

MAGISTRATES' COURT SENTENCING GUIDELINES

SENTENCING COUNCIL UPDATE 7 – March 2012

This update from the Sentencing Council provides new material following publication of the definitive guideline for allocation, offences taken into consideration and totality.

The new allocation guideline supersedes any existing guidance on allocation decisions. The Council's intention is to provide clear and structured guidance on allocation decisions, shifting the emphasis in the way in which magistrates approach assessing the strength of the case from taking the prosecution case at its highest to taking all aspects, including facts advanced by the defence, into account.

This update also includes some revisions to the *Explanatory material* in Part 5, taking into account introduction of the new overarching guidelines and updating some figures in relation to relevant weekly income.

Finally, there was an error within one of the drug offence guidelines issued in update 6 and this has been corrected in this update.

Applicability of the guideline

The guideline applies to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council's definitive guideline, *Overarching Principles – Sentencing Youths*.

It applies to all cases that are dealt with on or after 11 June 2012, regardless of when the offence was committed.

To bring your guidelines up to date, please:

Contents:

- Remove pages 1–2 and replace them with the new similarly numbered pages

Part 2 – Introduction and user guide:

- Remove pages 15–18 and replace them with pages 15–18p

Part 5 – Explanatory material:

- Remove pages 147–150 and replace them with the new similarly numbered pages
- Remove pages 155–156 and replace them with the new similarly numbered pages

Part 6 – Sentencing Council guidelines:

- Remove pages 229–230 and replace them with the new similarly numbered pages

This guideline is also available on our website – www.sentencingcouncil.org.uk

Please do not hesitate to contact us should you have any queries.

Michelle Crotty

Sentencing Council, March 2012

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Introduction

What's included in the Magistrates' Court Sentencing Guidelines

- Overarching guidelines issued by the Sentencing Council (within this Part).
- Guidelines and guidance issued by the Sentencing Guidelines Council:
 - ▶ offence guidelines (Part 3);
 - ▶ motoring offence guidelines (Part 4); and
 - ▶ explanatory material (Part 5).
- Offence specific guidelines issued by the Sentencing Council (Part 6).

In some instances, the guidelines previously issued by the Sentencing Guidelines Council and Court of Appeal have been necessarily summarised; **the original guideline or Court of Appeal judgment should be consulted for comprehensive guidance.**

Following these guidelines

When sentencing offences committed after 6 April 2010, every court is under a statutory obligation to follow any relevant Council guideline unless it would be contrary to the interests of justice to do so.¹ If a court imposes a sentence outside the range indicated in an offence specific guideline, it is obliged to state its reasons for doing so.²

When to use these guidelines

- These guidelines apply to **sentencing in a magistrates' court** whatever the composition of the court. They cover

offences for which sentences are frequently imposed in a magistrates' court when dealing with adult offenders.

- They also apply to **allocation (mode of trial) decisions**. When dealing with an either way offence for which there is no plea or an indication of a not guilty plea, these guidelines will be relevant to the allocation decision and should be consulted at this stage.

In general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient and reference should be made to the definitive offence guidelines to assess the likely sentence. Reference should be made to the allocation guideline within this Part (at page 18b) which replaces the relevant sections of the Mode of Trial guidelines in Part V.51 of the Consolidated Criminal Practice Direction.

- These guidelines apply also to the **Crown Court** when dealing with appeals against sentences imposed in a magistrates' court and when sentencing for summary only offences.

Further information

All guidelines issued by the Sentencing Guidelines Council and the Sentencing Council, and further information on the guidelines, are available at www.sentencingcouncil.org.uk or can be obtained from the Office of the Sentencing Council, 3rd Floor, Steel House, 11 Tothill Street, London, SW1H 9LJ.

¹ Coroners and Justice Act 2009, s.125(1)

² Criminal Justice Act 2003, s.174(2)(a)

User Guide

These guidelines include two structures: that used by the Sentencing Guidelines Council in the guidelines contained within Parts 3 and 4, and that adopted by the Sentencing Council in the guidelines contained within Part 6.

Using Parts 3 and 4

The first section of the user guide explains the key decisions involved in the sentencing process for guidelines in **Parts 3 and 4**. A step-by-step summary is provided on the pullout card.

1. Assess offence seriousness (culpability and harm)

Offence seriousness is the starting point for sentencing under the Criminal Justice Act 2003. The court's assessment of offence seriousness will:

- determine which of the sentencing thresholds has been crossed;
- indicate whether a custodial, community or other sentence is the most appropriate;
- be the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.

When considering the seriousness of any offence, the court must consider the offender's **culpability** in committing the offence and any **harm** which the offence caused, was intended to cause, or might foreseeably have caused.³ In using these guidelines, this assessment should be approached in two stages:

1. Offence seriousness (culpability and harm) A. Identify the appropriate starting point

The guidelines set out **examples** of the nature of activity which may constitute the offence, progressing from less to more serious conduct, and provide a **starting point** based on a **first time offender pleading not guilty**. The guidelines also specify a sentencing **range** for each example of activity. Refer to pages 145-146 for further guidance on the meaning of the terms 'starting point', 'range' and 'first time offender'.

