

Intimidatory Offences Guideline

Response to consultation

July 2018

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Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on this guideline. I also extend my thanks to the members of the judiciary who gave their time to participate in the research exercise undertaken to test and inform the development of the guideline, as well as the groups who hosted and attended feedback events.

As with all Sentencing Council consultations, the views put forward by all respondents were carefully considered, and the range of views and expertise were of great value in informing the definitive guideline. As a result of those views, a number of changes has been made across the offences including the inclusion of new factors in medium harm and culpability to aid in the assessment of the seriousness of the offence; and considerable revision of the guidance for racially or religiously aggravated offences, in order to give greater assistance to sentencers for these sensitive offences. The Council has also made changes to individual guidelines to address the issues raised. The detail of those changes is set out within this document.

In developing these guidelines the Council has recognised and reflected the very intimate, personal and intrusive nature of these offences, which can have devastating, often long term impacts on victims and their families. This set of guidelines will provide vital assistance to sentencers across England and Wales, particularly for the newer offences of disclosing private sexual images and controlling and coercive behaviour, for which no guidance previously existed.

Lord Justice Treacy
Chairman, Sentencing Council

Introduction

In March 2017 the Sentencing Council published a consultation on a package of draft guidelines, collectively known as ‘Intimidatory’ offences. This included: stalking, harassment, racially or religiously aggravated stalking or harassment, threats to kill, disclosing private sexual images, and controlling and coercive behaviour. These offences were grouped together as there are certain similarities between the offences. Previously, there was limited guidance within the Magistrates’ Court Sentencing Guidelines (MCSG) for the sentencing of harassment and racially or religiously aggravated harassment, and threats to kill, but no sentencing guidelines for stalking, disclosing private sexual images or controlling or coercive behaviour.

Increasing attention has been given to these offences by both the public and media in recent years. The cases by their nature are pernicious, personal and can cause great distress for the victims. The offences can be tried in magistrates’ courts or in the Crown Court, and numbers have generally risen in the courts in recent years. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

A number of consultation events/forums were held with organisations with an interest in these offences, and the reaction to the draft guidelines was positive.

This was also a joint consultation on revised guidance for sentencing offences committed in a domestic context. The Council published the definitive guideline¹, *Overarching Principles: Domestic Abuse*, in February 2018.

The guideline will apply to all those aged 18 or over who are sentenced on or after 1 October 2018, regardless of the date of the offence.

¹ <https://www.sentencingcouncil.org.uk/publications/item/overarching-principles-domestic-abuse-definitive-guideline/>.

Summary of research and analysis

Several research exercises were carried out to support the Council in developing the guideline.

Content analysis was conducted of judges' sentencing remarks for 75 defendants sentenced for all the offences included within this guideline. This provided indicative yet valuable information on some of the key factors influencing sentencing decisions for these cases.

During the consultation stage of guideline development, qualitative research was carried out to help gauge how the guideline might work in practice. Three draft guidelines were explored in this research: harassment and stalking (s. 2/2A offence), harassment and stalking (s.4/4A offence) and controlling or coercive behaviour. These guidelines were tested using scenario based exercises in 29 in-depth interviews with magistrates, district judges and Crown Court judges.

In addition to using scenarios to help ascertain whether the guidelines resulted in consistent decision making across Crown Court judges, some judges were also asked to re-sentence cases of stalking or controlling or coercive behaviour that they had previously sentenced.

As a result of this research, in combination with consultation responses, a number of changes were made to the draft guidelines, including: changes to the wording of some culpability factors; including additional medium culpability and harm factors; some changes to the factors and process for determining the level of harm; and changes to the guidance for the sentencing of racially or religiously aggravated stalking and harassment offences.

In this way, research and analysis played an important part in the development of the guideline.

A statistics bulletin and draft resource assessment were published alongside the consultation, and updated data tables and a final resource assessment have been published alongside the definitive guideline and consultation response document.

Looking ahead to monitoring and assessing the impact of the new guideline, from November 2017 to March 2018 the Council collected data on how harassment and stalking offences were currently being sentenced across a sample of magistrates' courts. This will be used as a baseline for assessing the guideline's impact, once in force.

Summary of responses

The consultation sought views from respondents on the five separate guidelines. The consultation also included a number of case studies in order to obtain detailed responses on the workability of each draft guideline and whether any difficulties arose. In total, 53 responses to the consultation were received², most of which were submitted by e-mail or letter, with 26 responses submitted online.

