

Public Order
Offences Guidelines
Consultation

Public Order Offences Consultation

Published on 9 May 2018

The consultation will end on 8 August 2018

A consultation produced by the Sentencing Council

This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This consultation is open to everyone including members of the public, judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:

From 9 May 2018 to 8 August 2018

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Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment and an online questionnaire, all of which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

www.sentencingcouncil.org.uk

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE: We will disregard automatic confidentiality statements generated by an IT system.

In addition, responses may be shared with the Justice Committee of the House of Commons.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. Part of the Council's remit¹ is to conduct public consultations on guidelines for the sentencing of offenders.

Why Public Order offences?

Public Order offences are high volume offences both in the magistrates' courts and Crown Court. In 2016 there were 22,500 adult offenders sentenced for these offences, approximately 83 per cent were dealt with in the magistrates' courts, and 17 per cent in the Crown Court.

There is some existing guidance for offenders being sentenced in magistrates' courts, but no guidance for offenders being sentenced in the Crown Court.

In the magistrates' courts the existing guidance is contained within the *Magistrates' Court Sentencing Guidelines* (MCSG). This guidance is limited to a brief reference to violent disorder offences which may be sentenced in magistrates' courts. The MCSG also contains guidance on sentencing the offence of affray and the summary offences relating to disorderly behaviour provided for by section 4, section 4A and section 5 of the Public Order Act 1986.

The new guideline will provide sentencers across the Crown Court and magistrates' courts with guidance for all of the offences listed below, which will assist in achieving the Council's objective of consistent sentencing, and provide transparency for the public regarding the possible penalties for these offences.

Which offences are covered by the guideline?

The new Public Order Act offences guideline will contain guidance for:

- Section 1 Riot
- Section 2 Violent disorder
- Section 3 Affray
- Section 4 Threatening or provocation of violence and the racially and religiously aggravated counterpart offences
- Section 4A Disorderly behaviour with intent to cause harassment, alarm or distress and the racially and religiously aggravated counterpart offences

1 ss.118-136 Coroners and Justice Act 2009

- Section 5 Disorderly behaviour causing or likely to cause harassment, alarm or distress and the racially and religiously aggravated counterpart offences
- Offences relating to stirring up racial or religious hatred and hatred based on sexual orientation which are provided for by the Public Order Act 1986

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of Public Order Act offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the types and lengths of sentence that should be passed;
- anything else you think should be considered.

A summary of the consultation questions can be found at Annex A.

What else is happening as part of the consultation process?

This is a 13 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire. The Council has also produced a resource assessment and statistical bulletin for the guideline. These can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

Section one: Overarching issues and the context of the guidelines

This consultation seeks views on seven guidelines: riot, violent disorder, affray, section 4, section 4A and section 5 offences and their aggravated counterparts, and a guideline relating to hate crime offences of stirring up racial or religious hatred and hatred based on sexual orientation.

The principal piece of legislation for these offences is the Public Order Act 1986. In addition the racially and religiously aggravated versions of these offences are provided for by section 31 of the Crime and Disorder Act 1998. Offences relating to hate crime type offences are provided for by Parts 3 and 3A of the Public Order Act 1986.

Public Order offences are some of the highest volume offences seen by courts, and span a wide range of offending, ranging from low level disorderly behaviour to incidents involving serious violence and disorder.

Public order is essential for the safe functioning of society, and the law seeks to protect the public from behaviour which undermines this. This issue came into prominence in the 2011 riots which started in London and spread throughout the country, causing widespread disorder and criminal activity. In a case dealing with riot related offending, the then Lord Chief Justice stated that “there is an overwhelming obligation on sentencing courts to do what they can to ensure the protection of the public”.

Thankfully incidents of riot are rare, but the Council considers that these principles apply equally to other Public Order offences which threaten to undermine the safe and lawful functioning of society.

In considering the scope of the guideline, the Council has considered other trends in criminality and a social climate which has seen a rise in hate crime offending. Home Office statistics² illustrate that in 2016/17, there were 80,400 offences recorded by the police in which one or more hate crime strands were deemed to be a motivating factor. This was an increase of 29 per cent compared with the 62,500 hate crimes recorded in 2015/16, the largest percentage increase seen since 2011/12. While not all of these offences will be Public Order offences, the Council considered that a guideline on Public Order would be incomplete if it did not address both aggravated Public Order offences and those which specifically address stirring up of racial or religious hatred or hatred based on sexual orientation.

2 Source: Hate Crime, England and Wales, 2016/17: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2016-to-2017>

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues these draft guidelines. Following consultation, when the definitive guidelines are produced they will apply to all offenders aged 18 and older, who are sentenced on or after the implementation date, regardless of the date of the offence.

Section 125(1) 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 guidelines which are 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.”

Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guidelines specify *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence-based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision-making process, after the appropriate sentence has been identified.

The guideline in relation to current practice and existing guidelines

In preparing the guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice’s Court Proceedings Database (CPD) for the offences covered in the guideline to get a picture of current sentencing levels. In addition, an analysis of 117 transcripts of judges’ sentencing remarks was carried out, in order better to understand the factors involved in high level offences, and types of cases attracting sentences of differing levels of seriousness.

A small-scale research exercise was carried out to gather sentencers’ views on the existing guidelines and their attitudes to sentencing in this area. Further qualitative research will be carried out with sentencers during the consultation period to help assess whether the proposed new guideline will work as intended, whether there may be unintended consequences and sentencers’ views on the content of the guideline.

Section two: Developing the Public Order guidelines

Assessing seriousness

The guideline sets out a step-by-step decision-making process for the court to use when sentencing each type of offence. This is intended to ensure that all sentencers adopt a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors which in turn determine what the sentence starting point should be.

The first two steps that the sentencer follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Determining the offence category

The first step is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The draft guideline directs the court to consider the factors relating to the culpability of the offender in committing the offence and the harm that has been caused or intended. In broad terms, culpability relates to the role the offender has played, the level of planning involved and the sophistication with which the offence was carried out, but there are some variations. For the riot and violent disorder guidelines in particular the overall scale of the incident is assessed at step one with the offender's role assessed at step two. For some other offences there may be characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability.

Harm is assessed in terms of the harm caused or intended from the offence.

STEP TWO**Starting point and category range**

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. It is at this step that the court should consider any adjustments for previous convictions, if appropriate. The court should also consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive.

The starting points and ranges in the draft guidelines have been proposed based on a combination of statistical data collected by the Ministry of Justice, the starting points and ranges of the current guidelines, press reports, reported cases and data gathered from the research activities described above. The starting points and ranges have then been tested against reported cases.

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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX
Totality principle

Where an offender is before the court for more than one offence, the court must consider whether the sentences passed should be consecutive or concurrent. The court must also consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN
Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT
Reasons

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

STEP NINE
Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Section three: Riot

This section considers the offence of riot. The offence is contained within section 1 of the Public Order Act 1986 which provides that where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot. The offence has a statutory maximum of ten years' imprisonment.

Volumes of this offence are very low. In the period 2006-2016 there were 35 offenders sentenced for riot. Despite the low volumes, the Council considers that a Public Order guideline would be incomplete if it did not include the most serious offence provided for by the Public Order Act.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

STEP ONE Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**. The court should weigh all the factors set out below in determining the offender's culpability.

Culpability demonstrated by one or more of the following:

Culpability A	Factor(s) in Category B present AND any of: <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Offender's actions escalated level of violence and/or disorder
Culpability B	<ul style="list-style-type: none"> • Offender participated in incident which caused widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity in a public place

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.*

Culpability factors

To identify appropriate culpability factors for the offence of riot the Council decided that these should reflect established case law principles³ that the level and scale of the incident is the predominant factor influencing sentences, with the offender's individual role in the incident assessed to a lesser extent. However, cases illustrated that some activity does inflate a sentence from a 'baseline'. For this reason, the factors proposed capture all offenders convicted of riot at culpability B, with culpability A factors providing for particularly serious activity within the incident by an individual.