Sentencers should begin by considering which of the examples of offence activity corresponds most closely to the circumstances of the particular case in order to identify the appropriate **starting point**:

- where the starting point is a fine, this is indicated as band A, B or C. The approach to assessing fines is set out on pages 148-155;
- where the community sentence threshold is passed, the guideline sets out whether the starting point should be a low, medium or high level community order. Refer to pages 160-162 for further guidance;
- where the starting point is a custodial sentence, refer to pages 163-164 for further guidance.

The Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004, identifies four levels of culpability for sentencing purposes (intention, recklessness, knowledge and negligence). The starting points in the individual offence guidelines assume that culpability is at the highest level applicable to the offence (often, but not always, intention). **Where a lower level of culpability is present, this should be taken into account.**

³ Criminal Justice Act 2003, s.143(1)

1. Offence seriousness (culpability and harm)

B. Consider the effect of aggravating and mitigating factors

Once the starting point has been identified, the court can add to or reduce this to reflect any aggravating or mitigating factors that impact on the **culpability** of the offender and/or **harm** caused by the offence to reach a provisional sentence. Any factors contained in the description of the activity used to reach the starting point must not be counted again.

The **range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence.

However:

- the court is not precluded from going outside the range where the facts justify it;
- previous convictions which aggravate the seriousness of the current offence may take the provisional sentence beyond the range, especially where there are significant other aggravating factors present.

In addition, where an offender is being sentenced for multiple offences, the court's assessment of the totality of the offending may result in a sentence above the range indicated for the individual offences, including a sentence of a different type. Refer to page 18g for further guidance.

The guidelines identify aggravating and mitigating factors which may be particularly relevant to each individual offence. These include some factors drawn from the general list of aggravating and mitigating factors in the Council's definitive guideline *Overarching Principles: Seriousness* published 16 December 2004, (reproduced on the pullout card). In each case, sentencers should have regard to the full list, which includes the factors that, by statute, make an offence more serious:

- offence committed while on bail for other offences;
- offence was racially or religiously aggravated;
- offence was motivated by, or demonstrates, hostility based on the victim's sexual orientation (or presumed sexual orientation);
- offence was motivated by, or demonstrates, hostility based on the victim's disability (or presumed disability);
- offender has previous convictions that the court considers can reasonably be treated as aggravating factors having regard to their relevance to the current offence and the time that has elapsed since conviction.

While the lists in the offence guidelines and pullout card aim to identify the most common aggravating and mitigating factors, **they are not intended to be exhaustive**. Sentencers should always consider whether there are any other factors that make the offence more or less serious.

2. Form a preliminary view of the appropriate sentence, then consider offender mitigation

When the court has reached a provisional sentence based on its assessment of offence seriousness, it should take into account matters of offender mitigation. The Council guideline *Overarching Principles: Seriousness* states that the issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

3. Consider a reduction for a guilty plea

The Council guideline *Reduction in Sentence for a Guilty Plea*, revised 2007, states that the **punitive** elements of the sentence should be reduced to recognise an offender's guilty plea. The reduction has no impact on sentencing decisions in relation to ancillary orders, including disqualification.

The level of the reduction should reflect the stage at which the offender indicated a willingness to admit guilt and will be gauged on a sliding scale, ranging from a **recommended** one third (where the guilty plea was entered at the first reasonable opportunity), reducing to a **recommended** one quarter (where a trial date has been set) and to a **recommended** one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun). There is a presumption that the recommended reduction will be given unless there are good reasons for a lower amount.

The application of the reduction may affect the type, as well as the severity, of the sentence. It may also take the sentence below the **range** in some cases.

The court must state that it has reduced a sentence to reflect a guilty plea.⁴ It should usually indicate what the sentence would have been if there had been no reduction as a result of the plea.

4. Consider ancillary orders, including compensation

Ancillary orders of particular relevance to individual offences are identified in the relevant guidelines; further guidance is set out on pages 168-174.

The court must **always** consider making a compensation order where the offending has resulted in personal injury, loss or damage.⁵ The court is required to give reasons if it decides not to make such an order.⁶

5. Decide sentence Give reasons

Sentencers must state reasons for the sentence passed in **every** case, including for any ancillary orders imposed.⁷ It is particularly important to identify any aggravating or mitigating factors, or matters of offender mitigation, that have resulted in a sentence more or less severe than the suggested starting point.

If a court imposes a sentence of a different kind or outside the **range** indicated in the guidelines, **it must state its reasons for doing so.**⁸

The court should also give its reasons for not making an order that has been canvassed before it or that it might have been expected to make.