Breakdown of respondents

Type of respondent	Number
Charity/not for profit organisations	1
Legal professionals (4 collective and 1 individual response)	5
Judiciary (1 representative body and 1 individual response)	2
Other	1
Academics	2
Government	1
Victims' representative group	8
Police (1 collective response, 2 from PCCs and 1 individual)	4
Parliament	2
Members of the public	7
Local Authority	1
Magistrates (8 collective and 11 individual responses)	19
Total	53

Feedback received from the Council's consultation events and interviews with sentencers during the consultation period is reflected in the responses to individual questions below.

In general, there was a positive response to the proposals. However, the Council was also grateful for constructive criticism and considered suggestions for amending parts of the five draft guidelines.

The substantive themes emerging from the responses to all guidelines included:

² These were joint responses, on the revised draft guideline for domestic abuse and on intimidatory offences

- The guidelines should include more factors within medium culpability and harm;
- The sentence ranges generally throughout the guidelines should be increased;
- Factors within the controlling and coercive behaviour guideline should better reflect the essence of the offence;
- The guidance for racially or religiously aggravated offences could be improved to provide more guidance for sentencers.

The Council has responded to these comments by:

- Including new medium culpability and harm factors across all five guidelines;
- Making increases to the sentence ranges, where appropriate;
- Revising the structure and factors of the guideline for controlling and coercive behaviour;
- Considerably revising and improving the guidance for sentencing racially or religiously aggravated offences.

In addition, the Council made a number of changes to each individual guideline. The detailed changes to the individual guidelines are discussed below.

Criticisms and concerns

The majority of respondents to the consultation were very positive about the proposed draft guidelines. One area of concern however was raised by the Suzy Lamplugh Trust. They commented on the amount of sentencing data used to inform the proposed sentence ranges for stalking, saying that it was a '*worryingly small number of cases to create informed guidelines*'. However, a number of other organisations had specifically requested the Council to produce guidelines for stalking offences, almost as soon as the legislation was passed.

Three years of sentencing data was used for the stalking ranges proposed in consultation, and with the 2016 sentencing data now available it will be four years of data which have been used to finalise the ranges for the definitive guideline. The Council therefore considers that this is sufficient data.

The data collection that is currently under way in a sample of magistrates' courts across England and Wales is collecting data on harassment (s.2) and stalking (s.2A) amongst other offences. A similar exercise is planned for 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of the guideline, compare sentencing practice before and after the guideline, and to ensure any divergence from its aims is identified and rectified. In due course, as with other guidelines, an evaluation of the impact of the guideline will be conducted and published, incorporating the data collected along with other sources.

Harassment/Stalking s.4/4A

Structure of the guidelines

The consultation document explained that harassment and stalking offences (and the racially or religiously aggravated forms of these offences) were combined within one guideline, as in development the Council felt that the two offences were sufficiently similar to be contained within one guideline. The majority of respondents agreed with this approach, although a small number felt that the differences between the two offences had not been sufficiently understood: in particular that stalking was a different offence to harassment, so necessitated a separate guideline.

In developing the guidelines the Council had taken into account the differences between the two. The essential difference between the s.2 harassment and s.2A stalking offence is that the latter relates only to an individual and includes an additional element of 'stalking' which is not defined in statute but is illustrated by examples (such as following, contacting, spying, etc). The essential difference between s.4 harassment and s.4A stalking is that for the former there must be a fear of violence but for the latter either a fear of violence **or** causing serious harm or distress is required.

The respondents who disagreed with this approach, principally the Suzy Lamplugh Trust and Paladin, stated that there should be two separate guidelines, one for harassment and one for stalking, as they are separate and distinct offences, which they state are not fully understood by criminal justice professionals. They state that stalking is characterised by obsessive, fixative, sinister behaviour, and that greater emphasis should be placed on the psychological nature of the crime and the impact on a victim's wellbeing. They also mentioned concerns with stalking charges being dropped to harassment, with offenders being more willing to plead guilty to harassment but not stalking offences.

The Council considered these concerns carefully, but on balance, decided not to change the structure of the harassment and stalking guidelines. The responses from users of the guidelines, such as the Magistrates Association (MA), Council of Circuit Judges and the Justices' Clerks' Society (JCS) did not raise any concerns about the proposed structure of the guidelines. The Council did decide to make some changes to the harm and culpability factors to address some of the concerns raised, for example, to incorporate appropriate references to the psychological harm caused (these are discussed more fully on page 12). With regard to the concern raised with possible undercharging of these offences, the benefit to having both offences within one guideline is that regardless of whether a defendant is charged with stalking or harassment, they will be sentenced using the same guideline.

