

## **STEP ONE: Determining the offence category**

The court at this stage does not consider the defendant's previous convictions nor whether he has pleaded guilty or been convicted after trial. The assessment of harm and culpability at step one is based solely on the principal identified factual elements of the offence. Any factors not listed here can be considered at step 2 which is not exhaustive.

### **Factors indicating greater harm**

- *Injury which is serious in the context of the offence* – it is not sufficient for the victim to have an injury which meets the criteria of the offence; it must be serious in the context of the range of injuries which can occur for that offence. This will require the sentencer to assess the nature of the injury, including psychological harm where relevant, and decide where on the scale of injuries for an offence any particular injury falls.
- *Victim is particularly vulnerable because of personal circumstances* – there is no automatic assumption that any specific 'class' of victim is covered and sentencers need to consider the language used – 'particularly vulnerable', 'personal circumstances'. It will be for the sentencer to assess when a victim comes within this description. A domestic violence victim could come into this category where, for

example, they had been isolated from family and friends by the behaviour of the offender and/or subject to repeated attacks by the offender; but it would also cover situations where the victim was particularly vulnerable to attack because of age, whether extreme youth or being elderly and infirm. Of course, factors not taken into account here can be considered at step 2 so that the facts of a domestic violence case can move up from the starting point based, for example, on location and timing of the offence.

- *Sustained or repeated assault on the same victim* – it is self explanatory as to why this leads to higher culpability.

#### **Factors indicating lesser harm**

- *Injury which is less serious in the context of the offence* – again, this will involve an assessment by the sentencer as to where on the scale of injuries for an offence a particular injury falls.

#### **Factors indicating higher culpability**

These are divided into 'statutory' and 'other' aggravating factors.

##### ***Statutory***

- *Offence motivated by, or demonstrating, hostility based on the victim's:*
  - *Sexual orientation or*
  - *Disability*

Where an offence is charged in its racially or religiously aggravated form under section 29 of the Crime and Disorder Act (section 20/ABH/common assault), it is not taken into account at this stage. The process remains the

same as at present, namely that the sentencer first determines the appropriate sentence for the offence without taking account of the element of aggravation using the step 1 and 2 factors. The sentencer then makes an addition to the sentence, considering the level of racial or religious aggravation involved, which can include moving outside the identified category range, taking into account the increased statutory maximum.

### **Other**

- *A significant degree of premeditation* – it is recognised that there are degrees of premeditation and the sentencer is required to assess where on the gradient of premeditation the facts of a particular case lie.

The other factors indicating higher culpability are:

- *Use of weapon or weapon equivalent*
- *Intention to commit more serious harm than actually resulted from offence*
- *Deliberately causes more harm than necessary for the commission of the offence*
- *Deliberate targeting of vulnerable victim*
- *Leading role in a group or gang*
- *Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)*

## **Factors indicating lower culpability**

- *Lack of premeditation* – it is for the sentencer to determine where on the scale of premeditation any particular set of facts falls.

The other factors included here are:

- *Subordinate role in a group or gang*
- *A greater degree of provocation than normally expected*
- *Mental disorder or learning disability, where linked to the commission of the offence*
- *Excessive self defence*

What does the court do where there may be no factors present indicating either higher or lower culpability? The Council believes that information will be available in the vast majority of cases that will lead the sentencer to conclude there is evidence of either higher or lower culpability. However, in the rare cases where there are genuinely no culpability factors present, the court has the discretion to choose the category which it feels to be most closely aligned with the case before them, bearing in mind that step 2 factors should not be considered in making this decision to avoid any potential for double counting.

There should be no automatic assumption that an absence of factors must indicate category 2 or that it must indicate category 3. The guideline offers discretion to the individual sentencer to make a judgement call based on whatever step 1 factors are present to assist them.

Once the court has decided on where the facts fit within the harm and culpability factors it then moves on to identify which one of the three category ranges applies to the offence. Each category has a range of sentences and starting point.

### **STEP TWO: Starting point and category range**

Once the starting point has been identified the sentencer then moves on to consider any additional factual elements providing the context of the offence and any factors relating to the offender which may result in the sentence moving up or down from the starting point. The guideline sets out the most relevant aggravating and mitigating factors for each offence. Unlike the step 1 factors, this is not an exhaustive list and other factors which are relevant to the offence can be taken into account here.

In addition to the statutory aggravating factors of previous convictions and an offence being committed on bail, the list of **factors increasing seriousness** includes:

- *Location and timing of the offence* – as discussed above, this could aggravate an offence committed in a domestic violence context. It would also cover offences committed at night in public areas.
- *Failure to comply with current court orders* – it is limited to current court orders in order to avoid double counting for previous convictions.
- *TICs* – these are included as an aggravating factor as their general effect is to increase the overall sentence.

### **Factors reducing seriousness/reflecting personal mitigation**

These include remorse, the fact that the incident was an isolated incident and the offender is of good character. Also included are *determination and/or demonstration of steps taken to address addiction or offending behaviour*. This factor will not apply where the offender simply says he is 'going to' deal with his addiction/offending behaviour but only where there is evidence that he is actually undertaking steps to deal with his addiction/offending behaviour.

The list also includes *age and/or lack of maturity where it affects the responsibility of the offender* and the fact that the offender is the *sole or primary carer for dependent relatives*.

Having considered all these factors the court will need to decide whether it should increase the sentence from the starting point because of the number and type of any aggravating factors and the effect of any mitigating factors.

### **STEP THREE – Reduction for assistance to prosecution**

There is reference to assistance under the SOCPA arrangements (these are only relevant in the Crown Court) and any other rule of law by which an offender may receive a discounted sentence because of assistance given or offered.

### **STEP FOUR – Reduction for guilty pleas**

This reflects the statutory requirement.

### **STEP FIVE - Dangerousness**

This is also governed by statute.

### **STEP SIX - Totality**

This applies where the sentencer is dealing with more than one offence and requires the sentencer to ensure that the final (total) sentence reflects the offender's overall criminality.

### **STEP SEVEN – Compensation and ancillary orders**

The court must consider making a compensation order in any case where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to order compensation.

### **STEP EIGHT – Duty to give reasons**

The court will need to explain how it has reached the sentence it has.

### **STEP NINE – Consideration of remand time**

This must be done in line with the statutory requirements.