⁴ Criminal Justice Act 2003, s.174(2)(d)

⁵ Powers of Criminal Courts (Sentencing) Act 2000, s.130(1)

⁶ *ibid.*, s.130(3)

⁷ Criminal Justice Act 2003, s.174(1)

⁸ *ibid.*, s.174(2)(a)

Using Part 6

This section of the user guide explains the key decisions involved in the sentencing process for guidelines in **Part 6**.

STEP ONE

Determining the offence category

The decision making process includes a two step approach to assessing seriousness. The first step is to determine the offence category by means of an assessment of the offender's culpability and the harm caused, or intended, by reference **only** to the factors set out at step one in each guideline. The contents are tailored for each offence and comprise the principal factual elements of the offence.

STEP TWO

Starting point and category range

The guidelines provide a **starting point** which applies to all offenders irrespective of plea or previous convictions. The guidelines also specify a **category range** for each offence category.

The guidelines provide non-exhaustive lists of aggravating and mitigating factors relating to the context of the offence and to the offender. Sentencers should identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In some cases, it may be appropriate to move outside the identified category range when reaching a provisional sentence.

FURTHER STEPS

Having reached a provisional sentence, there are a number of further steps within the guidelines. These steps are clearly set out within each guideline and are tailored specifically for each offence in order to ensure that only the most appropriate guidance is included within each offence specific guideline.

The further steps include:

- reduction for assistance to the prosecution;
- reduction for guilty pleas (courts should refer to the *Guilty Plea* guideline);
- where an offender is being sentenced for multiple offences – the court's assessment of the totality of the offending may result in a sentence above the range indicated for the individual offences, including a sentence of a different type (refer to page 18g for further guidance);
- compensation orders and/or ancillary orders appropriate to the case; and
- reasons for, and explain the effect of, the sentence.

Allocation guideline

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after 11 June 2012. It will not be applicable in the youth court where a separate statutory procedure applies.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Statutory framework

In accordance with section 19 of the Magistrates' Courts Act 1980, where a defendant pleads not guilty or has not indicated an intention to plead guilty to an offence triable either way, a magistrates' court must decide whether the offence should be sent to the Crown Court for trial.

When deciding whether an either way offence is more suitable for summary trial or trial on indictment, section 19 of the Magistrates' Courts Act 1980 provides that the court shall give the prosecutor and the accused the opportunity to make representations as to which court is more suitable for the conduct of the trial.¹

The court must also have regard to:

- a) the nature of the case;
- b) whether the circumstances make the offence one of a serious character;
- c) whether the punishment which a magistrates' court would have the power to inflict for the offence would be adequate; and
- d) any other circumstances which appear to the court to make the offence more suitable for it to be tried in one way rather than the other.²

¹ s.19(2) Magistrates' Courts Act 1980

² s.19(1) and (3) *ibid*

Guidance

It is important to ensure that all cases are tried at the appropriate level. **In general, either way offences should be tried summarily unless it is likely that the court's sentencing powers will be insufficient.** Its powers will generally be insufficient if the outcome is likely to result in a sentence in excess of six months' imprisonment for a single offence.

The court should assess the likely sentence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence.

The court should refer to definitive guidelines to assess the likely sentence for the offence.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion that the offence (and any associated offences) is so serious that greater punishment should be inflicted than the court has power to impose.³ Where the court decides that the case is suitable to be dealt with in the magistrates' court, it should remind the defendant that all sentencing options remain open, including committal to the Crown Court for sentence at the time it informs the defendant of this decision.

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.⁴

Linked cases

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be committed to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the young age of the defendant, particularly where the age gap between the adult and youth offender is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and
- the lack of previous convictions on the part of the youth.

³ s.3 Powers of Criminal Courts (Sentencing) Act 2000

⁴ s.2 and s.33 Magistrates' Courts Act 1980

Offences Taken Into Consideration guideline

TICs

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders whose cases are dealt with on or after 11 June 2012.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies where an offender admits the commission of other offences in the course of sentencing proceedings and requests those other offences to be taken into consideration.⁵

General principles

When sentencing an offender who requests offences to be taken into consideration (TICs), courts should pass a total sentence which reflects *all* the offending behaviour. The sentence must be just and proportionate and must not exceed the statutory maximum for the conviction offence.

