

# Intimidatory Offences and Domestic Abuse Guidelines Consultation



# **Draft Guidelines for Intimidatory Offences and Domestic Abuse Consultation**

Published on 30 March 2017

The consultation will end on 30 June 2017

# About this consultation

## To:

This consultation is open to everyone including members of the public, judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

## Duration:

From 30 March 2017 to 30 June 2017

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## Additional ways to feed in your views:

This consultation exercise is accompanied by a resource assessment and an online questionnaire, all of which can be found at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.

## Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

## Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system. In addition, responses may be shared with the Justice Committee of the House of Commons.

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# Introduction

## What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit<sup>1</sup> extends to allow consultation on the sentencing of offenders following conviction.

## Why intimidatory offences and revisions to domestic abuse guidance?

Currently the Magistrates' Court Sentencing Guidelines (MCSG) contains limited guidance for the sentencing of harassment and racially or religiously aggravated harassment, and threats to kill offences. There are no sentencing guidelines for stalking, disclosing private sexual images and controlling or coercive behaviour offences. As there are certain similarities between these offences, the Council decided to group them together under the title 'Intimidatory' offences. The title 'Intimidatory' has been used given that the definition of intimidate (to frighten, overawe, to subdue or influence) aptly covers the types of offences covered within this draft guideline.

There is currently an existing *Overarching Principles: Domestic Violence* guideline, published by our predecessor body the Sentencing Guidelines Council (SGC) in 2006. This guidance is now out of date and does not reflect the changes in terminology, expert thinking and society's views around this important and sensitive area of sentencing.

We are aware that the Government, recognising the gravity of domestic abuse offences and the impact on victims, is considering the current law in this area, and there may be legislative changes in due course. We wait to see the Government's intentions, and would reflect any legislative changes in the definitive guideline when published.

Given the crossover between the types of offences contained within this draft guideline, and some of the themes running through the revised domestic abuse guidance, it was decided to consult jointly on both guidelines.

We welcome all responses to the consultation, including those limited to particular sections. So if, for example, your interest is only in the revised domestic abuse guidance, you may wish to focus on pages 6 to 11, and can answer questions 1 to 9 or any one of those questions.

## Which offences are covered by the consultation?

The consultation covers:

- Harassment (putting people in fear of violence)
- Racially or religiously aggravated harassment (putting people in fear of violence)
- Stalking (involving fear of violence or serious alarm or distress)
- Racially or religiously aggravated stalking (with fear of violence)
- Harassment
- Racially or religiously aggravated harassment
- Stalking

<sup>1</sup> ss.118-136 Coroners and Justice Act 2009

- Racially and religiously aggravated stalking
- Controlling or coercive behaviour in an intimate or family relationship
- Disclosing private sexual images
- Threats to kill

Section one of the consultation contains revised guidance on the sentencing of offences committed within a domestic abuse context.

### **What is the Council consulting about?**

The Council has produced this consultation paper in order to seek the views of as many people as possible with an interest in the sentencing of the offences included within this consultation, and the revised domestic abuse guidance.

However, it is important to clarify that the Council is consulting on sentencing these offences and not on the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for these offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A.

### **What else is happening as part of the consultation process?**

This is a 13 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. The draft guidelines will also be tested with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment. The online questionnaire and these documents can be found on the Sentencing Council's website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

# Section one: Overarching Principles: Domestic Abuse Guideline

(Draft guideline at page 53)

There is currently an existing *Overarching Principles: Domestic Violence* guideline published in 2006 by the Council's predecessor body, the Sentencing Guidelines Council (SGC). The Council took the decision to revise this guidance to reflect the important changes in terminology, expert thinking and societal attitudes over the last ten years, in this important area of sentencing. 'Domestic abuse' is now the term used, rather than 'domestic violence', to reflect that both physical violence and controlling and coercive behaviour constitute abuse in domestic settings.

Domestic abuse can be an element within a wide range of offences. The Crown Court Sentencing Survey (CCSS) (which ran from 2010 to 2015) included some information about sentences where domestic abuse was a feature; where a Community Domestic Violence Programme or an Integrated Domestic Abuse Programme were imposed as requirements of a suspended sentence order or community order, or where domestic abuse was considered as an aggravating factor. These were not explicitly stated on the CCSS forms, but could be indicated with free text at the relevant areas of the form. Although this relied on self recording by sentencers, the information that was completed does give some general information on sentences with elements of domestic abuse.

Based on CCSS data, as shown below, sentences including domestic abuse programmes were mostly associated with the offences of ABH (3 per cent of cases sentenced in 2014 at the Crown Court), common assault (5 per cent), breach of a protective order (3 per cent), harassment (4 per cent) and making threats to kill (6 per cent). Domestic abuse also occurs in a variety of other offences. These figures should be treated with caution, because not all Crown Court sentences are covered by the CCSS data.

Offence	Total CCSS forms returned for this offence in 2014	Number of forms with DA indicated	Prevalence of DA
Actual Bodily Harm (ABH)	4,280	150	3%
Common assault	1,220	60	5%
Grievous Bodily Harm (GBH)	2,500	40	1%
Breach of protective order	910	30	3%
Harassment	440	20	4%
Affray	2,110	20	1%
Threats to kill	210	10	6%

Numbers in this table have been rounded to the nearest 10

The Home Office has been collecting information from the police since April 2015, on whether recorded offences are related to domestic abuse. Crimes are ‘flagged’ as being ‘domestic abuse related’ by the police if the offence meets the government definition of domestic violence and abuse. Data for the year ending September 2016<sup>2</sup> show that violence against the person<sup>3</sup> offences were the most likely to be flagged with around a third, 32 per cent (347,115), of such offences flagged as domestic abuse. The offence group with the next highest proportion of offences flagged as domestic abuse related was sexual offences 13 per cent (14,659). Overall, 11 per cent of all offences (447,950) were flagged as domestic abuse related.