Only two culpability levels are included as it is difficult to envisage, and no cases analysed identified, any case which would not be captured within the categories proposed. All cases analysed were large scale and/or serious incidents, involved significant planning or were persistent and sustained, and it is likely that any offence charged as riot would include these characteristics.

The model developed is slightly different from standard culpability models in guidelines, in that to be captured at the highest category of culpability, both a culpability A and culpability B factor must be present.

Culpability A

While cases analysed illustrated that the incident itself does result in a 'baseline' sentence for all offenders charged with riot, as explained above some individual behaviour – such as an organising or leading role, or throwing a petrol bomb or using a highly dangerous weapon such as a firearm – does inflate the sentence above this. It was therefore agreed that such activity should attract the highest culpability categorisation.

Additional guidance has been included to assist in the definition of a highly dangerous weapon. While weapons such as firearms and petrol bombs are obviously highly dangerous, the Council decided this category should provide for the use of any article substantially above and beyond the legislative definition of an offensive weapon which may be used in an offence. The text below is included to provide guidance on assessing whether a weapon is highly dangerous:

The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.

Culpability B

This category is intended to capture any incident of riot. As noted above, no cases analysed identified any case which would not be captured by these factors. An alternative approach could be for this category to include one factor of: *'any incident of riot'*.

3 R v Blackshaw (& others) [2011] EWCA Crim 2312; R v Caird [1970] 54 Cr. App. R 499 at 506

As well as consulting on the proposed factors, the Council would like to consult on which approach consultees think would be most appropriate.

Q1

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Q2

In culpability category B do you prefer the list of descriptive factors or the individual factor to capture any incident of riot?

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence. Category 1 harm factors define and are intended to capture the most serious harm resulting from riot offences. Category 2 captures cases where a lower level of harm is present than in category 1.

Category 1	<ul style="list-style-type: none"> • Incident results in very serious physical injury or very serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

Harm category 1 factors

While any harm resulting from a riot is likely to be serious due to the nature of the offence, the factors intend to describe impacts at the very highest level of seriousness.

The factors proposed were illustrated in a number of serious riot cases analysed. One riot involved attacks on a police station in which petrol bombs were thrown, and another involved an occupied building being set alight and firearms being used to shoot at police who had attended to deal with the incident. These incidents caused serious fear and distress, involved an intention to cause serious physical injury and caused extensive damage to property.

Harm category 2 factors

This category is intended to capture cases where a lower level of harm is present than in category 1.

Consideration was given to replicating but modifying the harm 1 factors for harm 2 cases to reflect lower levels of harm. However, it is difficult to articulate and define an exhaustive list of lower harm factors which would not potentially fall outside of either category. Category 1 harm factors reflect the highest level of harm that it is considered could be present in an offence, but there may be incidents where lower levels of harm are present than are defined in category 1.

The Council would like to consult on these factors.

Q3

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and analysis of first-instance transcripts and Court of Appeal sentencing remarks.

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability	
	A	B
Category 1	Starting point 7 years' custody	Starting point 6 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody
Category 2	Starting point 6 years' custody	Starting point 5 years' custody
	Category range 4 – 7 years' custody	Category range 3 – 6 years' custody

The ranges and starting points identified were informed by the cases analysed. Views are sought on whether the sentencing ranges and starting points are proportionate.

Q4

Do you have any comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. However, for this offence the guideline specifies that in cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender. First identify factors relating to the offenders role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far. **In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.** Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Commission of offence whilst under the influence of alcohol or drugs

Offence committed on licence or post sentence supervision

Offences taken into consideration

History of failing to comply with court orders

Other proposed factors are factors which cases illustrated, or the Council considers, increase the seriousness of an offence:

Active and persistent participant

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Took steps to prevent emergency services from carrying out their duties

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence
Injury to animal carrying out public duty
Actively recruited other participants
Possession of weapon or article intended to injure
Vulnerable persons or children present during incident
Ignored warnings or exclusion notices

Factors reducing seriousness or reflecting personal mitigation

Low level involvement
No previous convictions
Remorse
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Previous good character
Sole or primary carer for dependent relatives

There are no statutory mitigating factors. The factor '*low level involvement*' was the only factor identified that may mitigate the seriousness of an offence. All of the other factors included within the draft guideline are commonplace within the definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight to them.

Q5

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Riot related offending

The guideline also includes additional guidance for sentencing offences committed in the context of a riot. As was seen in the London and breakout riots of 2011, while not involved in the riot offence directly, some offenders committed opportunistic offences such as theft, burglary and criminal damage. The courts established in sentencing these cases that sentences should be severe to act as a deterrent to those who may seek to commit crime while disorder exists. It is thought that when sentencing such offences the courts will look to the Public Order guideline for assistance, and it is proposed the following guidance is included.

Other offences committed within incidents of riot

Where sentencing other offences committed in the context of riot, the court should treat the context of the offending as a severely aggravating feature of any offence charged.

Q6

Do you have any other comments on the content or structure of the draft guideline?

Section four: Violent disorder

The offence of violent disorder is contained within section 2 of the Public Order Act, which provides that where three or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder.

A person guilty of violent disorder is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, or on summary conviction to imprisonment for a term not exceeding 6 months.

In 2016, 340 offenders were sentenced for this offence in the Crown Court and fewer than ten were sentenced in the magistrates' court.

The offence of violent disorder can involve a broad range of activity. An analysis of cases identified that violent disorder can be charged in relation to offences akin to riot where all of the elements of a riot offence may not be made out; football related violence and disorder; fights between groups in public places or group violence towards individuals. Existing MCSG guidance also recognises that violent disorder offences may involve rare cases which involve minor violence or threats of violence leading to no or minor injury.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

The lowest culpability factors are intended to capture offences at the lowest end of the spectrum of this offence.

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following	
Culpability A	Factors in Category B present AND any of; <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Targeting of individual(s) by a group
Culpability B	<ul style="list-style-type: none"> • Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving serious acts of violence • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity
Culpability C	<ul style="list-style-type: none"> • Offence involved threats of violence only • Offence involved lower level of violence or activity than included in Category B

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.*

Culpability factors

Culpability A

As this offence can be charged in offences which are similar to riot or other serious outbreaks of disorder, the first two culpability categories include the same factors as are included in the riot guideline, save for some minor exceptions.

A factor included at culpability A in the riot guideline relates to an offender's actions escalating the level of violence and disorder involved. This has been included as an aggravating factor in the violent disorder guideline, as analysis of cases illustrated the potential for significant inflation of sentences for some violent disorder offences if this was included as a high culpability factor. This is because the factor could have broader application in a violent disorder offence due to the broad range of activity that can be involved in the offence. For example, in a riot type incident the factor would increase the offender's culpability significantly, as it may escalate a low level incident, such as a lawful demonstration, into a riot. However, in a group fight context where it was found an offender threw the first punch but was then otherwise mildly involved, application of the factor may not be reflective of the offender's overall culpability and would be more appropriately captured as an aggravating factor when sentencing.

The additional guidance relating to highly dangerous weapons is also included in the violent disorder guideline. As well as capturing highly dangerous weapons, the Council considers that this could have broader application in violent disorder offences. A recent phenomenon the Council considered is the use of dogs in a threatening way during an offence. The factor is intended to capture such cases where appropriate to do so, but views are sought on whether respondents think such a case would be captured by the factor.

An additional factor is in Category A of '*targeting of individual(s) by a group*'. The Council considers

that the presence of such a factor in a violent disorder offence would significantly escalate the seriousness of an offence and should attract a higher culpability categorisation. A number of cases analysed illustrated such incidents, and related to victims being sought out and attacked by groups and serious physical violence inflicted. Such cases would be captured by the Category B factor ‘*offender participated in incident involving serious acts of violence*’, and targeting of individual(s) would escalate the categorisation of the offence at step one.

