Assault
Draft Guideline

October 2010
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)

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.

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Greater harm (serious injury must normally be present) and higher culpability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 2</td>
<td>Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability</td>
</tr>
<tr>
<td>Category 3</td>
<td>Lesser harm and lower culpability</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point (Applicable to all offenders)</th>
<th>Category Range (Applicable to all offenders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>12 years’ custody</td>
<td>9–16 years’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>6 years’ custody</td>
<td>5–9 years’ custody</td>
</tr>
<tr>
<td>Category 3</td>
<td>4 years’ custody</td>
<td>3–5 years’ custody</td>
</tr>
</tbody>
</table>

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

#### Factors reducing seriousness or reflecting personal mitigation

- 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

- 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)

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.

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Greater harm (serious injury must normally be present) and higher culpability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 2</td>
<td>Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability</td>
</tr>
<tr>
<td>Category 3</td>
<td>Lesser harm and lower culpability</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point (Applicable to all offenders)</th>
<th>Category Range (Applicable to all offenders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>3 years’ custody</td>
<td>2–4 years’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>12 months’ custody</td>
<td>6 months – 2 years’ custody</td>
</tr>
<tr>
<td>Category 3</td>
<td>Community order</td>
<td>Community order – 6 months’ custody</td>
</tr>
</tbody>
</table>
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

**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

### 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

### 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.

<table>
<thead>
<tr>
<th>Further statutory aggravating factor</th>
<th>Offence racially or religiously aggravated</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission of offence whilst under the influence of alcohol or drugs</td>
<td></td>
</tr>
<tr>
<td>Abuse of power and/or position of trust</td>
<td></td>
</tr>
<tr>
<td>Exploiting contact arrangements with a child to commit an offence</td>
<td></td>
</tr>
<tr>
<td>Any steps taken to prevent the victim reporting an incident or obtaining assistance</td>
<td></td>
</tr>
<tr>
<td>Factors reducing seriousness or reflecting personal mitigation</td>
<td></td>
</tr>
<tr>
<td>Offence racially or religiously aggravated</td>
<td></td>
</tr>
</tbody>
</table>
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.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>Greater harm (serious injury must normally be present) and higher culpability</td>
</tr>
<tr>
<td>Category 2</td>
<td>Greater harm (serious injury must normally be present) and lower culpability; or Lesser harm and higher culpability</td>
</tr>
<tr>
<td>Category 3</td>
<td>Lesser harm and lower culpability</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point (Applicable to all offenders)</th>
<th>Category Range (Applicable to all offenders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>2 years 6 months’ custody</td>
<td>2–4 years’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>6 months’ custody</td>
<td>Community order – 2 years’ custody</td>
</tr>
<tr>
<td>Category 3</td>
<td>Community order</td>
<td>Fine – Community order</td>
</tr>
</tbody>
</table>
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

**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

**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

**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**
**Offence racially or religiously aggravated**

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**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.
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
- 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
- Offender operating in group or gang

Factors indicating lower culpability
- Minor role
- Lack of premeditation
- Mental illness or disability where linked to commission of offence
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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point (Applicable to all offenders)</th>
<th>Category Range (Applicable to all offenders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>6 months’ custody</td>
<td>3–12 months’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>Community order</td>
<td>Community order</td>
</tr>
<tr>
<td>Category 3</td>
<td>Fine</td>
<td>Fine</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Category 1</strong></td>
<td>Greater harm and higher culpability</td>
</tr>
<tr>
<td><strong>Category 2</strong></td>
<td>Greater harm and lower culpability; or Lesser harm and higher culpability</td>
</tr>
<tr>
<td><strong>Category 3</strong></td>
<td>Lesser harm and lower culpability</td>
</tr>
</tbody>
</table>

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**
- Sustained or repeated assault on the same victim

**Factors indicating lesser harm**
- No injury

**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

**Factors indicating lower culpability**
- Minor role
- Lack of premeditation
- Mental illness or disability where linked to commission of offence

**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
- Offender operating in group or gang
**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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point <em>(Applicable to all offenders)</em></th>
<th>Category Range <em>(Applicable to all offenders)</em></th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>3 months’ custody</td>
<td>Community order – 6 months’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>Community order</td>
<td>Community order</td>
</tr>
<tr>
<td>Category 3</td>
<td>Fine</td>
<td>Fine</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Greater harm (injury or fear of injury must normally be present) and higher culpability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 2</td>
<td>Greater harm (injury or fear of injury must normally be present) and lower culpability; or Lesser harm and higher culpability</td>
</tr>
<tr>
<td>Category 3</td>
<td>Lesser harm and lower culpability</td>
</tr>
</tbody>
</table>

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 or fear of 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**
- No injury

**Factors indicating higher culpability**

<table>
<thead>
<tr>
<th>Statutory aggravating factors:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)</td>
</tr>
<tr>
<td>Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other aggravating factors:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Degree of premeditation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Factors indicating lower culpability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)</td>
</tr>
<tr>
<td>Intention to commit more serious harm than actually resulted from the offence</td>
</tr>
<tr>
<td>Deliberately causes more harm than is necessary for commission of offence</td>
</tr>
<tr>
<td>Deliberate targeting of vulnerable victim</td>
</tr>
<tr>
<td>Offender operating in group or gang</td>
</tr>
</tbody>
</table>

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.

<table>
<thead>
<tr>
<th>Offence Category</th>
<th>Starting Point (Applicable to all offenders)</th>
<th>Category Range (Applicable to all offenders)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>Community order</td>
<td>Community order – 6 months’ custody</td>
</tr>
<tr>
<td>Category 2</td>
<td>Community order</td>
<td>Fine – community order</td>
</tr>
<tr>
<td>Category 3</td>
<td>Fine</td>
<td>Discharge – fine</td>
</tr>
</tbody>
</table>
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

### 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

### 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

### 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
- Offence racially or religiously aggravated

## 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
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.