

SENTENCING EXPLAINED

SENTENCING GUIDELINES

What are sentencing guidelines? Who creates them and how are they used?

This explainer seeks to describe the purpose of sentencing guidelines, how they are created (and who by) and the way in which they operate.

In most other countries, courts sentence offenders without any formal guidelines. In England and Wales, however, all levels of court must follow guidelines issued by the Sentencing Council when determining the sentence to be imposed on a person convicted of a criminal offence. These guidelines supplement and in some cases replace judgments from the Court of Appeal.

First, a word about the Sentencing Council. This body, created in 2010, is composed of judges from all levels of court, criminal justice professionals, and key stakeholders representing the police, prosecutors, crime victims and solicitors and barristers. The Sentencing Council conducts research, reviews sentencing judgments and develops guidelines for courts to follow. Before a guideline becomes law, the Sentencing Council holds public and professional consultations. The consultation period gives people a chance to have input into the guideline before it becomes operational. The Sentencing Council also conducts an impact assessment to estimate the impact of the guideline on the prison population. Once a guideline is introduced, the Sentencing Council will monitor its effects and may eventually amend the guideline to reflect changes in the law or patterns of offending.

Courts have considerable discretion at sentencing. They can choose from a wide range of sentences to impose and the severity of that sentence. Without guidance, judges and magistrates may vary in the sentences they impose. This may lead to less consistent sentencing across the country which could be unfair, if an offence in Birmingham, for example, receives a lesser sentence than an identical offence in Brighton.

The primary purpose of the guidelines is therefore to promote a more consistent approach to sentencing across courts in England and Wales. (Scotland also has a Sentencing Council which issues guidelines for courts in that jurisdiction.) The idea is that if all courts follow the same guideline, sentencing is likely to be more consistent. This brings benefits such as predictability, transparency and fairness.

Here's a summary of how the guidelines work.

Guidelines now cover the most common offences such as drugs, violence, fraud, theft and burglary. Each offence has its own separate guideline, because crimes vary significantly and sentencing varies according to the nature and seriousness of the crime.

Take an offence like street robbery (an extract from the street robbery guideline is provided at the end of this Explainer). When sentencing an offender for this offence, courts will follow nine steps found in the robbery guideline. First, the court will decide upon the level of seriousness of the case, taking into account the harm caused, and the offender's level of responsibility or culpability for that harm. There are 3 levels of seriousness, each with its own sentence range. Suppose that the court considers this case to be of intermediate harm and the offender of intermediate responsibility – this is Category 2B in the guideline. For this profile the guideline provides a sentence range of 3 to 6 years and a 'starting' sentence of 4 years.

The court now moves to Step 2 to consider all relevant aggravating and mitigating factors. The most important of these are specified in the guideline, and lawyers appearing for the offender or the prosecution may point out other factors in addition to those listed. Using the starting point sentence of 4 years, the court increases the sentence to reflect aggravating factors such as previous convictions, and decreases the sentence to reflect mitigating factors, such as good character and genuine remorse.

If the offender has assisted the prosecution in some way the court will apply a reduction. Similarly, if the offender has pleaded guilty, the court will reduce the length of the sentence. The reason for the plea-based reduction is that by pleading guilty the police and the prosecution save resources and court time, and victims and witnesses are spared having to come to court to testify (see the Explainer on reductions in sentence for a guilty plea for further information).

After these first two steps, the court will consider any other relevant matters, and impose sentence. In doing so the court will give reasons for the sentence, and will explain the sentence in clear language so that the offender and others understand its consequences. The last step in the guideline requires courts to deduct, from the custodial sentence, any time that the offender has already served in custody.

If all courts sentencing street robbery follow the same series of steps, sentences for this crime are likely to be more consistent. But the process is not mechanical. Judges and magistrates have to exercise their judgment throughout the process. They have to ensure that the circumstances of individual offenders are considered: courts sentence people not crimes. If the case is exceptional, and the guideline sentence range is inappropriate, courts may impose a different sentence. As one former Lord Chief Justice noted, the guidelines are exactly that, guidelines and not tramlines.

In addition to the guidelines for specific offences, the Sentencing Council also issues guidelines regarding key issues in sentencing. For example, the Sentencing Council has a separate guideline which guides courts in determining how much of a reduction a defendant should receive for pleading guilty. In this way, similarly-placed defendants who plead guilty will receive a comparable reduction. The 'guilty plea' guideline specifies that defendants who plead guilty at the first court hearing are normally entitled to a maximum reduction of one-third off their sentence (see the separate Explainer on reductions in sentence for pleading guilty).

Since the use of sentencing guidelines in England and Wales is still relatively new, research is still being conducted to determine their impact on court practices. However, one thing is clear: as a

result of the guidelines, sentencing is more transparent in England and Wales. Lawyers, defendants, victims – anyone with an interest in sentencing – can easily learn about the sentences that courts impose, why a particular sentence has been imposed in a particular case, and the factors courts take into account. People can do this by visiting the Sentencing Council's website which contains all the guidelines.

SENTENCING ACADEMY

Extract from Street Robbery Guideline

STEP TWO Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken into Consideration and Totality* guideline.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 4 years' custody
	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody
Category 2	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range High level community order – 3 years' custody

The table on the next page 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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.