Given the spread of offences in which domestic abuse can be a factor, the Council decided to provide a revised standalone guideline, but one which would be cross referenced to by all other relevant guidelines. By the time the definitive guideline is scheduled to be published in the spring of 2018, the Council intends that its guidelines will be available digitally. In this way, links will be embedded into guidelines that will take sentencers to the domestic abuse guideline at the click of a button.

The Council did consider other options, such as not producing a standalone guideline, but instead providing some revised domestic abuse guidance to be inserted into guidelines where domestic abuse is frequently a factor, such as assault. However the Council concluded that reducing a whole guideline into just a few paragraphs, to be inserted into an existing guideline, would not do justice to such an important area of sentencing. In addition, although the main offences in which domestic abuse can be a factor are referenced above, it can be a factor in many other offences, so an overarching guideline was considered to be the only way to ensure that guidance is available in all relevant cases.

The Council’s intention behind the revised guideline is to ensure that courts identify and treat cases involving domestic abuse, of whatever type, seriously and factor it in to all relevant sentencing decisions. The Council has endeavoured to produce guidance that provides all the necessary information and factors to consider, without being over lengthy, so that sentencers will familiarise themselves with the updated information and refer to it as appropriate.

Q1

**Please tell us your views on the decision to provide a standalone guideline, which will be cross referenced digitally to all relevant guidelines. Do you agree? If not, please tell us why and suggest any alternative approach.**

## Scope of the guideline

The guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. Many different criminal offences can involve domestic abuse and where they do, the court should ensure that the sentence reflects that an offence has been committed within this context. The first section of the guideline identifies the scope of the guideline, noting that there is not a specific offence of domestic abuse,<sup>4</sup> but that it is a general term which describes a range of violent and/or controlling or coercive behaviour. The Government definition of domestic abuse was revised in 2013, so the guideline provides the revised definition, as shown below:

<sup>2</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingsept2016#main-points>.

<sup>3</sup> Violent offences in police recorded data are referred to as “violence against the person” and include homicide, violence with injury and violence without injury.

<sup>4</sup> Guidance for sentencing the offence of controlling or coercive behaviour in an intimate or family relationship is contained within the draft Intimidatory Offences guideline - see section six of this document

*Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional.*

The guideline also further explains and gives examples of controlling and coercive behaviour, as set out below:

*Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.*

*Coercive behaviour is an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.*

This section also notes that domestic abuse occurs amongst men and women, all ethnicities, sexualities, ages, religion, beliefs, etc., and that care should be taken to avoid stereotypical assumptions regarding domestic abuse. This section also notes that cases in which a victim has withdrawn from the prosecution does not indicate a lack of seriousness, and that no inference should be made regarding the lack of involvement of a victim in a case.

Q2

**Please tell us your views on the scope of the guideline section - is there any other information that you think should be removed or added?**

### **Assessing seriousness**

This section sets out the seriousness of offences committed within a domestic context, as the domestic context of the offending behaviour represents a violation of the trust that normally exists between people in an intimate or family relationship. Also, that there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.

This section also states that domestic abuse offences are regarded as particularly serious within the criminal justice system. This represents a significant shift in emphasis from the approach taken in the SGC guideline, which had stated:

*'As a starting point for sentence, offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context'*

The guideline notes the reasons why these offences are so serious, that domestic abuse is rarely a one-off incident, domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. It also refers to the lasting trauma that the offences can inflict on victims and their children, who do not necessarily need to witness the abuse in order to be affected by it.

Q3

**Please tell us your views on the assessing seriousness section - is there any information that you think should be removed or added?**

### Aggravating factors

The list of aggravating factors provided within the guideline (shown below) provides the most relevant factors a court may need to consider. The list is non-exhaustive so courts are able to consider other factors which are not listed, if relevant. Some explanatory text is included with some factors as, although the guideline aims to be concise, the Council considers it important still to provide guidance where required. The list builds on the factors included within the SGC guideline, with two factors added, '*steps taken to prevent the victim reporting an incident*' and '*steps taken to prevent the victim obtaining assistance*'.

The standard list of aggravating and mitigating factors included as an annex to the SGC guideline has not been included as relevant factors are included in offence specific guidelines.

### Aggravating Factors

- Abuse of trust and/or abuse of power
- Victim is particularly vulnerable (*some victims of domestic abuse may be more vulnerable than others, and may find it almost impossible to leave an abusive relationship*)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (*children can be adversely impacted by both direct and indirect exposure to domestic abuse*)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (*such as but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders - this is not an exhaustive list*)

Q4

**Do you agree with the proposed list of aggravating factors? Are there any that should be removed or added?**

### Mitigating factors

The list of mitigating factors (shown below) provide the most relevant factors a court may need to consider. The list is non-exhaustive so courts are able to consider other factors that are not listed, if relevant. Supplementary text is provided as appropriate. The list builds on the factors included within the SGC guideline, with one additional factor '*self referral for help, treatment and counselling*', to reflect an offender who has recognised that their behaviour needs to change, and can demonstrate that they have taken steps to prevent further abusive behaviour.

### Mitigating Factors

- Positive good character (*however an offender's good character in relation to conduct outside the relationship should generally be of no relevance where there is a proven pattern of domestic abuse behaviour*)
- Provocation (*it is likely that cases where the provocation is sufficient to mitigate the seriousness of the offence will be rare. Any such assertions need to be examined with great care, to determine whether they have a factual basis and in recognition that these assertions can be used by offenders to deflect responsibility*)
- Self-referral for help, treatment, and counselling (*recognition by an offender of the need to change and demonstration of steps taken to confront and prevent abusive behaviour*)

Q5

**Do you agree with the proposed list of mitigating factors? In particular, what is your view of the mitigating factor relating to provocation?**

### Other factors influencing sentence

This section sets out some of the other factors influencing sentence, principally that the sentence imposed should be determined by the seriousness of the offence, not by the expressed wishes of the victim, for the reasons stated:

- the court is sentencing on behalf of the wider public;
- it is undesirable that a victim should feel a responsibility for the sentence imposed;
- there is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender;
- the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.