Culpability factors

The s.4/4A guideline had four levels of culpability. The inclusion of culpability A, very high culpability, was designed to cater for the recent increase in the statutory maximum to 10 years, so that only the most serious stalking or harassment cases would fall within A, and receive the longest sentences. This structure tested well during research with sentencers. Consultation respondents were supportive of this structure, with comments instead focusing on the factors within the categories, specifically a request for medium culpability factors, rather than just *'all other cases that fall between categories B and D'*. Respondents felt that as currently worded, it was difficult to envisage what cases would fall into the medium category. This was a view echoed across all the offences within the draft guideline.

Road testing also showed a tendency for the high culpability factor *'conduct designed to maximise distress'* to be overused, resulting in more cases being placed in high culpability than was envisaged. The combination of comments from consultation respondents and findings from the road testing has led to some rewording of the high culpability factors, and the creation of some new medium and lesser culpability factors.

Accordingly, in high culpability, *'significant planning and/or sophisticated offence'* becomes *'high degree of planning and/or sophisticated offence'*, with a new medium culpability factor of *'significant planning'*, and a lesser culpability factor of *'little or no planning'*. The high culpability factor of *'conduct intended to maximise distress'* has been strengthened by adding the word 'fear' so it now reads *'conduct intended to maximise fear or distress'*, with a new medium factor of *'conduct intended to cause some fear or distress'*, and a lesser culpability factor of *'conduct unlikely to cause significant fear or distress'*.

Within the high culpability factor of *'persistent action over sustained period'*, the word *'sustained'* has been altered to *'prolonged'*, as some respondents had said that the word *sustained* was confusing.

A new medium factor of *'scope and duration of offence that falls between categories B and D'* has now been included into the guideline, following requests from respondents that they would like more medium culpability factors, and to ensure that only the more serious cases are placed into high culpability.

The rest of the culpability factors remain unchanged from the consultation version of the guideline.

Harm factors

As with the culpability factors, respondents requested that the middle harm category, category 2, had specific factors, rather than just *'harm that falls between categories 1 and 2'*. A number of respondents, including the Suzy Lamplugh Trust, as discussed on page 10, suggested that the harm factors should reference psychological distress, as this was very much a feature of these type of offences. Accordingly, a new harm category 1 factor has been added of *'significant psychological harm caused to the victim'* and *'some psychological harm caused to the victim'* has been added to harm category 2.

Other factors have also been added to harm 2: *'some distress to the victim'* and *'victim caused to make some changes to lifestyle to avoid contact'*, both corresponding versions of factors present in harm category 1. The factor of *'physical violence used'*, has been removed from the final guideline as on reflection very few cases involve physical harm. A number of respondents questioned the inclusion of *'victim is particularly vulnerable'* as a harm factor, saying that all victims of these offences would be vulnerable, or they asked for greater clarity on what constitutes vulnerability. This factor also caused uncertainty during testing with sentencers, with it being somewhat inconsistently applied. The Council considered that leaving this as a harm 1 factor could lead to it being inappropriately overused, but that rather than removing it from the guideline altogether, it should become an aggravating factor. This change has been made throughout all the guidelines.

A small number of respondents queried the category 3 factor of *'minimal distress or harm caused to the victim'* stating that it is unlikely that there would be cases with only 'minimal' distress caused. The Council agreed with these comments, and reworded it to read *'limited distress or harm caused'*. This change has been made throughout the guidelines.

Psychiatric reports

In this guideline there was text which asked sentencers to consider asking for psychiatric reports in appropriate cases. The inclusion of this text was strongly supported by respondents. A number of respondents asked why this text had not been included within the harassment/stalking s.2/2A offence as well, stating that it should be. The Council considered this, but felt that including this text could lead to delays in the courts. The Council considered that a proportionate approach was to include it only within the more serious s.4/4A offence, and not within the s.2/2A offence.

