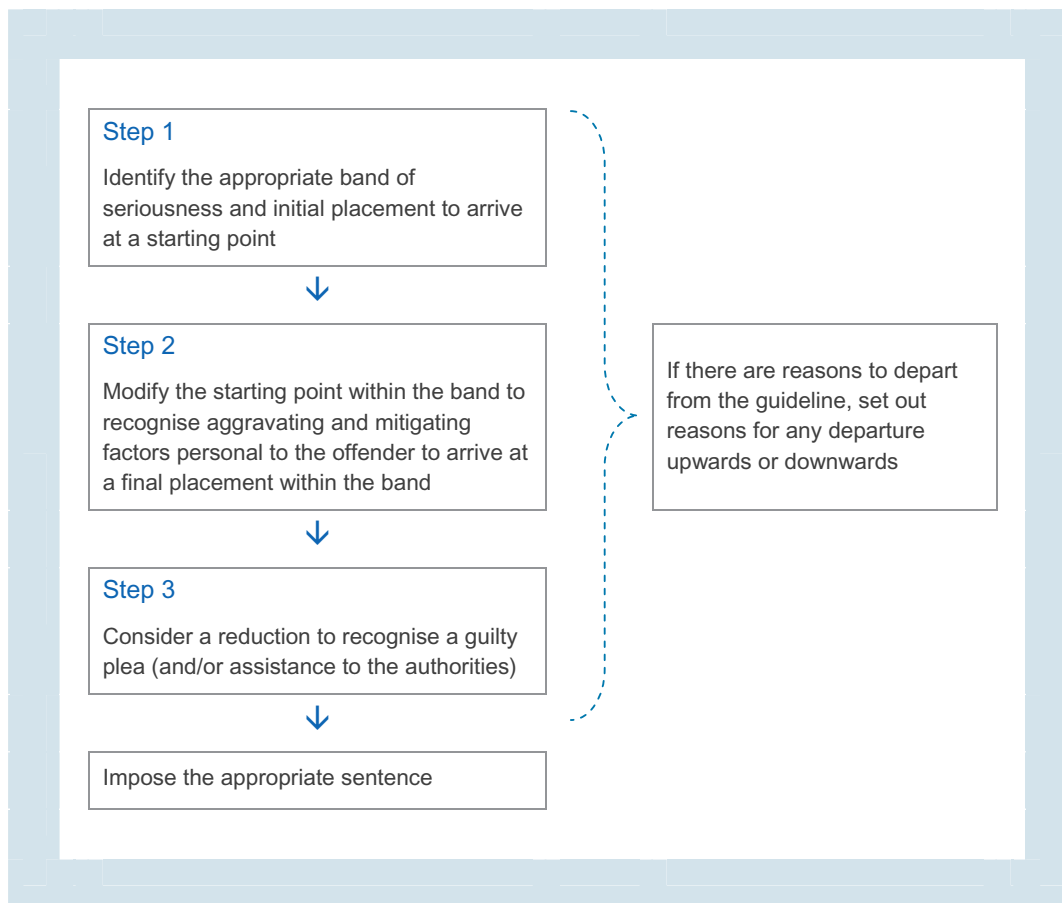


Sentencing methodology

Introduction

1. The sentencing methodology described below must be followed whenever an offence-based guideline is being applied. An offence-based guideline applies whenever an offence included within that guideline is:
 - (a) The only offence being sentenced; or
 - (b) The lead offence of a number of offences being sentenced and a *concurrent* sentencing approach is adopted (see the generic guideline on [Multiple offences \(totality principle\)](#)).
2. Conceptually, the methodology involves three key steps:



3. There are a limited number of situations in which sentencing must take place outside the offence-based guidelines – see paragraphs 24–25.

Applying the sentencing methodology

Choose the appropriate offence-based guideline

4. The appropriate offence-based guideline is the guideline for the offence being sentenced, whether that offence is the only offence being sentenced or the lead offence of a number of offences. (See the generic guideline on [Multiple offences \(totality principle\)](#) for guidance on selecting the lead offence.)
5. If the offence being sentenced is an “excluded offence” (that is, it does not have an offence-based guideline), sentencing must take place outside the offence-based guidelines (see paragraphs 24–25 below).

STEP 1: Identify the appropriate band of seriousness and initial placement to arrive at a starting point

6. The appropriate *band of seriousness* is determined by specified aggravating and mitigating factors relating to the offence (that is, those factors that determine the seriousness of the offence and the offender’s culpability) and any specified aggravating and mitigating factors personal to the offender (most often the offender’s criminal history). The relative weight of each band choice factor depends on the circumstances of the individual case, and does not depend on the order in which the band choice factors appear in the band.
7. The band of seriousness indicates the range of sentences available to the judge. The *starting point* is the sentence within that range that properly reflects the number and intensity of all aggravating and mitigating factors relating to the offence (whether or not identified in the offence-based guideline as band choice or band placement factors) and any factors personal to the offender that are identified as band choice factors.
8. Many offence-based guidelines require the judge to determine the appropriate band by reference to a combination of some or all band choice factors. This will enable a band to be readily chosen in most cases. If there is a combination of some or all band choice factors from more than one band, band choice will depend on an overall assessment of the intensity of band choice factors. The intensity of one band choice factor will occasionally justify sentencing in a particular band, even if no other factors from that band are present. A departure from the otherwise appropriate band (and therefore from the guidelines) may be justified if the band choice factors are of such number and intensity that they constitute exceptional aggravation or mitigation – see ground (p) of the guideline on [Departure from the guidelines](#).
9. Some offence-based guidelines include examples of typical situations that may fall within each band. These situations are not intended as a substitute for the judicial evaluation of the case at hand. Rather, they aim to assist band choice by distinguishing between the bands of seriousness for that offence.
10. For further guidance, see the generic guidelines on [Aggravating factors](#), [Mitigating factors](#), [Criminal history](#), [Victim interests](#), and [Departure from the guidelines](#).