Culpability B

For the reasons noted above, these factors are the same as those proposed for the offence of riot. An additional factor is also proposed of ‘*offender participated in incident involving serious acts of violence*’. This factor is proposed to capture serious incidents of group violence, such as football related violence and fights between rival groups.

Culpability C

Category C is intended to capture cases where a lower level or threats of violence only are present.

Q7

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1

- Incident results in serious physical injury or serious fear and/or distress
- Incident causes serious disruption or severe detrimental impact to community
- Incident causes loss of livelihood or substantial costs to businesses
- Incident causes substantial costs to be incurred to public purse
- Incident results in attacks on police or public servants
- Incident results in extensive damage to property

Category 2

- Cases where a lower level of harm is present than in category 1

Again, to capture riot type cases or incidents of serious disorder, the harm factors mirror those for the offence of riot.

Harm category 1

These factors would capture the most serious harm which could result from a serious incident of violent disorder, whether it be a riot type incident or an offence involving group violence or violence towards individuals.

Harm category 2

There is just one factor providing for cases where a lower level of harm is present in an offence.

Q8

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database, analysis of first-instance transcripts, analysis of Court of Appeal sentencing remarks and reference to ranges within the riot and affray guidelines, to ensure relativity within the limitations of the different statutory maximum sentence for offences.

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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year 6 months' custody

Views are sought on whether the sentencing ranges are proportionate.

Q9

Do you have any comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. However, for this offence the guideline specifies that in cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

Commission of offence whilst under the influence of alcohol or drugs

Offence committed on licence or post sentence supervision

Offences taken into consideration

History of failing to comply with court orders

Other proposed factors are factors which cases illustrated, or the Council considers, increase the seriousness of an offence.

Other aggravating factors:

Leading role where offending is part of group activity (where not taken into account at step one)
Active and persistent participant
Offender's actions escalated level of violence and/or disorder
Incitement of others
Offender masked or disguised to evade detection
Incident occurred in busy public area
Offender used weapon
Offender threw missiles/objects
Use of significant physical violence
Injury to animal carrying out public duty
Possession of weapon or article intended to injure
Incident occurred in victim's home
Vulnerable persons or children present during incident

Factors reducing seriousness or reflecting personal mitigation

No previous convictions
Evidence of steps initially taken to defuse incident
Low level involvement
Minor/peripheral role
Remorse
Previous good character
Sole or primary carer for dependent relatives
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence

There are no statutory mitigating factors. The factors '*evidence of steps initially taken to defuse incident*', '*low level involvement*' and '*minor/peripheral role*' were all identified as common mitigating factors in cases analysed. All of the other factors proposed are commonplace within the definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight to them.

Q10

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q11

Do you have any other comments on the content or structure of the draft guideline?

Section five: Affray

Section 3 of the Public Order Act provides for the offence of Affray and states that:

A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

The maximum penalty for the offence is 3 years' imprisonment in the Crown Court, or on summary conviction in the magistrates' court 6 months' imprisonment.

Volumes of this offence are relatively high. In 2016 2,500 offenders were sentenced for this offence in the Crown Court and 530 were sentenced in magistrates' courts.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following	
Culpability A	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Use of a weapon to inflict violence • Use of serious or sustained violence • Intention to cause fear of very serious violence
Culpability B	<ul style="list-style-type: none"> • Threat of violence by any weapon (whether or not produced) • Threat or use of violence falling between levels in categories A and C
Culpability C	<ul style="list-style-type: none"> • Threat or use of minimal violence • The offender acted in self-defence or in fear of violence (where not amounting to a defence)

The principle that the sentence should relate to the overall incident and not the offender's individual role in an incident does not apply to the offence of affray as it does for riot and in some cases of violent disorder. As the offence requires the use or threat of unlawful violence, the factors proposed reflect gradations of this type of conduct.

Culpability factors

Culpability A

The factors proposed reflect the most serious culpability that could be present in this offence. Where individuals are targeted by a group, this will always make the offence more serious. The Council considers that the use of a weapon or of serious or sustained violence in an offence would infer a high level of culpability on the part of an offender.

The factor "*Intention to cause fear of very serious violence*" has been included to capture serious cases where threats or behaviour towards a victim imply that serious violence will be used. This factor was present in a number of cases which were analysed. In one case an offender entered their neighbour's property and threatened them with a loaded nail gun at night when they were in bed. In another an offender entered a neighbour's property and removed a baby from its cot and implied to the mother a sinister and violent threat of harm towards the child. The Council carefully considered how cases such as these could be appropriately captured in high culpability, while not intending that the factor capture cases where offenders may intend to cause fear of violence to an equally enthusiastic opponent in a fight. The latter cases did not attract sentences as high as the former. As the guideline requires the factors to be balanced it is thought that sentencers will appreciate the distinction required for the application of this factor, but consultee views are sought as to whether alternative expression is required.

Culpability B

This category captures threats by a weapon whether or not produced, as it is implicit that if use of a weapon is threatened it will be intended that the victim fear it will be used. Use of a weapon, however, will always make an offence more serious and reflect a greater level of culpability in the offence.

This category also provides for cases falling between the levels defined in categories A and C to be captured.

Culpability C

This category defines factors which represent the lowest level of culpability of an offender. These include threats or use of minimal violence, and cases where an offender acts in self defence or in fear of violence.

Q12

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors**Harm factors**

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Category 1	<ul style="list-style-type: none"> • Serious physical injury to others • Very serious fear/distress caused
Category 2	<ul style="list-style-type: none"> • Harm falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Little or no physical injury to others • Minimal fear/distress caused

Harm category 1

These factors would capture the most serious harm which could result from a serious incident of affray, where serious physical injury or very serious fear and/or distress is caused. These factors were present in a number of serious affray cases analysed.

Harm category 2

This is a catch all category for cases where harm is more than minimal, but less than the threshold of injury, fear or distress required at category 1.

Harm category 3

This category provides for the lowest level of harm the Council considers would be caused by this offence.

Q13

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database, analysis of first-instance transcripts, analysis of Court of Appeal sentencing remarks and reference to the ranges within the riot and affray guidelines, to ensure relativity within the limitations of the different statutory maximum sentence for offences.

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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 year 6 months' – 2 years 6 months' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody
Category 3	Starting point 26 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody	Category range Band C fine – High level community order

Q14

Do you have any comments on the sentence ranges and starting points?

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence. These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Leading role where offending is part of group activity

Incident occurred in busy public area

Offender threw missiles/objects

Vulnerable persons or children present during incident

Incident occurred in victim's home

Prolonged incident

Planning

Significant impact on public resources

Threats or violence directed towards public servants in the course of their duty

Commission of offence whilst under the influence of alcohol or drugs

Large number of persons affected

History of failing to comply with court orders

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Previous good character

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Low level involvement

Minimal/peripheral role where offending is part of group activity

No members of public present other than those participating in violence

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

Mental disorder or learning disability where linked to commission of offence

Sole or primary carer for dependent relatives

Q15

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q16

Do you have any other comments on the content and structure of the draft guideline?

Section six: Section 4, Section 4A and Section 5 Public Order offences

These are summary offences providing for a range of disorderly behaviour. There is existing guidance within the MCSG for sentencing these offences. These include examples of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors. There is significant overlap between the offences in relation to the type of conduct required to constitute an offence.

Due to the similarity between offences the factors included are very similar. Each draft guideline is discussed in detail below, and factors, sentence levels and the approach to sentencing in each guideline discussed and outlined.