Q6

**Do you have any comments on the other factors influencing sentence section?**

### Factors to take into consideration

In this section, the principles that the court should consider when imposing sentence are outlined. These include that for offences which involve serious violence, or where the psychological harm caused is severe, a custodial sentence will be warranted in the majority of cases. Also, that courts should consider whether or not the offence is a specified offence for the purposes of the dangerous offender provisions.

Also noted is that where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court may wish to consider whether a better option is to suspend the custodial sentence or impose a community order, including in either case a requirement to attend a domestic abuse programme. The guidance goes on to say that such an option will normally only be appropriate where the court is satisfied that the offender genuinely

intends to reform their behaviour, and is unlikely to be an appropriate option if there has been a pattern of abuse or if the offender has denied responsibility for the offence.

Paragraph 16 of the guidance reminds courts that they should consider whether or not it is appropriate to make a restraining order. Further information on restraining orders to assist the courts is also provided. Reference to other orders the courts may wish to consider making when sentencing a criminal offence, such as a sexual harm prevention order, is also made, (the list of other orders is a non-exhaustive one).

Q7

**Do you have any comments on the factors to take into consideration section?**

Q8

**Overall, do you feel the level of information provided in this guideline is right? Is there any information not included that you think should be? Or is there any information included that you think should be removed?**

The Council is interested in whether or not the draft guideline will have any unintended equality impacts, so would welcome views or any evidence on this issue.

Q9

**Are there any equality or diversity matters that the Council should consider for this guideline? Please provide evidence of any issues where possible.**

## Section Two: Overarching issues and the context of the intimidatory offences guidelines

### **Background to offences**

Increasing attention has been given to the offences included within this guideline 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 included in the consultation 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 aims**

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

### **Approach to victims**

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principle factor of the offence. In the development of this guideline, the Council gave very careful thought as to how to reflect the devastating, often long term impact these offences can have on victims and their families. The Council wanted to recognise and reflect the very intimate, personal and intrusive nature of these offences.

### **Sentence ranges**

To develop the sentence ranges, the Council considered the available statistical data from the Ministry of Justice court proceedings database for the existing offences included in this guideline. As many of the intimidatory offences were dealt with in the magistrates' court, data from the Crown Court Sentencing Survey (CCSS) may not have covered the full range of sentences available for this offence, and therefore this data was not used to inform sentencing ranges. There are also issues with the volumes of available sentencing data for the newer offences, such as disclosing private sexual images and the controlling and coercive behaviour offences. As they are such new offences the volume of data is small. In addition, the Council had to consider what would be appropriate sentence ranges to reflect the recent doubling of the statutory maxima for the section four (Protection from Harassment Act 1997, 'PHA') stalking and harassment offences. The Council also utilised the expertise of Council members to develop the sentence ranges. The Council decided that for the offences contained within this guideline harm and culpability are closely interlinked, one does not take precedence over another. Accordingly, within the draft ranges the sentences are equally weighted, for example, between an offender with a low level of culpability who causes great harm with their actions, and an offender who is highly culpable, and intends to cause great harm, but doesn't cause actual harm, because part of the execution of the offence fails for some reason.

## **Data analysis and research**

To support the development of the guideline, content analysis was conducted of judges' sentencing remarks of 75 defendants sentenced in the Crown Court for all the offences included within this draft guideline. This provided indicative but valuable information on some of the key factors influencing sentencing decisions for these cases.

With regard to the revisions to the domestic abuse guidance, as there is no specific offence of domestic abuse (the guidance identifies principles relevant to the sentencing of cases involving domestic abuse) there is very limited sentencing data available. To assist the Council to develop the guideline, it conducted research in the following ways:

- At an early stage, 129 sentencers – Crown Court Judges, District Judges and magistrates - from the Council's pool of research participants provided views on the current guideline and suggestions for what the Council may want to take into consideration for the new guidelines. A small number of informal interviews with sentencers on the guideline were also conducted.
- Data from the CCSS and the Crime Survey for England and Wales was also used to obtain information on domestic abuse related offences.

The Council also discussed its proposals with interested organisations, to help inform the development of the guidelines.

## Section three: Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence) (Draft guideline at page 59)

This guideline is for the harassment and stalking offences under section 4 and 4A of the PHA and also includes the racially or religiously aggravated forms of these offences under the Crime and Disorder Act 1998, section 32 (1)(b). The Council carefully considered whether it was appropriate or not to include both harassment and stalking offences within one guideline. After due consideration the Council concluded that as the statutory maxima, culpability and harm factors were the same for both offences, it was sensible to have one guideline for both offences.

For this guideline, and for all the guidelines included within this document, there is a reference on the front of the guideline, and on the bottom of each page, to the *Domestic Abuse: Overarching Principles* guideline. This instructs sentencers that when the offence has been committed in a domestic context, they should refer to the domestic abuse guidance. The domestic abuse guideline is discussed at section one of this consultation, at page 6.

### STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors. There are four levels of culpability: the offender may exhibit characteristics from different levels of culpability, in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability. The culpability factors represent a move away from the narrow definitions and activity based examples used in the current MCSG harassment guidance, to more generic factors which are not as rigid or prescriptive. The factors at step one are exhaustive.

### Culpability factors

#### Category A – Very high culpability

As shown in the table below, the extreme nature of one or more culpability B factors or the extreme culpability indicated by a combination of culpability B factors may elevate a case from culpability B to A. Only the most serious cases within these offences are intended to be captured within culpability A.