Offences to be Taken Into Consideration

The court has discretion as to whether or not to take TICs into account. In exercising its discretion the court should take into account that TICs are capable of reflecting the offender’s overall criminality. The court is likely to consider that the fact that the offender has assisted the police (particularly if the offences would not otherwise have been detected) and avoided the need for further proceedings demonstrates a genuine determination by the offender to ‘wipe the slate clean’.⁶

It is generally **undesirable** for TICs to be accepted in the following circumstances:

- where the TIC is likely to attract a greater sentence than the conviction offence;
- where it is in the public interest that the TIC should be the subject of a separate charge;

⁵ s.305 Criminal Justice Act 2003 and s161(1) Powers of Criminal Courts (Sentencing) Act 2000

⁶ Per Lord Chief Justice, R v Miles [2006] EWCA Crim 256

- where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not;
 - where the TIC constitutes a breach of an earlier sentence;⁷
 - where the TIC is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003, but the conviction offence is non-specified; or
 - where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).
- the date of the offence(s), relevant detail about the offence(s) (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- a copy of the TIC schedule must be provided to the defendant and his representative (if he has one) before the sentence hearing. The defendant should sign the TIC schedule to provisionally admit the offences;
 - at the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC schedule and whether he wishes to have them taken into consideration;⁹
 - if there is any doubt about the admission of a particular offence, it should not be accepted as a TIC. Special care should be taken with vulnerable and/or unrepresented defendants;
 - if the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the magistrates' court.

Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence.

The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or are part of a series of offences of the same or similar character as the indictable conviction offence.⁸

Procedural safeguards

A court should generally only take offences into consideration if the following procedural provisions have been satisfied:

- the police or prosecuting authorities have prepared a schedule of offences (TIC schedule) that they consider suitable to be taken into consideration. The TIC schedule should set out the nature of each offence,

Application

The sentence imposed on an offender should, in most circumstances, be increased to reflect the fact that other offences have been taken into consideration. The court should:

1. Determine the sentencing starting point for the conviction offence, referring to the relevant definitive sentencing guidelines. No regard should be had to the presence of TICs at this stage.
2. Consider whether there are any aggravating or mitigating factors that justify an upward or downward adjustment from the starting point.

⁷ R v Webb (1953) 37 Cr App 82

⁸ s.40 Criminal Justice Act 1988

⁹ Anderson v DPP [1978] AC 964

The presence of TICs should generally be treated as an aggravating feature that justifies an upward adjustment from the starting point. Where there is a large number of TICs, it may be appropriate to move outside the category range, although this must be considered in the context of the case and subject to the principle of totality. The court is limited to the statutory maximum for the conviction offence.

3. Continue through the sentencing process including:
 - consider whether the frank admission of a number of offences is an indication of a defendant's remorse or determination and/or demonstration of steps taken to address addiction or offending behaviour;
 - any reduction for a guilty plea should be applied to the overall sentence;
 - the principle of totality;
 - when considering ancillary orders these can be considered in relation to any or all of the TICs, specifically:
 - ▶ compensation orders¹⁰ - in the magistrate's court the total compensation cannot exceed the limit for the conviction offence;
 - ▶ restitution orders.¹¹

¹⁰ s.131(2) Powers of Criminal Courts (Sentencing) Act 2000

¹¹ s.148 ibid

Totality guideline

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders, whose cases are dealt with on or after 11 June 2012.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence. In these situations, the courts should apply the principle of totality.

General principles

The principle of totality comprises two elements:

1. all courts, when sentencing for more than a single offence, should pass a total sentence which reflects *all* the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. it is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

General approach (as applied to Determinate Custodial Sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Determine whether the case calls for concurrent or consecutive sentences.

Concurrent sentences will ordinarily be appropriate where:

a) offences arise out of the same incident or facts.

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims;¹²
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;¹³
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

b) there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include:

- repetitive small thefts from the *same* person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.¹⁴

¹² R v Lawrence (1989) 11 Cr App R (S) 580

¹³ R v Poulton and Cellaire [2002] EWCA Crim 2487; Attorney General's Reference No 21 & 22 of 2003 [2003] EWCA Crim 3089

¹⁴ Attorney General's Reference Nos 21 & 22 of 2003

¹⁵ Attorney General's Reference No 1 of 1990 (1990) 12 Cr App R (S) 245

¹⁶ R v Millen (1980) 2 Cr App R (S) 357

Consecutive sentences will ordinarily be appropriate where:

a) offences arise out of unrelated facts or incidents.

Examples include:

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged;¹⁵
- a Bail Act offence;¹⁶
- any offence committed within the prison context;
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
 - ▶ an assault on a constable committed to try to evade arrest for another offence also charged;¹⁷
 - ▶ where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition;¹⁸
 - ▶ where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element.¹⁹

b) offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include:

- where offences committed against *different* people, such as repeated thefts involving attacks on several different shop assistants;²⁰
- where offences of domestic violence or sexual offences are committed against the *same* individual.

c) one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.²¹

However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.²²

Where consecutive sentences are to be passed add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - ▶ whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively;
 - ▶ whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified.