Racially and religiously aggravated offences

Each offence has a racially or religiously aggravated counterpart, provided for by section 31 Crime and Disorder Act 1998. Section 31 provides:

- (1) A person is guilty of an offence under this section if he commits—
 - (a) an offence under section 4 of the Public Order Act 1986 (fear or provocation of violence);
 - (b) an offence under section 4A of that Act (intentional harassment, alarm or distress); or
 - (c) an offence under section 5 of that Act (harassment, alarm or distress),

which is racially or religiously aggravated for the purposes of this section.
- (4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable —
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

The proposed guidelines include additional guidance at step two for assessing the seriousness of and sentencing racially aggravated offences. The approach requires the sentencer to first identify the category of the basic offence, and then tailor the sentence depending on the level of aggravation present. Due to differing statutory maximum sentences for basic and aggravated offences, the guidelines for these offences include separate sentence tables or guidance on applying an uplift to reflect the level of aggravation. Further detail is provided in the summary of each guideline.

SECTION 4

Threatening Behaviour – fear or provocation of violence

Section 4(1) of the Public Order Act provides that a person is guilty of this offence if he –

- uses towards another person threatening, abusive or insulting words or behaviour, or
- distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

A person found guilty of the basic offence under this section is liable on summary conviction in the magistrates' court to a term not exceeding 26 weeks. In 2016, 6,500 offenders were sentenced for this offence. A person guilty of a racially or religiously aggravated offence is liable to a maximum of two years' imprisonment in the Crown Court and 26 weeks' in the magistrates' court. In 2016, 580 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

It is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases. Analysis of a limited number of cases did not identify a range of behaviour providing for three categories of culpability.

Culpability demonstrated by one or more of the following

A – High culpability

- Targeting of individual(s) by a group
- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missile thrown

B – Lesser culpability

- All other cases

High culpability factors

The Council considers that the presence of the factors listed indicate higher culpability of an offender. For a section 4 offence to be committed it is necessary for the offender to intend to cause a person to believe that immediate unlawful violence will be used, therefore the factor '*intention to cause fear of serious violence*' is proposed. Presence of this factor would be established by considering the nature and level of the threat. Where individuals are targeted by a group, this will always make the offence more serious, so this factor is included at culpability A. The other factors listed are factors which were present in cases analysed and are all considered to imply a higher level of intention to threaten or provoke violence. The existing MCSG guidance for this offence includes a

factor for the most serious activity which includes ‘*use of weapon*’ and ‘*missile thrown*’. The Council also considers that a sustained incident or an incident involving the use of substantial force would increase the culpability of an offender.

The Council is consulting on these factors and seek views on whether there are any other factors which indicate a higher level of culpability in an offence.

Lesser culpability

This category will capture offences where the factors proposed in category 1 are not present. The Council considers this will enable a straightforward and proportionate assessment of culpability, but seek views on whether the factors and approach are suitable.

Q17

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

As for culpability, two levels of harm are proposed:

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Victim feared serious violence
- Fear of immediate violence caused to multiple persons present
- Incident escalated into violence

Category 2

- All other cases

Harm category 1 factors

These factors are considered to represent the highest level of harm which would be present in an offence of threatening or provoking violence. The factor ‘*victim feared serious violence*’ would be inferred from the conduct of the offender. For example an offender in very close proximity to another wielding an object in a threatening manner would be captured by this category. Fear of immediate violence to multiple persons captures the increased harm caused when multiple persons are present during an offence, for example, serious threats made to a number of people in a busy street. Incidents that escalate into violence from a threat would also result in a greater degree of harm. The Council is consulting on these factors and seek views on whether there are any other factors which indicate a higher level of harm in an offence.

Harm category 2 factors

This captures offences where factors specified in category 1 are not present.

Q18

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the common assault guideline (which is a comparable offence) and section 4A offences has also been observed, to ensure relativity of sentences, subject to differences in the substance of the offences.

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.

Harm	Culpability	
	A	B
Category 1	Starting point 12 weeks' custody	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point High level community order	Starting point Low level community order
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Medium level community order

Q19

Do you have any comments on the sentence ranges and starting points?

Racially aggravated section 4 offences

The guideline then goes on to address racially aggravated offences. The Council did consider developing separate guidelines for aggravated offences, but it was not possible to develop a model that enabled each element of the offence to be adequately provided for. For example, an offence may involve low level threats of violence that do not cause a victim a high degree of fear, but a high level of racial aggravation may be present which is deeply upsetting for the victim.

The seriousness of the basic offence and the appropriate basic offence category is therefore assessed at step one, with the aggravated elements assessed at step two. Once the level of aggravation is identified, a separate sentence table is included to identify the appropriate starting point and sentence range;

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Q20

Do you agree with the approach to assessing the level of aggravation present in an offence?

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 36 weeks' custody	Starting point 26 weeks' custody	Starting point 16 weeks' custody
	Category range 16 weeks' – 1 year 6 months' custody	Category range 6 weeks' – 1 year's custody	Category range High level community order – 36 weeks' custody
A2 or B1	Starting point 12 weeks' custody	Starting point 6 weeks' custody	Starting point High level community order
	Category range 6 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – 16 weeks' custody
B2	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 26 weeks' custody	Category range Low level community order – 12 weeks' custody	Category range Band C fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts. The sentences are intended to be proportionate and relative to substantive offence sentences.

Q21

Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Commission of offence whilst under the influence of alcohol or drugs

Other aggravating factors:

Planning

Offence committed against those working in the public sector or providing a service to the public

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Other factors included are considered to be factors which increase the seriousness of a section 4 offence. Particular consideration was given to the factor *'commission of offence whilst under the influence of drink or drugs'*, which is a standard factor included in guidelines. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minimal/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is '*minor/peripheral role in group activity*'.

Q22

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q23

Do you have any other comments on the structure and content of the draft guideline?

SECTION 4A

Disorderly behaviour with intent to cause harassment, alarm or distress

A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he —

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

A person guilty of an offence under this section is liable on summary conviction in the magistrates' court to imprisonment for a term not exceeding 26 weeks. In 2016, 3,200 offenders were sentenced for the basic offence. A person guilty of a racially or religiously aggravated offence is liable to a maximum of two years' imprisonment in the Crown Court and 6 months' in the magistrates' court. In 2016, 2,400 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

As for the more serious section 4 offence, it is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases.

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Sustained incident • Use of substantial force • Production of weapon • Missile thrown
B – Lesser culpability	<ul style="list-style-type: none"> • All other cases

High culpability factors

With the exception of the factor *'intention to cause fear of serious violence'* the high culpability factors proposed are as for the section 4 offence of threatening or provoking violence.

The Council considers that parity of these factors is appropriate due to the similarity in the conduct required to make out a section 4 or a section 4A offence, with the same conduct required but a distinction in whether the intention is to cause fear or provocation of violence or to cause harassment, alarm or distress.

Existing MCSG guidance provides for a weapon being brandished or used for a section 4A offence, and a limited review of cases did identify the presence of weapons in a number of more serious offences; in one offence an offender jabbed a steel bar in the direction of the victim, while in another a car jack was wielded at the victim. While the factor *'missile thrown'* is not included in existing section 4A guidance, such behaviour could be as serious as producing a weapon and would likely cause a high level of alarm or distress.

The Council is consulting on the proposed factors and whether any factors should be added or removed.

Lesser culpability

This is a catch all category for offences not involving factors listed in culpability category A.

Q24

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious distress or alarm caused • Distress or alarm caused to multiple persons present
Category 2	<ul style="list-style-type: none"> • All other cases

Harm category 1 factors

The proposed factors are self explanatory and are intended to reflect the most serious harm which could be caused or intended by this offence.

Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q25

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the section 4 and section 5 offences has also been observed, to ensure relativity within the limitations of the different statutory maximum sentences and the substance of the offences.

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.

Harm	Culpability	
	A	B
Category 1	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point Low level community order	Starting point Band C fine
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Low level community order

Q26

Do you have any comments on the sentence ranges and starting points?

Racially aggravated section 4A offences

The guideline then goes on to address racially aggravated offences, using the same approach as for the section 4 offence explained at page 33.