#### Category B – High culpability

'*Conduct intended to maximise distress*' is designed to capture offenders who deliberately act in a way to cause their victims as much distress as they can, based on their knowledge of the victim. This could relate to the nature of the offending, such as sexual threats made, or to the timing or location of the offences, for example on the day the victim is attending a funeral. '*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*’ has been included to capture those offenders where the offender has targeted the victim due to one or more of those specific characteristics. There is no reference to race or religion here<sup>5</sup> as there is a racially and religiously aggravated form of this offence (see page 21). The two other factors included in high culpability are *‘significant planning and/or sophisticated offence’* to reflect offenders who have carefully planned the offending, or where the offending is of a sophisticated nature, perhaps having purchased special software or spyware to follow and monitor the victim. *‘Persistent action over sustained period’* reflects the greater culpability of an offender who persists with the offending behaviour over some time.

### **Category C – Medium culpability**

As these offences potentially cover a wide range of offending behaviour, the Council has given careful thought to the factors that should be included in the assessment of culpability, but it is possible that not every case will be captured by the factors specified, so for this reason the wording *‘all other cases that fall between categories B and D’* has been included. This wording has been used in a number of other guidelines.

### **Category D – Lesser culpability**

The factors in this category will apply to offenders who have the lowest level of culpability for these offences. *‘Offence was limited in scope and duration’* is designed to reflect offenders who briefly committed offences of an unsophisticated or unplanned nature. The factor of *‘Offender’s responsibility substantially reduced by mental disorder or learning disability’* has been included to ensure that sentencers focus particularly closely on the extent to which an offender’s mental disorder or learning disability reduces their culpability, so that only offenders whose responsibility for the offences may be greatly reduced because of mental disorder or learning disability are captured within lesser culpability. Accordingly, it may be appropriate for those offenders whose mental disorder or learning disability reduces their culpability to a lesser extent, are placed within category C, medium culpability.

**STEP ONE****Determining the offence category**

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

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

**Culpability** demonstrated by one or more of the following:

**A – Very high culpability** – 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 – High culpability:**

- Conduct intended to maximise distress
- Significant planning and/or sophisticated offence
- Persistent action over sustained period
- 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

**C – Medium culpability:**

- All other cases that fall between categories B and D

**D – Lesser culpability:**

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Offence was limited in scope and duration

Q10

**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.**

**Harm Factors**

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. A great deal of consideration was given by the Council to the assessment of harm, in recognition that the impact on victims will differ greatly between victims, and that even a 'minor' offence of this type can cause very real harm to a victim. Three levels of harm are proposed, as set out below.

Category one reflects the most serious types of harm caused by these offences, whether this is the amount of distress caused, or that physical violence was used, or the practical effect on the victim – such as having to move house or jobs, or needing to vary their day to day routines – because of the offending. It also recognises that some victims are more vulnerable than others for various reasons, and so they may be less able to withstand the effect of the offences.

Category three reflects cases where either minimal distress or harm has been caused to the victim. Category two has been designed to capture harm that falls between categories one and three. The Council considered articulating these types of cases, by the use of the words ‘some’ or ‘considerable’ distress caused, but felt that it was not appropriate to prescribe exactly what level of harm would cause a case to fall into category two, but instead would allow courts to decide based on the facts before them.

## Harm

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

### Category 1

- Very serious distress caused to the victim
- Physical violence used
- Victim is particularly vulnerable
- Victim caused to change lifestyle to avoid contact

### Category 2

- Harm that falls between categories 1 and 3

### Category 3

- Minimal distress or harm caused to the victim

Q12

**Do you agree with the proposed approach and with the factors included in the assessment of harm? If not, please tell us why.**

## STEP TWO

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

### Sentence levels

During the development of this guideline, the Council became aware that the Government had laid an amendment during the passage of the Police and Crime Act 2017, with the effect of doubling the statutory maximum for these offences from five to ten years, and for the racially and religiously aggravated form of the offence from seven to fourteen years. As legislation has now been passed and an early commencement is expected for this provision, the Council has developed a sentence table which incorporates this increased maximum, as show below.

The ranges up to the old statutory maximum of five years have been formulated from statistical data from the Ministry of Justice court proceedings database. Sentences above five years are contained within one box, A1, which gives a sentencing range up to eight years, allowing some ‘headroom’ to the maximum available of ten years. Due to the very recent legislative change, this range is not based on any sentencing data. In taking this approach, the Council was mindful of the presumed intent of Parliament as evidenced by the debate within Parliament when the amendment was passed, that the increase to the maximum is intended to apply to the most serious cases within these offences.

The Council took the view that it was not the intention of Parliament that sentences for all offences were to be increased following legislation. During the passage of the legislation the Government stated: ‘... each case must, of course, be considered by the courts on the facts, but given the harm that can be caused by the most serious stalking cases we are persuaded that, in such cases, sentencing Judges should have greater latitude to pass a higher sentence that fits the crime and affords greater protection for victims...’<sup>6</sup> Further debate did not dissent from this point.

**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 10 years (basic offence)**

Harm	Culpability			
	A	B	C	D
<b>Category 1</b>	<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
<b>Category 2</b>	<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> Medium 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 – High level community order
<b>Category 3</b>	<b>Starting point</b> 36 weeks’ custody	<b>Starting point</b> 12 weeks’ custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<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 – High level community order	<b>Category range</b> Discharge – Low level community order

A scenario illustrating how the guideline is to be used and the resulting sentence is at page 23.

Q13

**Do you agree with the proposed sentence levels? If not, please tell us why.**

6 <https://hansard.parliament.uk/commons/2017-01-10/debates/7D8B82A3-533A-4D1A-832F-B87CF36566EB/PolicingAndCrimeBill>

Immediately below the sentence table in the draft guideline is text regarding psychiatric reports, as shown below. In developing this guideline the Council was mindful of the proportion of offenders, particularly within stalking offences, who have mental health conditions which relate to, or underpin, the offending behaviour. Although sentencers will routinely consider an offender's mental health when it is a factor during sentencing, the Council felt that it was particularly important to note this consideration within this guideline. Increased recognition and appropriate treatment of mental health conditions will potentially help to reform and rehabilitate offenders, protect the public and reduce further crime.

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.