Sentence levels

A small number of respondents, and sentencers during the testing of the guidelines thought that the top of the range in category 1A, at 8 years, should be closer to the statutory maximum of 10 years. The Suzy Lamplugh Trust recommended that all the sentence levels be increased to allow time for psychological treatment to be carried out in order to reduce reoffending. Similarly the National Stalking helpline suggested that short term custodial sentences are ineffective for stalkers, and that they seldom respond to custodial sentences alone. At the lower end of the table, a small number of respondents suggested that the starting point of a band C fine in 3D was inappropriate, and that the inclusion of fines in general was inappropriate, given how serious these offences are.

The increase to the statutory maximum from 5 to 10 years came into effect in April 2017; it is not clear from the data available at the time of writing whether any offenders have been sentenced under the new statutory maximum. Published data suggests that no offenders were sentenced to over 4 years' custody for these offences in 2017 (after any reduction for guilty plea). Following the consultation, the Council reviewed more recent sentencing data, for 2016. Following this review, and the comments made during consultation, the Council concluded that the top of the range at 1A should remain at 8 years, allowing headroom up to the statutory maximum of 10 years, but that there should be some slight increases at the lower end of the sentence table, to reflect current sentencing practice.

In 3D, the starting point is increased from a band C fine to a low level community order, the bottom of the range is increased from a discharge to a band C fine, and the top of the range is increased from a low to a high level community order. In 2D and 3C, the starting point is increased from a medium to a high level community order, and the top of the range is increased from a high level community order to 12 weeks' custody. In 2016 only a very small proportion of offenders for both stalking and harassment offences received a discharge or fine. Sentencers could go outside the guideline, if it was in the interests of justice to do so, to give a discharge, in exceptional cases.

Aggravating and mitigating factors

Aggravating factors

The Council has added the following factor to the guideline:

- Grossly violent or offensive material sent

This factor was in the MCSG guidance for this offence, and a small number of respondents felt that it should be included within the guideline.

As discussed in the harm section above, the harm factor relating to vulnerability has been moved to become an aggravating factor, with some additional clarification, as shown below. This change has been made across all the guidelines.

- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)

The aggravating factor shown below has been removed, the MA commented that it was hard to see cases where it would apply, or how evidence of such an impact could be contained. This factor has been removed from all the offences within this guideline.

- Established evidence of community/wider impact

Mitigating factors

There have been no substantive changes to the mitigating factors, except for a slight amendment to the factor shown below:

- Age and/ or lack of maturity

The wording in the consultation version also said: '*where it affects the responsibility of the offender*'. This additional wording has been removed, as age or lack of maturity may be a broader consideration, other than just where it affects responsibility. This change has been made across all the offences within this guideline.

Racially and religiously aggravated harassment/stalking offences

The proposed approach to sentencing these offences was supported by respondents to the consultation. The testing with sentencers did give rise to some concerns about the sentences arrived at, albeit this was due to a combination of issues: the approach to the aggravated offences, the wording of the culpability/harm factors, and lack of factors in the medium categories. As a result of these findings, a revised version of this guideline was retested with a small group of sentencers, which resulted in more proportionate and consistent sentencing overall.

The changes made have been to simplify and streamline the guidance. The guidance is now embedded more intuitively within the text. The guidance has also been restructured to provide clearer guidance as to what constitutes a high, medium or low level of aggravation, and how that should then be sentenced. A short list of non-exhaustive factors, specific to the aggravated offence, is provided to decide the level of aggravation. This short list of specific hostility factors is to avoid the possibility of double counting more generic factors, such as level of planning, which may already have been considered at step one.

Following a suggestion made during the consultation, additional factors have been added to assess how much of a part the hostility element formed of the offence: whether it was the predominant

motivation for the offence (a factor in a high level of aggravation), formed a significant proportion of the offence as a whole, (a factor in a medium level of aggravation) or formed a minimal part of the offence as a whole (low level of aggravation). This revised guidance also appears within the s.2/2A harassment and stalking guideline.

Harassment/Stalking s.2/2A

Culpability and harm factors

The factors and structure of this guideline are very similar to the harassment and stalking s.4/4A, with the exception that this guideline only has three levels of culpability. Accordingly, all the changes to the culpability and harm factors made to the s.4/4A discussed earlier, have also been made to this guideline. One change to this guideline is to the high culpability factor regarding threats of violence. The Council decided to reword the high culpability factor of '*threatening violence*', to '*threat of serious violence*' and to add an additional medium culpability factor of '*threat of some violence*'.