¹⁷ R v Kastercum (1972) 56 Cr App R 298

¹⁸ R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General's Reference Nos 21 & 22 of 2003 [2003] EWCA Crim 3089

¹⁹ R v Fletcher [2002] 2 CAR (S) 127

²⁰ R v Jamieson & Jamieson [2008] EWCA Crim 2761

²¹ R v Raza (2010) 1 Cr App R (S) 56

²² R v Ralphs [2009] EWCA Crim 2555

- when sentencing for two or more offences of differing levels of seriousness the court can consider:
 - ▶ whether some offences are of such low seriousness in the context of the most serious offence(s) that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification);
 - ▶ whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

3. Test the overall sentence(s) against the requirement that they be just and proportionate.

4. Consider whether the sentence is structured in a way that will be best understood by all concerned with it.

Specific applications – Custodial sentences

EXISTING DETERMINATE SENTENCE, WHERE DETERMINATE SENTENCE TO BE PASSED	
Circumstance	Approach
Offender serving a determinate sentence (offence(s) committed before original sentence imposed)	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
Offender serving a determinate sentence (offence(s) committed after original sentence imposed)	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison, any reduction for totality is likely to be minimal. ²³
Offender serving a determinate sentence but released from custody	The new sentence should start on the day it is imposed: s.265 Criminal Justice Act 2003 prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); ²⁴ this is so even if the new sentence will, in consequence, add nothing to the period actually served.
Offender subject to a s.116 return to custody The powers under s.116 Powers Criminal Court (Sentencing) Act 2000 remain available where the offender: <ul style="list-style-type: none"> • has been released from a sentence of less than 12 months;²⁵ • committed his offence before 4 April 2005 and is released from a sentence of less than 4 years;²⁶ • committed his offence before 4 April 2005 and is released from a sentence of over 4 years following a Parole Board recommendation, or after serving two-thirds of his sentence under section 33(b) Criminal Justice Act 1991.²⁷ 	The period of return under s.116 can either be ordered to be served before or concurrently with the sentence for the new offence. In either case the period of return shall be disregarded in determining the appropriate length of the new sentence.
Offender sentenced to a determinate term and subject to an existing suspended sentence order	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

²³ R v Ali (1998) 2 Cr App R 123

²⁴ R v Costello [2010] EWCA Crim 371

²⁵ s.116 of the Powers of Criminal Courts (Sentencing) Act 2000 was repealed by s.332 of the Criminal Justice Act 2003 and Part 7 of Schedule 37. However, the effect of the saving in paragraph 29 of Schedule 2 to the Commencement No.8 and Transitional and Savings Provisions Order 2005 was that s.116 continued to apply where the earlier sentence was imposed for an offence committed before 4 April 2005, or was for a term of less than 12 months.

²⁶ *ibid*

²⁷ *Ibid*. The Criminal Justice & Immigration Act 2008 contains a further transitional provision. Paragraph 4 of Schedule 26 inserts an exclusion into s.116 which prevents prisoners released under s.33(1A) of the 1991 Act (i.e eligible discretionary conditional release prisoners, who are released automatically at ½ point of their sentence, rather than on a recommendation from the Parole Board) from being returned to prison under s.116.

Specific applications – Non-custodial sentences

MULTIPLE FINES FOR NON-IMPRISONABLE OFFENCES	
Circumstance	Approach
<p>Offender convicted of more than one offence where a fine is appropriate</p>	<p>The total fine is inevitably cumulative.</p> <p>The court should determine the fine for each individual offence based on the seriousness of the offence²⁸ and taking into account the circumstances of the case including, the financial circumstances of the offender so far as they are known, or appear, to the court.²⁹</p> <p>The court should add up the fines for each offence and consider if they are just and proportionate.</p> <p>If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p><i>For example:</i></p> <ul style="list-style-type: none"> • where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences; • where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed. <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.³⁰</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p>Multiple offences attracting fines – crossing the community threshold</p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence.³¹ However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed.³²</p>

²⁸ s.164(2) Criminal Justice Act 2003

²⁹ s.164(3) *ibid*

³⁰ R v Pounton [2008] EWCA Crim 513

³¹ s.148(1) Criminal Justice Act 2003

³² s.150A *ibid* (in force since 14 July 2008) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.

FINES IN COMBINATION WITH OTHER SENTENCES	
Circumstance	Approach
<p>A fine may be imposed in addition to any other penalty for the same offence except:</p>	<ul style="list-style-type: none"> • a hospital order;³³ • a discharge;³⁴ • a sentence fixed by law³⁵ (minimum sentences, EPP, IPP); • a minimum term imposed under s.110(2) or s.111(2) of the Powers of Criminal Courts (Sentencing) Act 2000;³⁶ • a life sentence imposed under s.225(2) Criminal Justice Act 2003 or a sentence of detention for life for an offender under 18 under s.226(2) Criminal Justice Act 2003.³⁷
<p>Fines and determinate custodial sentences</p>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> • the sentence is suspended; • a confiscation order is not contemplated; and • there is no obvious victim to whom compensation can be awarded; and • the offender has, or will have, resources from which a fine can be paid.³⁸