Q14

**Do you agree with the inclusion of this text with the guideline?**

The court should then consider adjustment for any aggravating or mitigating factors. These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

#### **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:***

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

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

'Previous convictions' and 'offence committed whilst on bail' are factors which the court is required by law to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

- *Established evidence of community/wider impact*
- *Failure to comply with current court orders*
- *Offence committed on licence or post sentence supervision*
- *Offences taken into consideration*

'Impact of offence on others, particularly children' is included to recognise the impact particularly on children, if the family has to change house or other routines etc because of the offender. 'Exploiting contact arrangements with a child to commit the offence' recognises an offender who, for example, uses information gleaned from contact with their children/visits to the family home, to further the offences against the victim or uses the opportunity of contact to commit further offences. 'Offences committed against those working in the public sector or providing a service to the public' is included to recognise the additional seriousness of offences committed against public sector workers: for example doctors, nurses, social workers etc.

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

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

There are no statutory mitigating factors. Most of the factors included above within the draft guideline are commonplace within definitive guidelines. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

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.**

### Guidance for racially and religiously aggravated offences

The Council has given very careful thought on how best to provide guidance for the sentencing of racially and religiously aggravated stalking and harassment offences within this guideline. The Council decided to maintain the approach outlined in the Court of Appeal (*R v. Saunders*,<sup>7</sup> *R v. Kelly and Donnelly*<sup>8</sup>) that the court should sentence the basic offence first, then make an addition to the sentence for the level of racial or religious aggravation involved. This is also the approach used currently in the MCSG, which in turn reflects advice from the Sentencing Advisory Panel (SAP). Accordingly at the start of the guideline, courts are guided on the approach for these offences, as shown below:

### Approach

#### **RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES (Crime and Disorder Act 1998, s.32)**

The court should decide on the sentence for the basic offence first, without taking account of the element of aggravation, and then make an addition to the sentence considering the level of aggravation involved. Guidance on sentencing a racially or religiously aggravated harassment offence follows at step 3.

Further detailed guidance then follows at step three of the guideline, once a court has determined the sentence for the basic offence, to assist the court in deciding by what level the sentence should be increased, as set out below. Volumes of these offences are low (34 offenders sentenced in 2015) and are very fact specific. The Council considered different methods of providing guidance on what increase to make to the sentence for the aggravation, such as percentage ranges, as suggested by the SAP in their guidance published in 2000. However, the Council concluded that it was not possible to develop evidence based sentence ranges due to the limited amount of sentencing data for these cases, and that to do so could lead to a rather mechanistic approach which would not reflect the individual nature of such cases.

The guidance sets out a non-exhaustive list of factors which the court must consider to decide the level of aggravation, as set out below.

<sup>7</sup> *R v Saunders* [2000] 2 Cr App R (S) 71

<sup>8</sup> *R v Kelly and Donnelly* [2001] EWCA Crim 170

**STEP THREE****Racially or religiously aggravated offence- section 32 offences only:**

Having determined the sentence for the basic offence, the court should now increase the sentence to reflect the level of aggravation involved. The nature and extent of the increase will depend on the seriousness of the aggravation, and the individual circumstances of the particular case. 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 following is a **non-exhaustive** list of factors which the court should consider to decide the level of aggravation (where not already taken into account at step one):

- The nature of the hostility (language, gestures, or weapons)
- The duration (isolated, repeated or persistent)
- Location
- Whether the hostility was minor and incidental
- The number of both those participating in and those targeted by the offence
- Whether the offence was part of a pattern of similar offending by the offender
- Whether the offender was a member of, or was associated with, a group promoting hostility based on race or religion
- Whether the aggravated nature of the offence caused particular distress to the victim or victim's family
- Whether there is evidence that the aggravated nature of the offence caused fear and distress throughout a local community or more widely

Once the court has considered these factors, and decided on the level of aggravation, further guidance follows to assist the court in how to decide the increase to the basic sentence, depending on whether the level of aggravation is low, medium or high, as shown below.

**Maximum sentence for the aggravated offence on indictment is 14 years (maximum for the basic offence is 10 years)**

<b>High level of racial or religious aggravation</b>	Increase the length of custodial sentence imposed for the basic offence <b>or</b> impose a custodial sentence if not already imposed for the basic offence.
<b>Medium level of racial or religious aggravation</b>	Impose a significantly more onerous penalty of the same type <b>or</b> impose a more severe type of sentence than for the basic offence.
<b>Low level of racial or religious aggravation</b>	Impose a more onerous penalty of the same type identified for the basic offence.

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.

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.**

Information on the rest of the steps in the guideline can be found on page 51.

**Case Study A**

S could not accept the break up of his marriage and bombarded his estranged wife with hundreds of text messages daily. The messages included declarations of love, requests for sex and threats to take his own life if she did not agree to take him back. He repeatedly came to her home uninvited at all times of the day and night and made drunken threats to harm himself. On one occasion he came to her home, produced a knife, called her abusive names and threatened to kill himself if she did not take him back. He sent her copies of letters that he had written for his parents to read after he had died, blaming her for his death.

He told mutual friends that she was pursuing him and that she was unstable and could not be trusted, and that she was stalking him. His behaviour continued for four months until the victim went to the police.

In a victim personal statement the victim said that she had been terrified and unable to carry on a normal life. She had since moved from her home, changed her job and her contact details to prevent S from finding her.

S pleaded guilty at the first hearing to stalking involving fear of violence or serious alarm or distress. He expressed remorse and said that he had not wanted to harm his wife. He had no previous convictions.

**Applying the guideline****Step one: culpability and harm**

The high culpability factors of ‘conduct intended to maximise distress’ and ‘persistent action over sustained period’ would apply in this case. No other culpability factors apply, so S’s culpability would be assessed as high.

The distress suffered by the victim would fall into category one (very serious distress) and the category one factor of ‘victim caused to change lifestyle’ would also apply.

**Step two: starting point and category range**

The case would fall into B1 which has a starting point of two years and 6 months’ custody.

There are no aggravating factors.

The mitigating factors of ‘no previous convictions’ and ‘remorse’ would apply.