Sentence levels

Only a small number of respondents disagreed with the proposed sentence levels for this offence. Women's Aid were concerned with what they saw as the low level of starting points throughout the table, and felt that sentences must reflect the serious and damaging impact on victims. Two people questioned the ranges in 3C, and commented that these levels were lower than in the existing s.2 MCSG harassment guideline.

The Council reviewed the sentence table in light of these comments, and taking into account the more recent data to 2016, decided that there should be some small increases across the ranges, particularly across the lower levels. In 3C, the starting point is increased from a band A fine to a band B fine, and the top of the range is increased from a band C fine to a low level community order. In 2C and 3B the starting point is increased from a band C fine to a low level community order, and the top of the range increased from a low to a medium level community order.

In 2B, 3A and 1C the top of the range is increased from a high level community order to 12 weeks custody, to allow for a greater spread of custodial disposals, given that for the 2A stalking offence nearly 50% of offenders currently receive a custodial sentence. The top of the category range in 2A and 1B also increases from 12 to 16 weeks' custody. These changes intend to bring the sentence ranges into line with existing practice.

Aggravating and mitigating factors

The changes made to the aggravating and mitigating factors for the s.4/4A offence discussed above on pages 13 and 14 have also been made to this guideline.

Psychiatric reports

As noted on page 12, a number of respondents asked why the text included within the s.4/4A offence had not been included within this offence as well, stating that it should be. The Council considered this, but felt that a proportionate approach was to include it only within the more serious s.4/4A offence, and not within the s.2/2A offence.

Racially or religiously aggravated harassment/stalking offences

The changes made to this guidance outlined on page 14 have also been made to this offence.

Disclosing Private Sexual Images

Culpability factors

A small number of respondents suggested that the focus should be on who the images were shared with, such as pupils if the victim worked in a school, and so on. Arguably this is already captured with factor '*conduct intended to maximise distress*'. However the Council decided to strengthen this factor by adding '*and/or humiliation*' to it. A small number of respondents felt that the length of time the images were made available was an indication of high culpability, as some offenders re post images a number of times after sites remove them. To reflect this, the Council have added a new high culpability factor of '*repeated efforts to keep images available for viewing*'. The factor '*large number of images disclosed*' has been removed as the Council agreed with respondents who commented that the number of images was not a key consideration of high culpability.

A small number of respondents felt that the range of different types of images that could be disclosed was not adequately captured within the guideline, that different types of material, nude photos, compared to footage of explicit sexual acts, for example, carries different levels of culpability. The Council however had previously rejected this approach in the development of the guideline, believing that it was not appropriate to 'rate' one type of image as worse than another.

Respondents also requested additional factors for the medium and lesser categories for these offences, as with the other offences discussed earlier. Accordingly, in medium culpability there are two additional factors, '*some planning*', and '*scope and duration that falls between categories A and C*'. In lesser culpability there are two new additional culpability factors of '*conduct intended to cause limited distress and/or humiliation*' and '*offence was limited in scope and duration*'. These additional factors are also to ensure that only the most serious cases fall into high culpability.

Harm factors

The Council added the following factor to harm category 1 '*significant psychological harm caused to the victim*' and to harm category 2, '*some distress caused to the victim*', '*some psychological harm caused to the victim*' and '*offence has some practical impact on the victim*'

The factor in harm category 3 has been reworded from 'minimal' to 'limited' as discussed on page 12.

Sentence levels

Some small increases have been made to the sentence table; a number of consultation respondents had felt that at least some of them of the proposed ranges were too lenient. The starting point in 3C has been increased from a band B fine to a low level community order, and the top of the range increased from a low level to a high level community order. The starting point in 2C and 3B has increased from a medium to a high level community order, and the top of the range increased from a high level community order to 12 weeks' custody.

Aggravating and mitigating factors

The amendments that have been made to all of the guidelines in this package, are discussed on pages 13 and 14.

In addition, the Council has added '*offender took steps to limit circulation of images*' to the mitigating factors, following a suggestion made by a number of respondents. The Council corrected the placement of '*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*', by moving it from aggravating factors to within statutory aggravating factors. Hostility based on sex and age is not included as a statutory aggravating factor, but if relevant in a particular case it can be considered as the list of aggravating factors is non-exhaustive.