STEP 2: Modify the starting point within the band to recognise aggravating and mitigating factors personal to the offender to arrive at a final placement within the band

11. Once a starting point within the appropriate band has been identified, final placement in the band is determined by considering all aggravating and mitigating factors personal to the offender that have not been considered at step 1 as band choice factors. A guilty plea and assistance to the authorities are not to be regarded as mitigating factors personal to the offender. They are instead taken into account separately under step 3.
12. Occasionally, a selected starting point will fall at the top or the bottom of the sentence range for a band of seriousness, and there will be other significant aggravating or mitigating factors personal to the offender that cannot be accommodated within that range. This justifies departure – see ground (b) of the guideline on [Departure from the guidelines](#).
13. For further guidance, see the generic guidelines on [Aggravating factors](#), [Mitigating factors](#), [Criminal history](#), [Age](#), [Restorative justice and similar processes](#), [Parties](#), and [Departure from the guidelines](#).

STEP 3: Consider a reduction to recognise a guilty plea (and/or assistance to the authorities)

14. A reduction from the sentence reached under step 2 is normally required if a guilty plea has been entered and/or assistance to the authorities has been provided.
15. The sentence that is arrived at after the reduction has been made is to be regarded as falling within the guideline, even if it falls below the range provided for the chosen band. For example, a case falling within a band of seriousness warranting five–eight years imprisonment may, after applying steps 1 and 2, result in a final placement in the band of six years imprisonment. A guilty plea entered at the first reasonable opportunity justifies a reduction of 33%, so that the appropriate sentence is four years. This sentence is still within the guideline.
16. For further guidance, see the generic guidelines on [Guilty pleas](#) and [Assistance to the authorities](#).

Impose the appropriate sentence

17. The offence-based guidelines identify the appropriate sentence range for each band of seriousness. Guidance is also provided on the imprisonment threshold for that particular offence or offence type.
18. Whenever the Sentencing Act 2002 permits a sentence specified in a band to be combined with any other sentence or order, the judge may impose that combination. However, the other sentence or order must be at the same or a lower point in the hierarchy of sentences and orders specified in section 10A of the Act.
19. If a non-custodial sentence is at the top or bottom of a band, a judge may substitute that sentence with an equivalent combination of different non-custodial sentences without departing from the guideline. For example, a sentence of six months home detention may, depending on the circumstances and the conditions imposed, be considered equivalent to six months community detention combined with 200 hours community work. However, the judge must be satisfied that the sentences are equivalent to that indicated by the guideline and the equivalence must be articulated.

Departure from the guidelines

20. Section 21A of the Sentencing Act 2002 enables a judge to impose a sentence other than that indicated by the guidelines if satisfied that it is in the interests of justice to do so. It will not always be necessary for a judge to methodically follow the steps of the sentencing methodology to determine whether departure is appropriate.
21. Some individual offence-based guidelines provide specific guidance about the situations in which departure from that guideline may be appropriate. For guidance on grounds of departure from all guidelines, see the generic guideline on [Departure from the guidelines](#).

Reasons for sentence

22. The judge should normally give reasons for the sentence with reference to the steps of the sentencing methodology. This includes articulating:
 - (a) The band of seriousness, and the band choice factors that determined it;
 - (b) The starting point, and the aggravating and mitigating factors that determined it;
 - (c) Final placement within the band, and the aggravating and mitigating factors that determined it;
 - (d) The amount of, and reasons for, any reduction for a guilty plea and/or assistance to the authorities.
23. Section 31(1A) of the Sentencing Act 2002 requires the judge to give reasons for departing from the guidelines. In cases of departure, it may sometimes be sufficient simply to identify the band of seriousness that would otherwise have been appropriate and to focus on the reasons that justify departure.

Sentencing outside the offence-based guidelines

24. The situations where sentencing must take place outside the offence-based guidelines, and for which the sentencing methodology does not apply, are if:
 - (a) The offence being sentenced is an excluded offence;
 - (b) Multiple offences are being sentenced and a cumulative sentencing approach is adopted – see the generic guideline on [Multiple offences \(totality principle\)](#);
 - (c) The offender is being sentenced as an accessory – see the generic guideline on [Accessories after the fact](#);
 - (d) The offender is being sentenced for an attempt or conspiracy offence that is not expressly included within an offence-based guideline – see the generic guidelines on [Attempts](#) and [Conspiracies](#).
25. In these situations, sentencing must take place with reference to analogous offence-based guidelines and existing case authority. Relevant generic guidelines must also be applied where appropriate. For example, the generic guideline on [Guilty pleas](#) applies whenever a guilty plea is entered. Some generic guidelines (for example, the generic guidelines on [Accessories after the fact](#), [Attempts](#), and [Conspiracies](#)) provide specific guidance on how to sentence outside the offence-based guidelines. Other generic guidelines apply to the extent they are relevant.