On these facts the mitigating factors would reduce the sentence slightly from the starting point, leading to a sentence of around two years’ custody.

**Other steps**

At step five the sentence would be reduced by one third to reflect the guilty plea.

At step eight a restraining order could be imposed to prevent the offender from contacting the victim.

Q17

**Do you have any comments on using the guideline through case study A?**

## Section four: Harassment/racially or religiously aggravated harassment and stalking/racially or religiously aggravated stalking

(Draft guideline at page 65)

This guideline is for the harassment and stalking offences under section 2 and 2A of the PHA and also includes guidance for the racially or religiously aggravated forms of these offences. As with the guideline at section two discussed above, the Council decided that, it was appropriate to combine both harassment and stalking offences within one guideline, as the statutory maxima, culpability and harm factors were the same for both offences.

### STEP ONE

There are three levels of culpability and harm for this guideline. The Council carefully considered whether it was appropriate to have two or three levels of culpability and harm, and concluded that as this was a high volume offence (over 5,000 offenders sentenced for these offences in 2015) covering a wide range of offending behaviour, three levels of culpability and harm would give helpful guidance to sentencers.

#### Culpability factors

Category A – High culpability

The factors, as shown in the table below, are the same as those in culpability B for the offences in section three, discussed earlier on page 14, with the exception of one additional factor, '*threatening violence*'. This factor has been included within this guideline only to cover those more serious cases where violence is threatened as part of the offence. It was not necessary to include this factor for the section 4/4A offence as that offence is harassment or stalking '*...putting people in fear of violence/ involving fear of violence*' and it therefore applies to all such cases.

The factors for category B and C are the same as those discussed on page 15.

**STEP ONE****Determining the offence category**

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

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

**Culpability** demonstrated by one or more of the following:

**A - High culpability:**

- Conduct intended to maximise distress
- Significant planning and/or sophisticated offence
- Persistent action over sustained period
- Threatening violence
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: age, sex, disability, sexual orientation or transgender identity

**B - Medium culpability:**

- All other cases that fall between categories A and C

**C - Lesser culpability:**

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Offence was limited in scope and duration

**Harm factors**

There are three levels of harm for this offence, as shown below. The factors included are identical to those for the section 4/4A offence, discussed at pages 16 and 17, without the factor, '*physical violence used.*' This factor has not been included as it does not apply to this offence.

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

**Category 1**

- Very serious distress caused to the victim
- Victim is particularly vulnerable
- Victim caused to change lifestyle to avoid contact

**Category 2**

- Harm that falls between categories 1 and 3

**Category 3**

- Minimal distress or harm caused to the victim

Q18

**Do you agree with the proposed culpability and harm factors for this offence? If not, please tell us why.**

**STEP TWO**

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

**Sentence levels**

This offence is not affected by the recent changes to legislation described on page 17. The statutory maximum for the basic offence is 6 months custody. The sentencing table as set out below is based on current sentencing practice for this offence.

<b>STEP TWO</b>			
<b>Starting point and category range</b>			
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.			
<b>Maximum 6 months (basic offence)</b>			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<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 – 12 weeks' custody	<b>Category range</b> Low level community order – High level community order
<b>Category 2</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order
<b>Category 3</b>	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order	<b>Category range</b> Discharge – Band C fine

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 28.

**Q19** Do you agree with the proposed sentence table? If not, please tell us why.

The text regarding psychiatric reports included for the section 4/4A offence, discussed on page 19, has not been included within this guideline. The Council did consider whether to include it, but concluded that mental health conditions may not be as prominent a feature of this type of offending as for the more serious form of this offence, and was also mindful of the need for proportionate use of mental health services.

**Q20**

**Do you have any views on the text regarding psychiatric reports not being included within this guideline?**

### **Aggravating and mitigating factors**

The aggravating and mitigating factors for this offence are non-exhaustive and are identical to the ones included for the section 4/4A offence discussed on pages 19 and 20.

### **Guidance for racially and religiously aggravated offences**

The guidance for the sentencing of the racially and religiously aggravated harassment and stalking forms of this offence is the same as the guidance proposed with the section 4/4A offence, discussed on page 21.

**Q21**

**Do you have any further comments, in addition to your answer to question 16, on the proposed guidance for the sentencing of the racially and religiously aggravated forms of this offence?**

Information on the rest of the steps in the guideline can be found on page 51.

**Case Study B**

W, aged 60, carried out a campaign of harassment over a period of 6 months against her Malaysian neighbour. She became obsessed after a dispute regarding her neighbour's hedges. She monitored her neighbour's movements, taking photographs of him, and spying on him with binoculars, and also shouted racist abuse at him outside his house.

The victim was so worried about W's actions that he installed CCTV cameras outside his home. W was charged with one count of racially aggravated harassment. W was convicted after a trial. She had no previous convictions. She has a serious heart condition which requires long-term medical treatment.

**Applying the guideline**

Following the instructions at the start of the guideline, the court sentenced the basic offence of harassment first.

**Step one: culpability and harm**

The high culpability factor of 'persistent action over sustained period' would apply, so W's culpability would be assessed as high.

The distress suffered by the victim was neither very serious, nor minimal, so would be captured by category two harm, harm that falls between categories one and three.

**Step two: starting point and category range**

The case would fall into A2, which has a starting point of a high level community order. There are no aggravating factors. The mitigating factors of no previous convictions and her serious medical condition would apply. On these facts the mitigating factors would reduce the starting point to a medium level community order.

**Step three: racially or religiously aggravated harassment**

Once the sentence has been determined for the basic harassment offence, then consideration should be given to the level of racial aggravation involved, in order to decide the increase to the basic sentence. The factors that apply in this case are the nature of the hostility, the language used (racist words) and the location of the offence, at the victim's home, a place the victim should feel safe. The rest of the factors either do not apply, or have already been taken into account at step one, such as the duration of the offence.