The seriousness of the basic offence and the appropriate basic offence category is therefore assessed at step one, with the aggravated elements assessed at step two. Once the level of aggravation is identified, a separate sentence table is included to identify the appropriate starting point and sentence range.

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Q27

Do you agree with the approach to assessing the level of aggravation present in an offence?

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point 6 weeks' custody
	Category range 6 weeks' – 1 year 3 months' custody	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody
A2 or B1	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 16 weeks' custody
B2	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band C fine – 6 weeks' custody	Category range Band B fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

Q28

Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Commission of offence whilst under the influence of alcohol or drugs

Other aggravating factors:

Planning

Offence committed against those working in the public sector or providing a service to the public

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Other factors included are considered to be factors which increase the seriousness of a section 4A offence. As for the section 4 offence, particular consideration was given to the factor *'commission of offence whilst under the influence of drink or drugs'* which is a standard factor included in guidelines. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour by the courts. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minor/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is '*minor/peripheral role in group activity*'.

Q29

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q30

Do you have any other comments on the structure and content of the draft guideline?

SECTION 5

Disorderly behaviour causing or likely to cause harassment, alarm or distress

A person is guilty of this offence if he —

- (a) uses threatening or abusive words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. In 2016, 5,100 offenders were sentenced for the basic offence. A person guilty of a racially or religiously aggravated offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. In 2016, 1,400 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

As for the more serious section 4 and section 4A offences, it is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases.

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Sustained incident • Use of force
B – Lesser culpability	<ul style="list-style-type: none"> • All other cases

High culpability factors

The high culpability factors included for the section 5 offence are reflective of factors included for the section 4 and section 4A offence. ‘*Sustained incident*’ is included as for the other offences, to recognise higher culpability on the part of an offender where the duration of the incident is long lasting. Such incidents are provided for in the existing MCSG guidance by the activity ‘*substantial disturbance caused*’ and an aggravating factor of ‘*lengthy incident*’; ‘*sustained incident*’ is intended to encapsulate both these factors.

The threshold of use of force as a factor in this offence is lower than the ‘substantial’ force required to illustrate high culpability in a section 4 or section 4A offence. This is because as this offence does not require intent but only a likelihood that harassment, alarm or distress would be caused, it is considered that any use of force would increase that likelihood and the culpability of an offender. The Council is consulting on the proposed factors and whether any factors should be added or removed.

Lesser culpability

This is a catch all category for offences not involving factors listed in culpability category A.

Q31

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence. The factors proposed for the section 5 offence are as for the section 4A offence. Both offences require harassment, alarm or distress to be intended or likely to be caused. The potential harm will therefore be the same in each offence.

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious distress or alarm caused • Distress or alarm caused to multiple persons present
Category 2	<ul style="list-style-type: none"> • All other cases

Harm category 1 factors

The proposed factors are self explanatory and are intended to reflect the most serious harm which could be caused or intended by this offence.

Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q32

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the section 4A offences have also been observed, to ensure relativity within the limitations of the different statutory maximum sentence for offences. The statutory maximum sentence for this offence is a level 3 fine, which significantly limits the range of sentences.

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.

Harm	Culpability	
	A	B
Category 1	Starting point Band C fine	Starting point Band B fine
	Category range Band B – Band C fine	Category range Band A – Band C fine
Category 2	Starting point Band B fine	Starting point Band A fine
	Category range Band A – Band C fine	Category range Conditional discharge – Band B fine

Q33

Do you have any comments on the sentence ranges and starting points?

Racially or religiously aggravated section 5 offences

The seriousness of the basic offence is assessed at step one, with the aggravated elements assessed at step two, as for the section 4 and section 4A offences.

The approach to identifying the appropriate sentence differs for this offence, due to the limited statutory maximum sentence. The statutory maximum sentence for the basic offence is a level 3 fine, and for the aggravated offence a level 4 fine. This means it is not possible to include a sentence table that provides adequately for an appropriate uplift in sentence, given that penalties are restricted to fine bands.

The guideline therefore combines the aggravation assessment and uplift guidance. The same factors as for other aggravated offences is considered to identify whether the level of aggravation is high, medium or low, and guidance is included on appropriate increases to the penalty depending on type of sentence and level of aggravation.

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Summary only offence. Maximum sentence for the aggravated offence is a level 4 fine.

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following table includes a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence, and apply the appropriate uplift to the sentence.

<p>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p> <ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence) Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one) Aggravated nature of the offence caused serious fear and distress throughout local community or more widely 	<p>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2.5 Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category
<p>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p> <ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one) Aggravated nature of the offence caused some fear and distress throughout local community or more widely 	<p>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2 Discharge for basic offence: impose fine at mid-top of basic offence category range

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

SENTENCE UPLIFT

- Fine for basic offence: Multiply basic fine by 1.5
- Discharge for basic offence: impose fine at low-mid of basic offence category range

Q34

Do you agree with the approach to assessing the seriousness of the aggravated section 5 offence, and to the penalty uplifts proposed?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision
History of failure to comply with court orders
Other aggravating factors:
Commission of offence whilst under the influence of alcohol or drugs
Planning
Offence committed against those working in the public sector or providing a service to the public
Leading role where offending is part of group activity
Vulnerable persons or children present
Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation
History of antagonising the victim
Victim had no opportunity to escape situation (ie: on public transport)

Other factors included are considered to be factors which increase the seriousness of a section 5 offence. As for the section 4 offence, particular consideration was given to the factor '*commission of offence whilst under the influence of alcohol or drugs*'. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence as for the section 4 and section 4A offences, to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour by the courts. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minor/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is '*minor/peripheral role in group activity*'.

Q35

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q36

Do you have any other comments on the structure and content of the draft guideline?

Section seven: Racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation

There are a number of other hate crime offences provided for by the Public Order Act.

Part 3 of the Public Order Act prohibits activities intended or likely to stir up racial hatred. Part 3A of the Act prohibits activities based on hatred against persons on religious grounds or grounds of sexual orientation. The legislation prohibits a range of activity including: use of words or behaviour or display of written material; publishing or distributing written material; public performance of play; distributing, showing or playing a recording; broadcasting or including in a programme service; and possession of racially inflammatory material where the offender intends to stir up racial hatred, and in some cases having regard to all the circumstances, racial hatred is likely to be stirred up. All offences carry a 7 year statutory maximum sentence.

The essence of each offence is the intention to stir up hatred. However, the offences contain an important distinction in that the racial hatred offences can include use of threatening, abusive or insulting words or behaviour, while the offences relating to hatred against persons on religious grounds or grounds of sexual orientation provide for threatening words or behaviour only, and do not extend to activity which is abusive or insulting.

It is proposed that one guideline could sufficiently capture all types of hatred offences. Although racial hatred activity can be broader and include abusive or insulting elements, the mischief of all offences is the incitement of hatred and potential harmful activity then being directed at particular groups.

Volumes of these offences are extremely low and there have been no offenders sentenced for some offences. However, given the recent social climate and an enhanced focus on this type of offending, the Council considers it would be useful for sentencers to be equipped with guidance on sentencing these offences.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Offender in position of trust, authority or influence and abuses their position to stir up hatred • Intention to incite serious violence • Persistent activity
B – Medium culpability	<ul style="list-style-type: none"> • Other cases falling between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Reckless as to whether hatred would be stirred up

High culpability

The factors proposed were identified as factors increasing seriousness of offences in the limited numbers of cases available for analysis. Among the cases analysed there were a number of ‘hate speech’ type offences, where inflammatory speeches were given by influential figures with the intention of stirring up racial hatred. Other cases involved publication on YouTube of content inciting serious violence towards particular racial or religious groups, websites being published including abusive and insulting content, with some activity continuing over a long period of time and intended to reach global audiences. The Council considers that activities of the type listed represent the highest level of culpability for these offences, as they demonstrate a serious intention to stir up hatred towards particular groups.

