

# Intimidatory Offences Definitive Guideline



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# Applicability of guideline

**The Sentencing Council issues this definitive guideline in accordance with section 120 of the Coroners and Justice Act 2009.**

The guidelines apply to all offenders aged 18 and older, who are sentenced on or after 1 October 2018, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

## Structure, ranges and starting points

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

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

**Information on community orders and fine bands is set out in the annex at page 40.**

## Harassment

(putting people in fear of violence)

Protection from Harassment Act 1997 (section 4)

## Stalking

(involving fear of violence or serious alarm or distress)

Protection from Harassment Act 1997 (section 4A)

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Triable either way

Maximum: 10 years' custody

Offence range: Fine – 8 years' custody

## Racially or religiously aggravated harassment

(putting people in fear of violence)

Crime and Disorder Act 1998 (section 32(1)(b))

## Racially or religiously aggravated stalking

(involving fear of violence or serious alarm or distress)

Crime and Disorder Act 1998 (section 32(1)(b))

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Triable either way

Maximum: 14 years' custody

The racially or religiously aggravated offence is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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:

- |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A</b> | <b>Very high culpability</b> - the extreme nature of one or more culpability B factors or the extreme culpability indicated by a combination of culpability B factors may elevate to category A.                                                                                                                                                                                                                                                                       |
| <b>B</b> | <b>High culpability:</b> <ul style="list-style-type: none"> <li>• Conduct intended to maximise fear or distress</li> <li>• High degree of planning and/or sophisticated offence</li> <li>• Persistent action over a prolonged period</li> <li>• Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim: age, sex, disability, sexual orientation or transgender identity</li> </ul> |
| <b>C</b> | <b>Medium culpability:</b><br>Cases that fall between categories B and D, and in particular: <ul style="list-style-type: none"> <li>• Conduct intended to cause some fear or distress</li> <li>• Some planning</li> <li>• Scope and duration of offence that falls between categories B and D</li> </ul>                                                                                                                                                               |
| <b>D</b> | <b>Lesser culpability:</b> <ul style="list-style-type: none"> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Conduct unlikely to cause significant fear or distress</li> <li>• Little or no planning</li> <li>• Offence was limited in scope and duration</li> </ul>                                                                                                                                       |

**Harm**

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

- |                   |                                                                                                                                                                                                                                                                                           |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>• Very serious distress caused to the victim</li> <li>• Significant psychological harm caused to the victim</li> <li>• Victim caused to make considerable changes to lifestyle to avoid contact</li> </ul>                                         |
| <b>Category 2</b> | Harm that falls between categories 1 and 3, and in particular: <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Victim caused to make some changes to lifestyle to avoid contact</li> </ul> |
| <b>Category 3</b> | <ul style="list-style-type: none"> <li>• Limited distress or harm caused to the victim</li> </ul>                                                                                                                                                                                         |

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



**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.

**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 consideration may be relevant.**

**Maximum: 10 years' custody (basic offence)**

Harm	Culpability			
	A	B	C	D
Category 1	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 3 years 6 months' – 8 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 12 weeks – 1 year 6 months' custody	<b>Category range</b> High level community order – 36 weeks' custody
Category 2	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 12 weeks' – 1 year 6 months' custody	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody
Category 3	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> 12 weeks' – 1 year 6 months' custody	<b>Category range</b> High level community order – 36 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band C fine – High level community order

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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

#### *Other aggravating factors:*

Using a position of trust to facilitate the offence

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

Grossly violent or offensive material sent

Impact of offence on others, particularly children

Exploiting contact arrangements with a child to commit the offence

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

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

Mental disorder or learning disability (where not taken into account at step one)

Sole or primary carer for dependent relatives

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

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

## RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING 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 for the basic offence is 10 years' custody)**

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>Racial or religious aggravation was the predominant motivation for the offence.</li> <li>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).</li> <li>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).</li> <li>Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	Increase the length of custodial sentence if already considered for the basic offence <b>or</b> 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"> <li>Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>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).</li> <li>Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	Consider a significantly more onerous penalty of the same type <b>or</b> 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"> <li>Aggravated element formed a minimal part of the offence as a whole.</li> <li>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).</li> </ul>	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.**

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

### **STEP THREE**

#### **Consider any factors which indicate a reduction for 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 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

### **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.

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse* 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.