This leads to a low level of aggravation in this case. The guidance for how to reflect an increase to the basic sentence for a low level of aggravation instructs courts to impose a more onerous penalty of the same type identified for the basic offence. Accordingly, the sentence would be increased from a medium level community order, to a high level community order. The guideline then instructs courts to state that the offence has been aggravated by race or religion, and to state what the sentence would have been without that element of aggravation.

**Other steps**

At step seven, a restraining order could be imposed to prevent the offender from contacting the victim.

Q22

**Do you have any comments on using the guideline through case study B?**

# Section five: Disclosing private sexual images

(Draft guideline at page 71)

This guideline is for the relatively new offence of disclosing private sexual images, frequently referred to as ‘revenge porn’. The elements of this offence are ‘*disclosing private sexual photographs or films without the consent of the individual who appears in them and with intent of causing that individual distress*’. The offence came into force in April 2015, so there is currently limited sentencing data available; 62 cases were sentenced between April and December 2015. To develop a guideline for such a new offence the Council considered transcripts of sentencing remarks and media reports of sentenced cases, and a small number of discussions were held with sentencers who had recently sentenced such cases. The Council gave very serious thought on how appropriately to reflect gradations within what is such an unpleasant and intrusive offence. It was noted that even the most basic case of its type can cause very serious distress to the victim.

## STEP ONE

The factors at step one are exhaustive. There are three levels of culpability and harm for this offence, as set out below.

### Culpability factors

#### Category A – High culpability

‘*Conduct intended to maximise distress*’ is designed to capture offences calculated to cause the maximum distress, examples could include sending images to a victim’s family who are very religious, or to a victim’s young sibling. ‘*Significant planning and/or sophisticated offence*’ is to reflect offences that required careful planning and execution, such as setting up fake internet profiles/websites in the victim’s name, uploading images, then inviting comments and contact from the public which could result in the victim receiving abuse and highly sexualised contact from strangers.

‘*Images circulated widely/publically*’ and ‘*large number of images disclosed*’ have been included to reflect the greater culpability if an offender takes steps to circulate widely a number of images.

#### Category B – Medium culpability

This category is designed for any cases not captured by either the factors in the highest or lowest levels of culpability.

#### Category C – Lesser culpability

The factors in this category will apply to offenders who have the lowest level of culpability for these offences. ‘*Little or no planning*’ is designed to reflect offenders who committed offences of an unsophisticated or unplanned nature. The factor of ‘*offender’s responsibility substantially reduced by mental disorder or learning disability*’ has been included to ensure that sentencers focus particularly closely on the extent to which an offender’s mental disorder or learning disability reduces their culpability, so that only offenders whose responsibility for the offences may be greatly reduced

because of mental disorder or learning disability are captured within lesser culpability. Accordingly, it may be appropriate for those offenders whose mental disorder or learning disability reduces their culpability to a lesser extent, are placed within category B, medium culpability.

#### STEP ONE

##### Determining the offence category

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

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

**Culpability** demonstrated by one or more of the following:

##### A - High culpability:

- Conduct intended to maximise distress
- Images circulated widely/publically
- Significant planning and/or sophisticated offence
- Large number of images disclosed

##### B - Medium culpability:

- All other cases that fall between categories A and C

##### C - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Little or no planning

Q23

**Do you agree with the proposed culpability factors? If not, please tell us why.**

#### Harm factors

The Council has given very careful thought to the factors proposed below to assess harm, set out below, given the sensitivity involved. From the cases studied, nearly all of the cases reported described victims as humiliated, destroyed, shamed, or traumatised in some way.

Category one reflects the most serious types of harm caused, such as '*very serious distress caused to the victim*', '*victim is particularly vulnerable*' and '*offence has a considerable practical impact on the victim*'. The last factor is designed to capture the practical effect on victims of such offences, such as a victim whose business was adversely affected after naked photos were posted on their business website.

Category three reflects cases where either minimal distress or harm has been caused to the victim. Category two has been designed to capture harm that falls between category one and three, which allows courts to decide on the facts before them what level of harm would cause a case to fall into category two, rather than the guideline imposing rigid definitions of levels of harm.

## Harm

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

### Category 1

- Very serious distress caused to the victim
- Victim is particularly vulnerable
- Offence has a considerable practical impact on the victim

### Category 2

- Harm that falls between categories 1 and 3

### Category 3

- Minimal distress or harm caused to the victim

Q24

Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.

## STEP TWO

### Sentence levels

The sentence levels for this offence, as shown below, have been developed on the limited sentencing data that is currently available for this offence.

#### 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 2 years

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' custody – 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> Medium 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 – High level community order
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Discharge – Low level community order

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 33.

Q25

**Do you agree with the proposed sentence level? If not, please tell us why.**

### Aggravating and mitigating factors

For this guideline, the factor relating to offences motivated by or demonstrating hostility based on certain characteristics is proposed as an aggravating factor at step two, as it is not thought to be a primary element of this type of offending. However, if it is a feature, it could increase the seriousness of the sentence at step two.

For an explanation of the remaining proposed aggravating and mitigating factors, please see the discussion on pages 19 and 20.

#### 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:*

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

Impact of offence on others, especially children

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

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

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.**

Information on the rest of the steps in the guideline can be found on page 51.

### Case Study C

B and the victim had briefly been in a relationship which ended acrimoniously. B sent the victim an email which contained a naked picture of her and said he would post it on social media to 'teach her a lesson'. She discovered that he had created a false account in her name and used the naked photograph as the profile picture. He had also posted three other intimate photographs of her. The false account had been used to contact 12 of the victim's friends. She contacted the social media company and they agreed to close the account but this took two days.

A few weeks later B set up another false account in the same way and then he used a different social media platform to send the photograph to some of the victim's work colleagues.

The victim and her friends contacted the social media companies and eventually had the photographs removed. In total the naked picture of her was live on social media sites for 18 days.

The victim reported that the incidents had left her feeling extremely embarrassed and anxious.