Medium culpability

This category is intended to capture cases where culpability falls between a serious intention and reckless behaviour.

Low culpability

This factor provides for those who may have been reckless as to stirring up hatred. While no cases involving such activity were identified, an example of such a case may be the reckless sharing and adding commentary to a social media post directing threats towards particular groups.

Q37

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence. There are two categories proposed;

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life • Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced
Category 2	<ul style="list-style-type: none"> • All other cases

Harm category 1 factors

The proposed factors are intended to reflect the most serious harm which could be caused by this offence. The ways in which these offences can be committed are wide ranging, which the factors reflect.

The Council considers that the most serious harm present in these offences would be cases where activity is encouraged which threatens or endangers life, as well as cases involving widespread dissemination of material and/or a strong likelihood that many would be influenced.

Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q38

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and analysis of first-instance transcripts and Court of Appeal sentencing remarks.

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 6 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody	Category range High level community order – 2 years' custody

Q39

Do you have any comments on the sentence ranges and starting points?

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Planning of event or campaign designed to stir up hatred

Leading role where offending is part of group activity

Timing of incident – particularly sensitive social climate

Vulnerable/impressionable audience

Significant volume of publications published or disseminated (where not taken into account at step one)

Used multiple social media platforms to reach a wider audience (where not taken into account at step one)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role in group activity

Previous good character

No previous convictions or no relevant/recent convictions

Remorse

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

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependent relatives

Q40

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q41

Do you have any other comments on the structure and content of the draft guideline?

Section eight: Public Sector Equality Duty

The Public Sector Equality Duty (PSED) is set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

- the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.
- the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not.
- the need to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

In the Public Order draft guidelines the PSED has been particularly considered in the approach to sentencing offences which are aggravated by reasons of being related to a protected characteristic. In particular these are the section 4, section 4A and section 5 racially or religiously aggravated offences, and the guideline for other hate crime offences which involve offences demonstrating hatred based on the protected characteristics of race, religion and sexual orientation. While volumes of the latter offence type are low, the Council considered that the guideline should provide for these, to act as a deterrent to potential offenders and ensure proportionate and appropriate sentences for perpetrators of these crimes. The guidelines also include statutory aggravating factors at step two, relating to offences motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity.

The Council has also considered data available in relation to offenders sentenced for Public Order offences. This data includes volumes of offenders sentenced grouped by gender, ethnicity and age and is available at **Annex E**. There are many and varied reasons for the distribution of offender types and prevalence towards a particular type of offending, including wider social issues such as education, poverty and addiction. The Public Order guidelines are intended to apply equally to all demographics of offenders, and views are sought as to whether there are any other equality or diversity issues the guideline has not considered.

Q42

Are there are any other equality and diversity issues the guideline should consider?

Annex A: Consultation questions

Section three: Riot

- Q1 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q2 In culpability B do you prefer the list of descriptive factors or the individual factor to capture any incidence of riot?
- Q3 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q4 Do you have any comments on the sentence ranges and starting points?
- Q5 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q6 Do you have any other comments on the structure and content of the draft guideline?

Section four: Violent disorder

- Q7 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q8 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q9 Do you have any comments on the sentence ranges and starting points?
- Q10 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q11 Do you have any other comments on the structure and content of the draft guideline?

Section five: Affray

- Q12 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q13 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q14 Do you have any comments on the sentence ranges and starting points?
- Q15 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q16 Do you have any other comments on the structure and content of the draft guideline?

Section six: Section 4, Section 4A and Section 5 offences**Section 4 Threatening or provocation of violence and the racially and religiously aggravated counterpart offences**

- Q17 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q18 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q19 Do you have any comments on the sentence ranges and starting points?
- Q20 Do you agree with the approach to assessing the level of aggravation present in an offence?
- Q21 Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?
- Q22 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q23 Do you have any other comments on the structure and content of the draft guideline?

Section 4A Disorderly behaviour with intent to cause harassment, alarm or distress and the racially and religiously aggravated counterpart offences

- Q24 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q25 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q26 Do you have any comments on the sentence ranges and starting points?
- Q27 Do you agree with the approach to assessing the level of aggravation present in an offence?
- Q28 Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?
- Q29 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q30 Do you have any other comments on the structure and content of the draft guideline?

Section 5 Disorderly behaviour causing or likely to cause harassment, alarm or distress and the racially and religiously aggravated counterpart offences

- Q31 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q32 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q33 Do you have any comments on the sentence ranges and starting points?
- Q34 Do you agree with the approach to assessing the seriousness of the aggravated section 5 offence, and to the penalty uplifts proposed?
- Q35 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q36 Do you have any other comments on the structure and content of the draft guideline?

Section seven: Stirring up racial or religious hatred or hatred based on sexual orientation

- Q37 Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.
- Q38 Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.
- Q39 Do you have any comments on the sentence ranges and starting points?
- Q40 Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.
- Q41 Do you have any other comments on the structure and content of the draft guideline?

Section eight: Public Sector Equality Duty

- Q42 Are there any other equality and diversity issues the guideline should consider?

Annex B: Background to guidelines

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;⁴
- the Council must publish a resource assessment in respect of the guidelines;⁵ and
- the Council must monitor the operation and effect of its sentencing guidelines.⁶

Section 125(a) of the Coroners and Justice Act 2009 states that, '*every court must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case*'. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

4 s.120 Coroners and Justice Act 2009

5 s.127(2) *ibid*

6 s.128(1) *ibid*

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effect of its sentencing guidelines.⁷

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.⁸

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision-making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

⁷ s.120(11) Coroners and Justice Act 2009

⁸ s.127(3) *ibid*

Annex C: Draft guidelines

Riot Public Order Act 1986 (section 1)

Triable only on indictment
Maximum: 10 years' custody

Offence range: 3 years' – 9 years' custody

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability demonstrated by one or more of the following:

A	<p>Factors in Category B present AND any of;</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Offenders actions escalated level of violence and/or disorder
B	<ul style="list-style-type: none"> • Offender participated in incident which caused widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity in a public place

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.*

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability	
	A	B
Category 1	Starting point 7 years' custody	Starting point 6 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody
Category 2	Starting point 6 years' custody	Starting point 5 years' custody
	Category range 4 – 7 years' custody	Category range 3 – 6 years' custody

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Relevant mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness***Statutory aggravating factors:***

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Active and persistent participant

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Took steps to prevent emergency services from carrying out their duties

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Actively recruited other participants

Possession of weapon or article intended to injure

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Ignored warnings or exclusion notices

Offence committed while on licence or subject to post sentence supervision

History of failing to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Low level involvement

No previous convictions

Remorse

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

Mental disorder or learning disability where linked to commission of offence

Previous good character

Sole or primary carer for dependent relatives

Other offences committed within incidents of riot

Where sentencing other offences committed in the context of riot, the court should treat the context of the offending as a severely aggravating feature of any offence charged.