Controlling or coercive behaviour in an intimate or family relationship

Culpability factors

As with the other offences discussed within this guideline, there was a request for more factors within medium culpability. There has been slight rewording to one of the high culpability factors to include the word 'fear', so it reads '*conduct intended to maximise fear or distress,*' with a new medium factor of '*conduct designed to cause some fear or distress.*' All the sentencers during the testing of the guidelines used the word 'fear' as one of the key effects of this offence on the victim. A small number of respondents felt that the duration of offending was an essential high culpability factor, to capture the 'drip, drip, drip' effect of this type of insidious behaviour; sentencers during guideline testing also made references to the importance of this dimension. The Council agreed and so there is a new high culpability factor of '*persistent action over a prolonged and sustained period.*' There is now a corresponding new medium factor of '*scope and duration of offence that falls between categories A and C.*'

The organisation 'Standing Together against Domestic Violence' proposed that there should be a high culpability factor of '*use of multiple methods of controlling and coercive behaviour.*' The Council agreed with this suggestion, as rather than listing the many types of behaviour an offender might use, financial control, isolation and so on, it instead acknowledges the cumulative effect of the different ways the offender controls the victim.

The high culpability factor of '*the use of significant violence against the victim or others (where not charged separately)*' has been removed. The Council agreed with some respondents who felt that it was not appropriate to include it, as such behaviour should be the subject of its own charge.

Harm factors

The Council decided to look carefully again at how the assessment of harm was conducted for this offence, and after consideration decided to change the structure from three levels of harm to two. The Council looked at the definition of the offence, and reworded the factors, ensuring that category 2 harm reflects the serious level of harm that is inherent in the offence and category 1 harm is reserved for the most serious cases. Category 1 harm has 3 factors:

- Fear of violence on many occasions
- Very serious alarm or distress which has a substantial adverse effect on the victim

- Significant psychological harm

Category 2 harm has 2 factors:

- Fear of violence on at least two occasions
- Serious alarm or distress which has a substantial adverse effect on the victim

Sentence levels

As set out above, the changes to harm mean the sentence table has changed from 9 boxes to 6. A small number of respondents thought that the sentence levels should be increased. The Council reviewed the latest sentencing data, and noted that in 2016 only two offenders received a discharge, and none received a fine. Therefore, at the bottom of the table in 2C, discharge has been removed and the range starts at a low level community order. Sentencers could go outside the guideline, if it was in the interests of justice to do so, to give a discharge, in exceptional cases.

The starting point in 2C has been increased from a low to a medium level community order, and the top of the range has increased from a high level community order to 26 weeks custody. The top of the range in 1B and 2A has increased from two years to two years six months, and the starting point in 1A increases from two years to two years six months custody.

Aggravating and mitigating factors

The amendments that have been made to all of the guidelines in this package, are discussed on pages 13 and 14.

In addition, the Council has added an aggravating factor of '*victim left in debt, destitute or homeless due to exploitation of finances*', a suggestion made by Women's Aid. The Council has also added '*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*' as a statutory aggravating factor.

Threats to Kill

Culpability factors

This draft guideline was well received. A few respondents suggested that the high culpability factor of *'offence part of a campaign of violence or threats of violence'* could be worded more clearly, so this has been reworded to read *'history of and/or campaign of violence towards the victim'*. The Council also decided to add *'threat(s) with significant violence'* as a high culpability factor.

With all the other guidelines discussed so far, the request for medium factors by consultation respondents was considered. Although a general theme throughout the consultation, this issue was not referenced specifically in relation to this offence. However, the Council decided to reword medium culpability to provide more assistance to courts as to whether culpability fell between high and lesser culpability. The new wording reads: *'cases that fall between categories A and C because: factors are present in A and C which balance each other out **and/or** the offender's culpability falls between the factors described in A and C.'*

A small number of respondents queried the wording of the lesser culpability factor of *'isolated, brief incident'*. This factor was designed to capture an offence that was an impulsive, unplanned act, no prior history with the victim, and so on. The Council has amended the wording to read: *'offence was limited in scope or duration'*.

Harm factors

One of the comments made by a consultation respondent was that offenders will often say that the threat was not meant, so more emphasis should be placed on harm to the victim, rather than culpability. Respondents also wished to see psychological harm referred to in the harm factors.

Therefore, there is now an additional category 1 harm factor of *'significant psychological harm caused to the victim'*, and three new factors in category 2 harm of *'some distress caused to the victim'*, *'some psychological harm caused to the victim'* and *'offence has some practical impact on the victim'*. As with the other offences already discussed, the factor of *'victim is particularly vulnerable'* has been moved to an aggravating factor, and the category 3 factor of *'minimal' distress* is reworded to *'limited'*

Sentence levels

There have been no changes to the sentence table. The majority of the respondents agreed with the sentence levels proposed in the consultation.