³³ s.37(8) Mental Health Act 1983

³⁴ R v McClelland [1951] 1 All ER 557

³⁵ s.163 Criminal Justice Act 2003

³⁶ ibid

³⁷ ibid

³⁸ This guidance is also provided at p. 12 of SGC Guideline: *Sentencing for Fraud – Statutory Offences (2009)*

COMMUNITY ORDERS	
Circumstance	Approach
Multiple offences attracting community orders – crossing the custody threshold	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. ³⁹ If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
Multiple offences, where one offence would merit immediate custody and one offence would merit a community order	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
Offender convicted of more than one offence where a community order is appropriate	<p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour.</p> <p>Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
Offender convicted of an offence while serving a community order	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;⁴⁰ it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates’ court is in force, is convicted by a magistrates’ court of an additional offence, the magistrates’ court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates’ court, the magistrates’ court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.</p> <p>If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

³⁹ s.148(1) Criminal Justice Act 2003

⁴⁰ Paragraphs 21-23 of Schedule 8 Criminal Justice Act 2003

DISQUALIFICATIONS FROM DRIVING	
Circumstance	Approach
<p>Offender convicted of two or more obligatory disqualification offences (s.34(1) Road Traffic Offender Act 1988)</p>	<p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender.⁴¹</p> <p>All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another.</p> <p>The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p>
<p>Offender convicted of two or more offences involving either:</p> <p>a) discretionary disqualification and obligatory endorsement from driving; or b) obligatory disqualification but the court for special reasons does not disqualify the offender and the penalty points to be taken into account number 12 or more (s.28 and 35 Road Traffic Offender Act 1988)</p>	<p>Where an offender is convicted on the same occasion of more than one offence to which s.35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be imposed on him.⁴² However, the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.⁴³</p>
<p>Other combinations involving two or more offences involving discretionary disqualification</p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

⁴¹ s.34(1) Road Traffic Offender Act 1988

⁴² s.34(3) *ibid*

⁴³ *ibid*

COMPENSATION ORDERS	
Circumstance	Approach
Global compensation orders	The court should not fix a global compensation figure unless the offences were committed against the same victim. ⁴⁴ Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis. ⁴⁵
The court may combine a compensation order with any other form of order.	
Compensation orders and fines	Priority is given to the imposition of a compensation order over a fine. ⁴⁶ This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.
Compensation orders and confiscation orders	A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation. ⁴⁷
Compensation orders and community orders	A compensation order can be combined with a community order.
Compensation orders and suspended sentence orders	A compensation order can be combined with a suspended sentence order. ⁴⁸
Compensation orders and custody	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

⁴⁴ R v Warton [1976] Crim LR 520

⁴⁵ R v Miller [1976] Crim LR 694

⁴⁶ s.130(12) Powers of Criminal Courts (Sentencing) Act 2000

⁴⁷ R v Mitchell [2001] Crim LR 239

⁴⁸ s.118(5) Powers of Criminal Courts (Sentencing) Act 2000

Fine band starting points and ranges

In these guidelines, where the starting point or range for an offence is or includes a fine, it is expressed as one of three fine bands (A, B or C). As detailed on page 148 below, each fine band has both a starting point and a range.

On some offence guidelines, both the starting point and the range are expressed as a single fine band; see for example careless driving on page 117 where the starting point and range for the first level of offence activity are 'band A fine'. This means that the starting point will be the starting point for fine band A (50% of the offender's relevant weekly income) and the range will be the range for fine band A (25-75% of relevant weekly income). On other guidelines, the range encompasses more than one fine band; see for example drunk and disorderly in a public place on page 55 where the starting point for the second level of offence activity is 'band B fine' and the range is 'band A fine to band C fine'. This means that the starting point will be the starting point for fine band B (100% of relevant weekly income) and the range will be the lowest point of the range for fine band A to the highest point of the range for fine band C (25%-175% of relevant weekly income).

Sentencing for multiple offences

Courts should refer to the totality guideline at page 18g.

Offences not included in the guidelines

A number of offences are currently under consideration by the Council and will be included in the MCSG by way of an update when agreed. In the interim, the relevant guideline from the previous version of the MCSG has been included for ease of reference – **these do not constitute formal guidelines issued by the Council.**

Where there is no guideline for an offence, it may assist in determining sentence to consider the starting points and ranges indicated for offences that are of a similar level of seriousness.

When sentencing for the breach of any order for which there is not a specific guideline, the primary objective will be to ensure compliance. Reference to existing guidelines in respect of breaches of orders may provide a helpful point of comparison (see in particular page 43 (breach of community order) and page 83 (breach of protective order)).

Consult your legal adviser for further guidance.