**Other ancillary orders available include:*****Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

**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 (tagged curfew)**

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

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

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

## Harassment

Protection from Harassment Act 1997 (section 2)

## Stalking

Protection from Harassment Act 1997 (section 2A)

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Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

## Racially or religiously aggravated harassment

Crime and Disorder Act 1998 (section 32(1)(a))

## Racially or religiously aggravated stalking

Crime and Disorder Act 1998 (section 32(1)(a))

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Triable either way

Maximum: 2 years' custody

Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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:

<b>A</b>	<b>High culpability:</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise fear or distress</li> <li>• High degree of planning and/or sophisticated offence</li> <li>• Persistent action over a prolonged period</li> <li>• Threat of serious violence</li> <li>• Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: age, sex, disability, sexual orientation or transgender identity</li> </ul>
<b>B</b>	<b>Medium culpability:</b>	<p>Cases that fall between categories A and C, in particular:</p> <ul style="list-style-type: none"> <li>• Conduct intended to cause some fear or distress</li> <li>• Some planning</li> <li>• Threat of some violence</li> <li>• Scope and duration of offence that falls between categories A and C</li> </ul>
<b>C</b>	<b>Lesser culpability:</b>	<ul style="list-style-type: none"> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Little or no planning</li> <li>• Offence was limited in scope and duration</li> </ul>

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Very serious distress caused to the victim</li> <li>• Significant psychological harm caused to the victim</li> <li>• Victim caused to make considerable changes to lifestyle to avoid contact</li> </ul>
<b>Category 2</b>	<p>Harm that falls between categories 1 and 3, and in particular:</p> <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Victim caused to make some changes to lifestyle to avoid contact</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Limited distress or harm caused to the victim</li> </ul>

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



## 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.

#### Maximum 6 months' custody (basic offence)

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Medium level community order – 16 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody
Category 2	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Medium level community order – 16 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band B fine – Medium level community order
Category 3	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band B fine – Medium level community order	<b>Category range</b> Discharge – Low level community order

See page 16.

Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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

#### *Other aggravating factors:*

Using a position of trust to facilitate the offence

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

Grossly violent or offensive material sent

Impact of offence on others, particularly children

Exploiting contact arrangements with a child to commit the offence

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

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

Mental disorder or learning disability (where not taken into account at step one)

Sole or primary carer for dependent relatives

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

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

## RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING 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 2 years' custody (maximum for the basic offence is 6 months' custody)**

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>Racial or religious aggravation was the predominant motivation for the offence.</li> <li>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).</li> <li>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).</li> <li>Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	Increase the length of custodial sentence if already considered for the basic offence <b>or</b> 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"> <li>Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>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).</li> <li>Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	Consider a significantly more onerous penalty of the same type <b>or</b> 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"> <li>Aggravated element formed a minimal part of the offence as a whole.</li> <li>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).</li> </ul>	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.**

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

### **STEP THREE**

#### **Consider any factors which indicate a reduction for 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.

#### **Other ancillary orders available include:**

#### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

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

**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 (tagged curfew)**

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

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

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

# Disclosing private sexual images

Criminal Justice and Courts Act 2015 (section 33)

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**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Discharge – 1 year 6 months' custody**

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse* 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:

<b>A – Higher culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise distress and/or humiliation</li> <li>• Images circulated widely/publically</li> <li>• Significant planning and/or sophisticated offence</li> <li>• Repeated efforts to keep images available for viewing</li> </ul>
<b>B– Medium culpability</b>	<ul style="list-style-type: none"> <li>• Some planning</li> <li>• Scope and duration that falls between categories A and C</li> <li>• All other cases that fall between categories A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> <li>• Little or no planning</li> <li>• Conduct intended to cause limited distress and/or humiliation</li> <li>• Offence was limited in scope and duration</li> </ul>

**Harm**

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Very serious distress caused to the victim</li> <li>• Significant psychological harm caused to the victim</li> <li>• Offence has a considerable practical impact on the victim</li> </ul>
<b>Category 2</b>	<p>Harm that falls between categories 1 and 3, and in particular:</p> <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Offence has some practical impact on the victim</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Limited distress or harm caused to the victim</li> </ul>

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



## 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	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 26 weeks' – 1 year 6 months' custody	<b>Category range</b> 12 weeks' – 1 year's custody	<b>Category range</b> High level community order – 26 weeks' custody
Category 2	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 12 weeks' – 1 year's custody	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Discharge – High level community order

See page 24.

Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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:**

Impact of offence on others, particularly children

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

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

Offender took steps to limit circulation of images

Remorse

Good character and/or exemplary conduct

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

Age and/or lack of maturity

Mental disorder or learning disability (where not taken into account at step one)

Sole or primary carer for dependent relatives

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

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

**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.

**Other ancillary orders available include:*****Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

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

## **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 (tagged curfew)**

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

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

# Controlling or coercive behaviour in an intimate or family relationship

Serious Crime Act 2015 (section 76)

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 4 years' custody**

**Also refer to the *Overarching principles: Domestic abuse* 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:

<b>A – Higher culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise fear or distress</li> <li>• Persistent action over a prolonged period</li> <li>• Use of multiple methods of controlling or coercive behaviour</li> <li>• Sophisticated offence</li> <li>• Conduct intended to humiliate and degrade the victim</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to cause some fear or distress</li> <li>• Scope and duration of offence that falls between categories A and C</li> <li>• All other cases that fall between categories A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Offence was limited in scope and duration</li> </ul>

**Harm**

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Fear of violence on many occasions</li> <li>• Very serious alarm or distress which has a substantial adverse effect on the victim</li> <li>• Significant psychological harm</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Fear of violence on at least two occasions</li> <li>• Serious alarm or distress which has a substantial adverse effect on the victim</li> </ul>

## 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	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year's custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Low level community order – 26 weeks' custody

See page 30.

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:*

Steps taken to prevent the victim reporting an incident

Steps taken to prevent the victim obtaining assistance

A proven history of violence or threats by the offender in a domestic context

Impact of offence on others particularly children

Exploiting contact arrangements with a child to commit the offence

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

Victim left in debt, destitute or homeless

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

Mental disorder or learning disability (where not taken into account at step one)

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address 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.

**Other ancillary orders available include:*****Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

### **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 (tagged curfew)**

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 kill

Offences Against the Person Act 1861 (section 16)

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**Triable either way**

**Maximum: 10 years' custody**

**Offence range: Community order – 7 years' custody**

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse* 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:

<b>A – Higher culpability</b>	<ul style="list-style-type: none"> <li>• Significant planning and/or sophisticated offence</li> <li>• Visible weapon</li> <li>• Threat(s) made in the presence of children</li> <li>• History of and/or campaign of violence towards the victim</li> <li>• Threat(s) with significant violence</li> </ul>
<b>B – Medium culpability</b>	<p>Cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> <li>• Factors are present in A and C which balance each other out <b>and/or</b></li> <li>• The offender's culpability falls between the factors described in A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> <li>• Offence was limited in scope and duration</li> </ul>

**Harm**

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Very serious distress caused to the victim</li> <li>• Significant psychological harm caused to the victim</li> <li>• Offence has a considerable practical impact on the victim</li> </ul>
<b>Category 2</b>	<p>Harm that falls between categories 1 and 3, and in particular:</p> <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Offence has some practical impact on the victim</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Little or no distress or harm caused to the victim</li> </ul>

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

**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	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 7 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody
Category 2	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year's custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 26 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Low level community order – High level community order

See page 36.

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse 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:**

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

Impact of offence on others, particularly children

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

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

Mental disorder or learning disability (where not taken into account at step one)

Sole or primary carer for dependent relatives

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

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

**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 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

**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.

**Where offence committed in a domestic context, also refer to the *Overarching principles: Domestic abuse* 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.

#### **Other ancillary orders available include:**

##### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

## **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 (tagged curfew)**

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

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



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# Annex:

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

<b>Fine Band</b>	<b>Starting point</b> (applicable to all offenders)	<b>Category range</b> (applicable to all offenders)
Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Band C	150% of relevant weekly income	125 – 175% of relevant weekly income

## COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 40 – 80 hours of unpaid work</li> <li>• Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</li> <li>• Exclusion requirement, for a few months</li> <li>• Prohibited activity requirement</li> <li>• Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• Greater number of hours of unpaid work (for example 80 – 150 hours)</li> <li>• Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</li> <li>• Exclusion requirement lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 150 – 300 hours of unpaid work</li> <li>• Curfew requirement up to 16 hours per day for 4 – 12 months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
<b>BAND A FINE</b>	<b>BAND B FINE</b>	<b>BAND C FINE</b>

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines. The table above is also set out in the *Imposition of Community and Custodial Sentences* guideline which includes further guidance on community orders.

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