

Annex C: Draft guidelines

Arson (criminal damage by fire) Criminal Damage Act 1971, section 1

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

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months' custody

Maximum when tried on indictment: Life imprisonment

Offence range: Discharge – 8 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Use of accelerant • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Serious consequential economic or social impact of offence • High level of damage caused
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal physical and/or psychological harm caused • Low value of damage caused

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 2 – 8 years' custody	Category range 9 months – 3 years' custody	Category range 6 months – 1 year 6 months' custody
Category 2	Starting point 2 years' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 – 4 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 6 months – 2 years' custody	Category range Medium level community order – 9 months' custody	Category range Discharge – High level community order

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

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

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

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Fire set in or near a public amenity

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP EIGHT**Reasons**

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

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

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

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Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

Criminal Damage Act 1971, section 1(2)

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

Triable only on indictment

Maximum: Life imprisonment

Offence range: High level community order – 12 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

Within this offence, culpability is fixed, culpability A is for intent, culpability B is for recklessness.

Culpability A	<ul style="list-style-type: none"> Offender intended to endanger life
Culpability B	<ul style="list-style-type: none"> Offender was reckless as to whether life was endangered

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1	<ul style="list-style-type: none"> Very serious physical and/or psychological harm caused High risk of very serious physical and/or psychological harm Serious consequential economic or social impact of offence caused Very high value of damage caused
Category 2	<ul style="list-style-type: none"> Significant physical and/or psychological harm caused Significant risk of serious physical and/or psychological harm Significant value of damage caused All other harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> No or minimal physical and/or psychological harm caused Low risk of serious physical and/or psychological harm Low value of damage caused

See page 59.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 years – 12 years' custody	Category range 4 years – 10 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 6 months – 3 years' custody	Category range High level community order – 2 years 6 months' custody

In appropriate cases, the court should order a psychiatric report in order to ascertain whether the offence is linked to an underlying mental disorder and, if it is, whether any mental health disposal should be considered (see Step Three).

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

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

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

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Revenge attack

Significant degree of planning or premeditation

Use of accelerant

Fire set in or near a public amenity

Victim is particularly vulnerable

Damage caused to heritage assets

Multiple people endangered

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Involved through coercion, intimidation or exploitation

Remorse

Good character and/or exemplary conduct

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

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

Offender's responsibility substantially reduced* by mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

STEP THREE**Consideration of mental health disposals****Where custody is being considered:**

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) that the offending is wholly or in significant part attributable to that disorder,
- (iii) treatment is available, and
- (iv) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

Section 37 hospital order and section 41 restriction order

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether: (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

Section 47 transfer to hospital

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s.47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

Non-custodial option:

If a non-custodial option is considered, and where an offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be appropriate. The offender should express a willingness to comply with the requirement.

STEP FOUR**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP SIX**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP NINE

Reasons

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

STEP TEN

Consideration for time spent on bail

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

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Criminal damage (other than by fire) value over £5,000

Criminal Damage Act 1971, section 1(1)

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years' custody

Offence range: Discharge – 4 years' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1988, section 30

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or damaged items of great sentimental value
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused • Low value damage

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

See page 68.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

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

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

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 14 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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

Criminal damage (other than by fire) value under £5,000

Criminal Damage Act 1971, section 1(1)

Triable only summarily

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge to 3 months' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1988, section 30

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or items damaged of great sentimental value
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 3 months' custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order
Category 2	Starting point Low level community order	Starting point Band B fine	Starting point Band A fine
	Category range Band C fine – High level community order	Category range Discharge – Low level community order	Category range Discharge – Band B fine

See page 74.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

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

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

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 14 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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

Threats to destroy or damage property

Criminal Damage Act 1971, section 2

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months custody

Maximum when tried on indictment: 10 years' custody

Offence range: Discharge to 5 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Significant planning or premeditation • Offence motivated by revenge • Threat to burn or bomb property
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

The level of harm is assessed by weighing up all the factors of the case.

Category 1	<ul style="list-style-type: none"> • Serious distress caused to the victim • Serious disruption/inconvenience caused to others
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused to the victim

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years 6 months' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 year – 5 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 2	Starting point 9 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Discharge – Medium level community order

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

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

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

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Threats made in the presence of children

Considerable damage threatened

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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