STEP THREE

Consider any factors which indicate a reduction for 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.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX

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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Violent disorder

Public Order Act 1986 (section 2)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 4 years' custody

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability demonstrated by one or more of the following

A	<p>Factors in Category B present AND any of:</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Targeting of individual(s) by a group
B	<ul style="list-style-type: none"> • Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving serious acts of violence • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity
C	<ul style="list-style-type: none"> • Offence involved threats of violence only • Offence involved lower level of violence or activity than included in Category B

* *The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.*

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident results in attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody	Category range High level community order – 2 years
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year 6 months' custody

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Active and persistent participant

Offender's actions escalated level of violence and/or disorder

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Possession of weapon or article intended to injure

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

History of failing to comply with court orders

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role

Remorse

Previous good character

Sole or primary carer for dependent relatives

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

Mental disorder or learning disability where linked to commission of offence

STEP THREE**Consider any factors which indicate a reduction for 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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Affray

Public Order Act 1986 (section 3)

Triable either way
Maximum: 3 years' custody

Offence range: Band C fine – 2 years' 6 months' custody

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Use of a weapon to inflict violence • Use of serious or sustained violence • Intention to cause fear of very serious violence
B	<ul style="list-style-type: none"> • Threat of violence by any weapon (whether or not produced) • Threat or use of violence falling between levels in categories A and C
C	<ul style="list-style-type: none"> • Threat or use of minimal violence • The offender acted in self-defence or in fear of violence (where not amounting to a defence)

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Serious physical injury to others • Very serious fear/distress caused
Category 2	<ul style="list-style-type: none"> • Harm falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Little or no physical injury to others • Minimal fear/distress caused

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 1 years' custody	Starting point 26 weeks' custody
	Category range 1 year 6 months' – 2 years 6 months' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 years' custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody
Category 3	Starting point 26 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody	Category range Band C fine – High level community order

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Incident occurred in busy public area

Leading role where offending is part of group activity

Offender threw missiles/objects

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

History of failing to comply with court orders

Prolonged incident

Planning

Significant impact on public resources

Threats or violence directed towards public servants in the course of their duty

Large number of persons affected

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Previous good character

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role where offending is part of group activity

No members of public present other than those participating in violence

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

Mental disorder or learning disability where linked to commission of offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for 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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Threatening behaviour – fear or provocation of violence Public Order Act 1986 (section 4)

Triable summarily

Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated threatening behaviour – fear or provocation of violence Crime and Disorder Act 1998 (section 31(1)(a))

Triable either way

Maximum: 2 years' custody

Offence range: Fine – 1 year 6 months' custody

The racially or religiously aggravated offence is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by a group
- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Victim feared serious violence
- Fear of immediate violence caused to multiple persons present
- Incident escalated into violence

Category 2

- All other cases

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.

Harm	Culpability	
	A	B
Category 1	Starting point 12 weeks' custody	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point High level community order	Starting point Low level community order
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Medium level community order

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 36 weeks' custody	Starting point 26 weeks' custody	Starting point 16 weeks' custody
	Category range 16 weeks' – 1 year 6 months' custody	Category range 6 weeks' – 1 year's custody	Category range High level community order – 36 weeks' custody
A2 or B1	Starting point 12 weeks' custody	Starting point 6 weeks' custody	Starting point High level community order
	Category range 6 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – 16 weeks' custody
B2	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 26 weeks' custody	Category range Low level community order – 12 weeks' custody	Category range Band C fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

Offence committed against those working in the public sector or providing a service to the public

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role where offending is part of group activity

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

Mental disorder or learning disability where linked to commission of offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for 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.

STEP FIVE**Dangerousness**

For **racially or religiously aggravated offences only** the court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Disorderly behaviour with intent to cause harassment, alarm or distress Public Order Act 1986 (section 4A)

Triable summarily

Maximum: 26 weeks' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress Crime and Disorder Act 1998 (section 31(1)(b))

Triable either way

Maximum: 2 years' custody

Offence range: Fine – 1 year 3 months' custody

The racially or religiously aggravated offence is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by a group
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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.

Harm	Culpability	
	A	B
Category 1	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point Low level community order	Starting point Band C fine
	Category range Band C Fine – 12 weeks' custody	Category range Discharge – Low level community order

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation was the predominant motivation for the offence
- Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)
- Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused serious fear and distress throughout local community or more widely

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Racial or religious aggravation formed a significant proportion of the offence as a whole
- Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one)
- Aggravated nature of the offence caused some fear and distress throughout local community or more widely

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- Aggravated element formed a minimal part of the offence as a whole
- Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below;

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point 6 weeks' custody
	Category range 6 weeks' – 1 year 3 months' custody	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody
A2 or B1	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 16 weeks' custody
B2	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band C fine – 6 weeks' custody	Category range Band B fine – High level community order

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

Leading role where offending is part of group activity

Offence committed against those working in the public sector or providing a service to the public

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role in group activity

No previous convictions or no relevant/recent convictions

Remorse

Previous good character

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

Mental disorder or learning disability where related to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for 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.

STEP FIVE**Dangerousness**

For **racially or religiously aggravated offences only** the court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Disorderly behaviour Public Order Act 1986 (section 5)

**Triable summarily
Maximum: Level 3 fine**

Offence range: Discharge – Fine

Racially or religiously aggravated disorderly behaviour Crime and Disorder Act 1998 (section 31(1)(c))

**Triable summarily
Maximum: Level 4 fine**

Offence range: Discharge – Fine

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by group
- Sustained incident
- Use of force

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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.

Harm	Culpability	
	A	B
Category 1	Starting point Band C fine	Starting point Band B fine
	Category range Band B – Band C fine	Category range Band A – Band C fine
Category 2	Starting point Band B fine	Starting point Band A fine
	Category range Band A – Band C fine	Category range Conditional discharge – Band B fine

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY**Summary only offence. Maximum sentence for the aggravated offence is level 4 fine.**

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following table includes a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence, and apply the appropriate uplift to the sentence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence) Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one) Aggravated nature of the offence caused serious fear and distress throughout local community or more widely 	<ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2.5 Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one) Aggravated nature of the offence caused some fear and distress throughout local community or more widely 	<ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2 Discharge for basic offence: impose fine at mid-top of basic offence category range
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one) 	<ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 1.5 Discharge for basic offence: impose fine at low-mid of basic offence category range

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

Leading role where offending is part of group activity

Offence committed against those working in the public sector or providing a service to the public

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

Commission of offence whilst under the influence of alcohol or drugs

Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Minor/peripheral role where offending is part of group activity

Remorse

Previous good character

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

Mental disorder or learning disability where related to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for 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.

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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other 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 time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Racial hatred offences Public Order Act 1986 (sections 18-23(3))

Hatred against persons on religious grounds or grounds of sexual orientation Public Order Act 1986 (sections 29B-29G(3A)(3))

Triable either way
Maximum: 7 years' custody

Offence range: Fine – 6 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> Offender in position of trust, authority or influence and abuses their position to stir up hatred Intention to incite serious violence Persistent activity
B – Medium culpability	<ul style="list-style-type: none"> Other cases falling between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> Reckless as to whether hatred would be stirred up

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim:

Category 1	<ul style="list-style-type: none"> Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced
Category 2	<ul style="list-style-type: none"> All other cases

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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 6 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody	Category range High level community order – 2 years' custody

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 sentence arrived at so far. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Planning of event or campaign designed to stir up hatred

Timing of incident – particularly sensitive social climate

Vulnerable/impressionable audience

Significant volume of publications published or disseminated (where not taken into account at step one)

Used multiple social media platforms to reach a wider audience (where not taken into account at step one)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Peripheral role in group activity

Previous good character

No previous convictions or no relevant/recent convictions

Remorse

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

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for 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.

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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other 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 time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Annex D:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

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

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below.

Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003). If an order does not contain a punitive requirement, suggested fine levels are below.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate

Low	Medium	High
Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 40 – 80 hours unpaid work • curfew requirement within the lowest range (for example, up to 16 hours per day for a few weeks) • exclusion requirement, for a few months • prohibited activity requirement • attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • greater number of hours of unpaid work (for example, 80 – 150 hours) • curfew requirement within the middle range (for example, up to 16 hours for two to three months) • exclusion requirement lasting in the region of 6 months • prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 150 – 300 hours unpaid work • curfew requirement up to 16 hours per day for four to twelve months • exclusion order lasting in the region of 12 months
BAND A FINE	BAND B FINE	BAND C FINE

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines.

This table is also set out in the *Imposition of Community and Custodial Sentences* guideline which includes further guidance on community orders.