Approach to the assessment of fines

Introduction

1. The amount of a fine must reflect the **seriousness** of the offence.¹
2. The court must also take into account the **financial circumstances** of the offender; this applies whether it has the effect of increasing or reducing the fine.² Normally a fine should be of an amount that is capable of being paid within 12 months.
3. The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level.
4. The guidance below aims to establish a clear, consistent and principled approach to the assessment of fines that will apply fairly in the majority of cases. However, it is impossible to anticipate every situation that may be encountered and in each case the court will need to exercise its judgement to ensure that the fine properly reflects the **seriousness of the offence** and takes into account the **financial circumstances** of the offender.

Fine bands

5. For the purpose of the offence guidelines, a fine is based on one of three bands (A, B or C).³ The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the **seriousness** of the offence.

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

6. For an explanation of the meaning of starting point and range, both generally and in relation to fines, see pages 145-146.

Definition of relevant weekly income

7. The **seriousness** of an offence determines the choice of fine band and the position of the offence within the range for that band. The offender's **financial circumstances** are taken into account by expressing that position as a proportion of the offender's **relevant weekly income**.
8. Where an offender is in receipt of income from employment or is self-employed **and** that income is more than £110 per week after deduction of tax and national insurance (or equivalent where the offender is self-employed), the actual income is the **relevant weekly income**.
9. Where an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) or the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is £110 or less, the **relevant weekly income is deemed to be £110**. Additional information about the basis for this approach is set out on page 155.
10. In calculating relevant weekly income, no account should be taken of tax credits, housing benefit, child benefit or similar.

¹ Criminal Justice Act 2003, s.164(2)

² *ibid.*, ss.164(1) and 164(4)

³ As detailed in paras.36-38 below, two further bands are provided which apply where the offence has passed the threshold for a community order (Band D) or a custodial sentence (Band E) but the court decides that it need not impose such a sentence and that a financial penalty is appropriate

No reliable information

11. Where an offender has failed to provide information, or the court is not satisfied that it has been given sufficient reliable information, it is entitled to make such determination as it thinks fit regarding the financial circumstances of the offender.⁴ Any determination should be clearly stated on the court records for use in any subsequent variation or enforcement proceedings. In such cases, a record should also be made of the applicable fine band and the court's assessment of the position of the offence within that band based on the seriousness of the offence.

12. Where there is no information on which a determination can be made, the court should proceed on the basis of an **assumed relevant weekly income of £400**. This is derived from national median pre-tax earnings; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.⁵

13. Where there is some information that tends to suggest a significantly lower or higher income than the recommended £400 default sum, the court should make a determination based on that information.

14. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means.⁶ The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band is **not** affected by the provision of this information.

Assessment of financial circumstances

15. While the initial consideration for the assessment of a fine is the offender's relevant weekly income, the court is required to take account of the offender's **financial circumstances** more broadly. Guidance on important parts of this assessment is set out below.

16. An offender's financial circumstances may have the effect of increasing or reducing the amount of the fine; however, they are **not** relevant to the assessment of offence seriousness. They should be considered separately from the selection of the appropriate fine band and the court's assessment of the position of the offence within the range for that band.

Out of the ordinary expenses

17. In deciding the proportions of relevant weekly income that are the starting points and ranges for each fine band, account has been taken of reasonable living expenses. Accordingly, no further allowance should normally be made for these. In addition, no allowance should normally be made where the offender has dependants.

18. Outgoings will be relevant to the amount of the fine only where the expenditure is **out of the ordinary** and **substantially** reduces the ability to pay a financial penalty so that the requirement to pay a fine based on the standard approach would lead to **undue** hardship.

Unusually low outgoings

19. Where the offender's living expenses are substantially **lower** than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.

⁴ Criminal Justice Act 2003, s.164(5)

⁵ For 2009-10, median pre-tax income was £377 per week (http://www.hmrc.gov.uk/stats/income_distribution/3-2table-feb2012.pdf). This figure has been increased to take account of earnings growth.

⁶ Criminal Justice Act 2003, s.165(2)

Savings

20. Where an offender has savings these will not normally be relevant to the assessment of the amount of a fine although they may influence the decision on time to pay.

21. However, where an offender has little or no income but has substantial savings, the court may consider it appropriate to adjust the amount of the fine to reflect this.

Household has more than one source of income

22. Where the household of which the offender is a part has more than one source of income, the fine should normally be based on the income of the offender alone.

23. However, where the offender's part of the income is very small (or the offender is wholly dependent on the income of another), the court may have regard to the extent of the household's income and assets which will be available to meet any fine imposed on the offender.⁷

Potential earning capacity

24. Where there is reason to believe that an offender's potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this.⁸ This may apply, for example, where an unemployed offender states an expectation to gain paid employment within a short time. The basis for the calculation of fine should be recorded in order to ensure that there is a clear record for use in variation or enforcement proceedings.

