

Assault

Draft Guideline



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About this Draft Guideline

This draft guideline is the subject of a consultation exercise from 13 October 2010 to 5 January 2011. A full consultation paper intended for criminal justice professionals, a shorter public consultation paper, a resource assessment, an equality impact assessment, and an online questionnaire can all be found at:

www.sentencingcouncil.org.uk

Following the conclusion of this consultation exercise, a response will be published on the Sentencing Council website.

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this as a draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older regardless of the date of the offence.

This guideline covers the following offences:

- offences contrary to sections 18, 20, 47 and 38 of the Offences against the Person Act 1861;
- assault on a police constable in execution of his duty; and
- common assault.

When preparing sentencing guidelines, the Council has had regard to the following statutory duties set out in the Coroners and Justice Act 2009:

- 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.

Section 125(1)(a) of the Coroners and Justice Act 2009 provides that:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so”.

This guideline will be the principal point of reference in all assault cases. This guideline incorporates some relevant parts of the Sentencing Guidelines Council’s existing guidelines, *Overarching Principles: Seriousness* and *Overarching Principles: Domestic Violence*. For assault cases, courts should refer to these guidelines if they require further clarification of an issue.

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

Where the court has decided to impose a community sentence, deferred sentence, suspended sentence or a custodial sentence of twelve months or more, they should refer to the Sentencing Guidelines Council's guideline, *New Sentences: Criminal Justice Act 2003*.

Structure of the guideline, sentencing ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies "offence ranges" – the range of sentences appropriate for the court to impose for each type of offence. The Council has specified three "categories" within each offence that reflect the varying degrees of seriousness in which the offence can be committed. The offence range is split into "category ranges" – the range of sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

This guideline responds to concerns expressed about the existing guideline and introduces a significant change to the applicability of starting points and category ranges. Starting points define the position within given ranges from which to start calculating the provisional sentence within an offence range. Existing Sentencing Guidelines Council guidelines state that the starting point applies only to first time offenders. This guideline moves from an offender based starting point to an offence based starting point. **Within this guideline, starting points should apply to all offences which fall within the corresponding category and are now applicable to all offenders, in all cases.** Once the starting point has been established should the court take into consideration further aggravating and mitigating factors and previous convictions to adjust the sentence within the range. Similarly, the starting points and category ranges apply to all offenders, whether they have entered a guilty plea or have been convicted following trial. Credit for a guilty plea is only to be taken into consideration at step 4 in the decision making process, after the appropriate sentence has been identified.

Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

GBH s.18

This is a serious offence for the purposes of sections 225 and 227
of the Criminal Justice Act 2003

Maximum: Life imprisonment
Offence range: 3–16 years' imprisonment

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm

Injury which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is minor in the context of the offence

Factors indicating higher culpability*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

Degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Offender operating in group or gang

Factors indicating lower culpability

Minor role

A greater degree of provocation than normally expected

Lack of premeditation

Mental illness or disability where linked to commission of offence

Excessive self defence

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Additional degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Any steps taken to prevent the victim reporting an incident or obtaining assistance

Factors reducing seriousness or reflecting personal mitigation

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

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age

Lapse of time since the offence where this is not the fault of the offender

STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Dangerousness**

Causing grievous bodily harm with intent to do grievous bodily/wounding with intent to do grievous bodily harm is a serious offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP EIGHT**Consideration for remand time**

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

Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

GBH s.20

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 20): 5 years' imprisonment

Maximum (section 29): 7 years' imprisonment

Offence range: Community order – 4 years' imprisonment

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm

Injury which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is minor in the context of the offence

Factors indicating higher culpability*Statutory aggravating factors:*

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

Degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Offender operating in group or gang

Factors indicating lower culpability

Minor role

A greater degree of provocation than normally expected

Lack of premeditation

Mental illness or disability where linked to commission of offence

Excessive self defence

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	3 years' custody	2–4 years' custody
Category 2	12 months' custody	6 months – 2 years' custody
Category 3	Community order	Community order – 6 months' custody