Annex E:

Demographics of adult offenders sentenced for offences covered by the Public Order guideline

For further details on these statistics please see the accompanying statistical bulletin published at <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

Table 1: Demographics of adult offenders sentenced for offences covered by the Public Order draft guideline, by gender, age and perceived ethnicity, 2006-2016^{1,2}
Riot

Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	35	100%
Female	0	0%
Total	35	100%

Age Group ³	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	7	20%
22 to 29 years	14	40%
30 to 39 years	7	20%
40 to 49 years	5	14%
50 to 59 years	2	6%
60 years or older	0	0%
Total	35	100%

Perceived Ethnicity ^{4,5}	Number of adults sentenced	Percentage of all adults sentenced ⁶
White	11	52%
Black	9	43%
Asian	1	5%
Other	0	0%
Not recorded/not known	14	
Total	35	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1 Figures shown here differ from those published by the MoJ, as there was one riot case in the CPD which indicated that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 2 Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- 3 These statistics are provided for the period 2006-2016, rather than for a single year, due to the small number of offenders sentenced for riot each year.
- 4 The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 5 For a 40% of adults sentenced for riot over the period 2006-2016, their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 6 Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 2: Demographics of adult offenders sentenced for violent disorder, by gender, age and perceived ethnicity, 2016

Violent disorder

Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	327	96%
Female	15	4%
Total	342	100%

Age Group ¹	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	120	35%
22 to 29 years	123	36%
30 to 39 years	62	18%
40 to 49 years	26	8%
50 to 59 years	10	3%
60 years or older	1	0%
Total	342	100%

Perceived Ethnicity ^{2,3}	Number of adults sentenced	Percentage of all adults sentenced ⁴
White	194	69%
Black	39	14%
Asian	41	15%
Other	7	2%
Not recorded/not known	61	
Total	342	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1 Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- 2 The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 3 For 18% of adults sentenced for violent disorder in 2016, their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 4 Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 3: Demographics of adult offenders sentenced for affray, by gender, age and perceived ethnicity, 2016**Affray**

Gender	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	2,824	93%
Female	213	7%
Not recorded/not known	7	
Total	3,044	100%

Age Group ²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	635	21%
22 to 29 years	1,148	38%
30 to 39 years	709	23%
40 to 49 years	353	12%
50 to 59 years	167	5%
60 years or older	32	1%
Total	3,044	100%

Perceived Ethnicity ^{3,4}	Number of adults sentenced	Percentage of all adults sentenced ⁵
White	2101	80%
Black	258	10%
Asian	199	8%
Other	79	3%
Not recorded/not known	407	
Total	3,044	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1 Percentage calculations do not include cases where the gender was unknown.
- 2 Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- 3 The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 4 For a small proportion of adults sentenced (13% for affray), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5 Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 4: Demographics of adult offenders sentenced for threatening and disorderly behaviour offences covered by the guideline, by gender, age and perceived ethnicity, 2016

Threatening behaviour, disorderly behaviour with intent and disorderly behaviour

Gender	Threatening behaviour		Disorderly behaviour with intent		Disorderly behaviour	
	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	5,904	91%	2,827	88%	4,251	85%
Female	549	9%	370	12%	742	15%
Not recorded/not known	50		31		58	
Total	6,503	100%	3,228	100%	5,051	100%

Age Group ²	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹
18 to 21 years	1,141	18%	395	12%	661	13%
22 to 29 years	2,234	34%	904	28%	1,467	29%
30 to 39 years	1,690	26%	859	27%	1,400	28%
40 to 49 years	901	14%	629	19%	942	19%
50 to 59 years	443	7%	326	10%	451	9%
60 years or older	94	1%	115	4%	130	3%
Total	6,503	100%	3,228	100%	5,051	100%

Perceived Ethnicity ^{3,4}	Threatening behaviour		Disorderly behaviour with intent		Disorderly behaviour	
	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ⁵	Number of adults sentenced	Percentage of all adults sentenced ⁵
White	5,000	85%	2,353	83%	3,956	85%
Black	540	9%	276	10%	348	9%
Asian	294	5%	144	5%	176	5%
Other	76	1%	45	2%	37	1%
Not recorded/not known	593		410		534	
Total	6,503	100%	3,228	100%	5,051	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1 Percentage calculations do not include cases where the gender was unknown.
- 2 Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- 3 The “perceived ethnicity” is the ethnicity of the offender as perceived by the police officer handling the case.
- 4 For a small proportion of adults sentenced (9% for threatening behaviour, 13% for disorderly behaviour with intent, 11% for disorderly behaviour), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5 Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 5: Demographics of adult offenders sentenced for racially and religiously aggravated threatening and disorderly behaviour offences covered by the guideline, by gender, age and perceived ethnicity, 2016

Racially or religiously aggravated threatening behaviour, disorderly behaviour with intent and disorderly behaviour

Gender	Racially or religiously aggravated threatening behaviour		Racially or religiously aggravated disorderly behaviour with intent		Racially or religiously aggravated disorderly behaviour	
	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	508	89%	1,912	82%	1,097	82%
Female	60	11%	427	18%	238	18%
Not recorded/not known	7		23		16	
Total	575	100%	2,362	100%	1,351	100%

Age Group ²	Racially or religiously aggravated threatening behaviour		Racially or religiously aggravated disorderly behaviour with intent		Racially or religiously aggravated disorderly behaviour	
	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹	Number of adults sentenced	Percentage of all adults sentenced ¹
18 to 21 years	61	11%	212	9%	146	11%
22 to 29 years	165	29%	572	24%	315	23%
30 to 39 years	150	26%	579	25%	338	25%
40 to 49 years	129	22%	547	23%	299	22%
50 to 59 years	55	10%	334	14%	184	14%
60 years or older	15	3%	118	5%	69	5%
Total	575	100%	2,362	100%	1,351	100%

Perceived Ethnicity ^{3,4}	Number of adults sentenced	Percentage of all adults sentenced ⁵	Number of adults sentenced	Percentage of all adults sentenced ⁵	Number of adults sentenced	Percentage of all adults sentenced ⁵
White	408	80%	1,666	82%	987	73%
Black	48	9%	201	10%	103	8%
Asian	46	9%	147	7%	74	5%
Other	5	1%	20	1%	12	1%
Not recorded/not known	68		328		175	
Total	575	100%	2,362	100%	1,351	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- Percentage calculations do not include cases where the gender was unknown.
- Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- The “perceived ethnicity” is the ethnicity of the offender as perceived by the police officer handling the case.
- For a small proportion of adults sentenced (12% for racially or religiously aggravated threatening behaviour, 14% for racially or religiously aggravated disorderly behaviour with intent, 13% for racially or religiously aggravated disorderly behaviour), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 6: Demographics of adult offenders sentenced for racial/religious/sexual orientation hatred offences covered by the draft guideline, by gender, age and perceived ethnicity, 2006-2016^{1,2}

Racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation

Gender	Number of adults sentenced	Percentage of all adults sentenced ³
Male	57	89%
Female	7	11%
Not recorded/not known	1	
Total	65	100%

Age Group ⁴	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	13	20%
22 to 29 years	19	29%
30 to 39 years	17	26%
40 to 49 years	10	15%
50 to 59 years	3	5%
60 years or older	3	5%
Total	65	100%

Perceived Ethnicity ^{5,6}	Number of adults sentenced	Percentage of all adults sentenced ⁷
White	29	58%
Black	7	14%
Asian	13	26%
Other	1	2%
Not recorded/not known	15	
Total	65	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1 These figures should be treated with caution due to potential data quality issues for these offences.
- 2 These statistics are provided for the period 2006-2016, rather than for a single year, due to the small number of offenders sentenced for these offences each year.
- 3 Percentage calculations do not include cases where the gender was unknown.
- 4 Where the age of the adult was unknown, the age is set to 25 in the source data for this table.
- 5 The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 6 For a proportion of adults sentenced (23% for the racial hatred offences and hatred against persons on religious grounds or grounds of sexual orientation covered by the draft guideline), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 7 Percentage calculations do not include cases where the perceived ethnicity was unknown.