Aggravating and mitigating factors

The amendments that have been made to all of the guidelines in this package, are discussed on pages 13 and 14.

The Council has also added '*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*' as a statutory aggravating factor.

Conclusion and next steps

The consultation has been an important part of the Council's consideration of this guideline. Responses received from a variety of sources informed changes made to the definitive guideline.

The guideline will apply to all adults aged 18 or over sentenced on or after 1 October 2018, regardless of the date of the offence.

Following the implementation of the definitive guideline, the Council will monitor its impact.

Annex A: consultation questions

Q10 ³ – Do you agree with the proposal that both harassment and stalking offences are included within this guideline? If not, please tell us why.
Q11 – Do you agree with the proposed factors within the four categories of culpability? If not, please tell us why.
Q12 - Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.
Q13 - Do you agree with the proposed sentence table? If not, please tell us why.
Q14 – Do you agree with the inclusion of this text with the guideline?
Q15 – Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
Q16 - Do you agree with the proposed approach to sentencing racially and religiously aggravated stalking and harassment offences? If not, please explain why and suggest any alternative approaches, including any factors that you think should be included or removed.
Q17 – Do you have any comments on using the guideline through case study A?
Q18 - Do you agree with the proposed culpability and harm factors for this offence? If not, please tell us why.
Q19 – Do you agree with the proposed sentence table? If not, please tell us why.
Q20 - Do you have any views on the text regarding psychiatric reports not being included within this guideline?
Q21 – Do you have any further comments, in addition to your answer to Q16, on the proposed guidance for the sentencing of the racially and religiously aggravated forms of this offence?

³ Questions 1-9 related to the consultation on the Overarching Principles: Domestic Abuse Guideline

Q22 – Do you have any comments on using the guideline through case study B?
Q23 - Do you agree with the proposed culpability factors? If not, please tell us why.
Q24 - Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.
Q25 - Do you agree with the proposed sentence table? If not, please tell us why
Q26 - Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
Q27- Do you have any comments on using the guideline through case study C?
Q28 - Do you agree with the proposed culpability factors? If not, please tell us why.
Q29 - Do you agree with the proposed approach and factors included in the assessment of harm? If not please tell us why.
Q30 - Do you agree with the proposed sentence table? If not, please tell us why.
Q31 - Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
Q32 - Do you have any comments on using the guideline through case study D?
Q33 – Do you agree with the proposed factors within the three levels of culpability? If not, please tell us why.
Q34 - Do you agree with the proposed approach and factors included in the assessment of harm? If not please tell us why.
Q35 - Do you agree with the proposed sentence table? If not, please tell us why.
Q36 - Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
Q37- Do you have any comments on using the guideline through case study E?
Q38 – Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.

Annex B: consultation respondents

Martin Alderman JP

HHJ Maureen Bacon QC

Dame Vera Baird QC, PCC for Northumbria

James Baker

Lee Barnard (Metropolitan Police)

Denise Blackburn (Denise Blackburn & Partners)

Central Kent Magistrates

Central London Magistrates

Alex Chalk MP

Criminal Bar Association

Jacquie Dabnor JP

David (no surname given)

Wendy Forrest

Richard Graham MP

Highbury Corner Magistrates Consultation Committee

Ben Hughes JP

Immigration Fraud UK

Justices' Clerks' Society

Caron Kipping

The Law Society

Maya Linstrum-Newman

London Criminal Courts Solicitors' Association

Nicky Loveday JP

Magistrates' Association

The ManKind Initiative

Judith Massey JP

Clare McGlynn (Durham University)

David Milner-Scudder

Ministry of Justice

Oxfordshire Bench

Paladin

Gary Price JP

Prison Reform Trust

Erika Rackley (University of Birmingham)

Refuge

Revenge Porn Helpline

Frances Ridout (Queen Mary Legal Advice Centre)

Safer Leeds, Leeds City Council

Chris Smith JP

South Wales Police and South Wales PCC

SouthEast London Bench

Standing Together Against Domestic Abuse

The Suzy Lamplugh Trust

Richard Thomas JP

Victims' Commissioner

Warrington Anti-Stalking Clinic Initiative

Peter Watson JP

West Hampshire Magistrates

West Sussex Bench

West Yorkshire Magistrates

Matthew Withey

Women's Aid