High income offenders

25. Where the offender is in receipt of very high income, a fine based on a proportion of relevant weekly income may be disproportionately high when compared with the seriousness of the offence. In such cases, the court should adjust the fine to an appropriate level; as a general indication, in most cases the fine for a first time offender pleading not guilty should not exceed 75% of the maximum fine.

Offence committed for 'commercial' purposes

26. Some offences are committed with the intention of gaining a significant commercial benefit. These often occur where, in order to carry out an activity lawfully, a person has to comply with certain processes which may be expensive. They include, for example, 'taxi-touting' (where unauthorised persons seek to operate as taxi drivers) and 'fly-tipping' (where the cost of lawful disposal is considerable).

27. In some of these cases, a fine based on the standard approach set out above may not reflect the level of financial gain achieved or sought through the offending. Accordingly:

a. where the offender has generated income or avoided expenditure to a level that can be calculated or estimated, the court may wish to consider that amount when determining the financial penalty;

b. where it is not possible to calculate or estimate that amount, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

Reduction for a guilty plea

28. Where a guilty plea has been entered, the amount of the fine should be reduced by the appropriate proportion. Courts should refer to the *Guilty Plea* guideline.

⁷ *R v Engen* [2004] EWCA Crim 1536 (CA)

⁸ *R v Little* (unreported) 14 April 1976 (CA)

Additional information: approach to offenders on low income

1. An offender whose primary source of income is state benefit will generally receive a base level of benefit (e.g. job seekers' allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar).
2. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming.
3. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.
4. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.
5. While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for job seekers' allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; **this is currently £110.**¹ The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.
6. It is expected that this figure will remain in use until 31 March 2015. Future revisions of the guideline will update the amount in accordance with current benefit and minimum wage levels.

¹ With effect from 1 October 2011, the minimum wage is £6.08 per hour for an adult aged 22 or over. Based on a 30 hour week, this equates to approximately £173 after deductions for tax and national insurance. To ensure equivalence of approach, the level of job seekers' allowance for a single person aged 22 has been used for the purpose of calculating the mid point; this is currently £53.45.

Enforcement of fines

1. The Courts Act 2003 created a new fines collection scheme which provides for greater administrative enforcement of fines. The main features are set out below. **Consult your legal adviser for further guidance.**

Attachment of earnings orders/applications for benefit deductions

2. Unless it would be impracticable or inappropriate to do so, the court must make an attachment of earnings order (AEO) or application for benefit deductions (ABD) whenever:

- compensation is imposed;¹ or
- the court concludes that the offender is an existing defaulter and that the existing default cannot be disregarded.²

3. In other cases, the court may make an AEO or ABD with the offender's consent.³

Collection orders

4. The court must make a collection order in every case in which a fine or compensation order is imposed unless this would be impracticable or inappropriate.⁴ The collection order must state:

- the amount of the sum due, including the amount of any fine, compensation order or other sum;
- whether the court considers the offender to be an existing defaulter;
- whether an AEO or ABD has been made and information about the effect of the order;
- if the court has not made an AEO or ABD, the payment terms;
- if an AEO or ABD has been made, the reserve terms (i.e. the payment terms that will apply if the AEO or ABD fails). It will often be appropriate to set a reserve term of payment in full within 14 days.

5. If an offender defaults on a collection order and is not already subject to an AEO or ABD, a fines officer must make an AEO or ABD.⁵ Where this would be impracticable or inappropriate, or where the offender is already subject to an AEO or ABD, a fines officer must either:⁶

- issue a 'further steps' notice advising that the officer intends to take any of the enforcement action listed below; or
- refer the case to a magistrates' court.

6. The following enforcement action is available to a fines officer:⁷

- making an AEO or ABD;
- issuing a distress warrant;
- registering the sum in the register of judgments and orders;

¹ Courts Act 2003, sch.5, para.7A

² *ibid.*, para.8

³ *ibid.*, para.9

⁴ *ibid.*, para.12

⁵ *ibid.*, para.26

⁶ *ibid.*, para.37

⁷ *ibid.*, para.38

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

For appropriate **class C** ranges, consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction (see box at page 227 if third drug trafficking conviction)

Offender used or permitted a person under 18 to deliver a controlled drug to a third person

Offence committed on bail

Other aggravating factors include:

Sophisticated nature of concealment and/or attempts to avoid detection

Attempts to conceal or dispose of evidence, where not charged separately

Exposure of others to more than usual danger, for example drugs cut with harmful substances

Presence of weapon, where not charged separately

High purity

Failure to comply with current court orders

Offence committed on licence

Factors reducing seriousness or reflecting personal mitigation

Lack of sophistication as to nature of concealment

Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step 1

Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances

Isolated incident

Low purity

No previous convictions **or** no relevant or recent convictions

Offender's vulnerability was exploited

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

For class A offences, where a minimum mandatory sentence is imposed under section 110 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SIX**Confiscation and ancillary orders**

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.