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

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

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions or no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

Further statutory aggravating factor	Offence racially or religiously aggravated
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STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP EIGHT**Consideration for remand time**

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

Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 47): 5 years' imprisonment

Maximum (section 29): 7 years' imprisonment

Offence range: Fine – 4 years' imprisonment

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Offender operating in group or gang
Injury which is minor in the context of the offence	Factors indicating lower culpability
Factors indicating higher culpability	Minor role
<i>Statutory aggravating factors:</i>	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Mental illness or disability where linked to commission of offence
<i>Other aggravating factors:</i>	Excessive self defence
Degree of premeditation	

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	2 years 6 months' custody	2–4 years' custody
Category 2	6 months' custody	Community order – 2 years' custody
Category 3	Community order	Fine – Community order

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

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

When sentencing **category 3** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions or no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

Further statutory aggravating factor	Offence racially or religiously aggravated
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STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP EIGHT**Consideration for remand time**

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

Assault with intent to resist arrest

Offences against the Person Act 1861 (section 38)

This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum: 2 years' imprisonment

Offence range: Fine – 12 months' imprisonment

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Sustained or repeated assault on the same victim	Intention to commit more serious harm than actually resulted from the offence
Factors indicating lesser harm	Deliberately causes more harm than is necessary for commission of offence
Injury which is minor in the context of the offence	Offender operating in group or gang
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Minor role
Offence racially or religiously aggravated	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Mental illness or disability where linked to commission of offence
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	
<i>Other aggravating factors:</i>	
Degree of premeditation	

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	6 months' custody	3–12 months' custody
Category 2	Community order	Community order
Category 3	Fine	Fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Additional degradation of victim

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Any steps taken to prevent the victim reporting an incident or obtaining assistance

Factors reducing seriousness or reflecting personal mitigation

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

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age

STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP EIGHT**Consideration for remand time**

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

Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

Maximum: 6 months' imprisonment

Offence range: Fine – 6 months' imprisonment

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender’s culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Sustained or repeated assault on the same victim	Intention to commit more serious harm than actually resulted from the offence
Factors indicating lesser harm	Deliberately causes more harm than is necessary for commission of offence
No injury	Offender operating in group or gang
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Minor role
Offence racially or religiously aggravated	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Mental illness or disability where linked to commission of offence
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)	
<i>Other aggravating factors:</i>	
Degree of premeditation	

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	3 months' custody	Community order – 6 months' custody
Category 2	Community order	Community order
Category 3	Fine	Fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

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

Factors increasing seriousness*Statutory aggravating factors:*

Previous convictions, having regard to a) 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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Additional degradation of victim

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Any steps taken to prevent the victim reporting an incident or obtaining assistance

Factors reducing seriousness or reflecting personal mitigation

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

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age

Lapse of time since the offence where this is not the fault of the offender

STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP SEVEN**Consideration for remand time**

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

Common Assault

Criminal Justice Act 1988 (section 39)

Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 39): 6 months' imprisonment

Maximum (section 29): 2 years' imprisonment

Offence range: Discharge – 6 months' imprisonment

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (injury or fear of injury must normally be present) and higher culpability
Category 2	Greater harm (injury or fear of injury must normally be present) and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

Factors indicating greater harm	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Offender operating in group or gang
No injury	Factors indicating lower culpability
Factors indicating higher culpability	Minor role
<i>Statutory aggravating factors:</i>	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Mental illness or disability where linked to commission of offence
<i>Other aggravating factors:</i>	Excessive self defence
Degree of premeditation	

STEP TWO**Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	Community order	Community order – 6 months' custody
Category 2	Community order	Fine – community order
Category 3	Fine	Discharge – fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

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

When sentencing **category 2** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions or no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

Further statutory aggravating factor	Offence racially or religiously aggravated
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STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR**Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

STEP FIVE**Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

STEP SIX**Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

STEP EIGHT**Consideration for remand time**

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