B made admissions to the police on arrest and pleaded guilty at the first hearing. He expressed remorse. He had no previous convictions.

### Applying the guideline

#### Step one: culpability and harm

The high culpability factors of 'conduct intended to maximise distress', 'images circulated widely' and 'significant planning and/or sophisticated offence' would apply in this case. No other culpability factors apply, so B's culpability would be assessed as high.

The distress suffered by the victim would fall into category two as it was between category one factor of 'very serious distress' and the category three factor of 'minimal distress or harm'.

#### Step two: starting point and category range

The case would fall into A2 which has a starting point of 26 weeks' custody.

There are no aggravating factors.

The mitigating factors of 'no previous convictions' and 'remorse' would apply.

On these facts the mitigating factors would reduce the sentence slightly from the starting point, leading to a sentence of around 20 weeks' custody.

#### Other steps

At step four the sentence would be reduced by one third to reflect the guilty plea.

At step six a restraining order could be imposed to prevent the offender from contacting the victim.

Q27

Do you have any comments on using the guideline through case study C?

# Section six: Controlling or coercive behaviour in an intimate or family relationship

(Draft guideline at page 77)

Section 76 of the Serious Crime Act 2015 created a new offence of controlling or coercive behaviour in an intimate or family relationship, and came into force on 29 December 2015. This new offence is intended to provide better protection to victims experiencing repeated or continuous abuse, setting out the importance of recognising the harm caused by coercion or control, and the cumulative impact on a victim that a repeated pattern of abuse can have. Only a small number of cases have so far been sentenced, so the guideline has been developed based on analysis of sentencing remarks and media transcripts of cases, and discussions with Judges who have sentenced cases. The Council has taken great care to try and understand the nature of such offending, and the types of impact the offences can have on victims.

The elements of the offence are:

*Repeatedly or continuously engaging in behaviour towards a ‘personally connected’<sup>9</sup> person that is controlling or coercive and has a serious effect on that person and an offender knows or ought to know that the behaviour will have a serious effect. Behaviour has a serious effect if:*

- *It causes the victim fear, on at least two occasions, that violence will be used against the victim, or*
- *It causes the victim serious alarm or distress which has a substantial adverse effect on the victim’s usual day-to-day activities*

## STEP ONE

There are three levels of culpability and harm proposed for this offence, as shown below.

### Category A – High culpability

‘*Conduct intended to maximise distress*’ is included to reflect offending deliberately aimed to cause a victim maximum distress; an example would be taunting them about a baby that they had lost, saying that they would have been an unfit parent anyway. ‘*Sophisticated offence*’ is included to reflect offences that have required a lot of preparation, setting up spyware to track and monitor mobile phone and laptop use, for example, rather than just demanding the victim tell them who they have spoken to or seen that day.

<sup>9</sup> ‘Personally connected’ means in an intimate personal relationship with, or, living with and members of the same family, or living with and have previously been in an intimate personal relationship.

'Conduct intended to humiliate and degrade the victim' reflects offenders who set out to degrade and humiliate the victim, such as telling them when they can use the toilet, subjecting them to naked strip searches due to suspicions of infidelity, and so on. 'The use of significant violence against the victim or others (where not separately charged)' is for the more serious cases where violence has been used, but does not form the basis of an assault charge.

### Category B – Medium culpability

This category is designed for any cases not captured by either the factors in the highest or lowest levels of culpability.

### Category C – Lesser culpability

The factors in this category will apply to offenders who have the lowest level of culpability for these offences. 'Offence was limited in scope and duration' is designed to reflect offenders who briefly committed offences of an unsophisticated or unplanned nature. The factor of 'Offender's responsibility substantially reduced by mental disorder or learning disability' has been included to reflect offenders whose responsibility for the offences is greatly reduced because of a mental disorder or learning disability.

Q28

Do you agree with the proposed culpability factors? If not, please tell us why.

#### STEP ONE

##### Determining the offence category

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

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

**Culpability** demonstrated by one or more of the following:

##### A - High culpability:

- Conduct intended to maximise distress
- The use of significant violence against the victim or others (where not separately charged)
- Sophisticated offence
- Conduct intended to humiliate and degrade the victim

##### B - Medium culpability:

- All other cases that fall between categories A and C

##### C - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Offence was limited in scope and duration

## Harm

The Council has given very careful thought to the factors proposed to assess harm, set out below. Category one reflects the most serious types of harm caused, such as ‘*very serious psychological harm caused to the victim*’, the Council felt that it was particularly important for this offence to reference the psychological harm caused by this type of offence. Also included are ‘*victim is particularly vulnerable*’ and ‘*offence has a considerable practical impact on the victim*’. The last factor is designed to capture the practical effect on victims by such offences, for example, a lack of money to buy essential hygiene items because the offender controls all their money, or the difficulty in navigating everyday life in order to comply with rules set by the offender.

Category three reflects cases where either minimal distress or harm has been caused to the victim. Category two has been designed to capture harm that falls between category one and three, which allows courts to decide on the facts before them what level of harm would cause a case to fall into category two, rather than the guideline imposing rigid definitions of harm.

Q29

**Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.**

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

### Category 1

- Very serious psychological harm caused to the victim
- Victim is particularly vulnerable
- Offence has a considerable practical impact on the victim

### Category 2

- Harm that falls between categories 1 and 3

### Category 3

- Minimal distress or harm caused to the victim

**STEP TWO****Sentence levels**

The sentence levels for this offence, as shown below, have been developed on the very limited sentencing data that is currently available for this offence.

<b>STEP TWO</b>			
<b>Starting point and category range</b>			
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.			
<b>Maximum 5 years</b>			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 6 months' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody
<b>Category 2</b>	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 6 months' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Medium level community order – 6 months' custody
<b>Category 3</b>	<b>Starting point</b> 6 months' 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 – 1 year's custody	<b>Category range</b> Medium level community order – 6 months' custody	<b>Category range</b> Discharge – High level community order

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 39.

Q30

**Do you agree with the proposed sentence levels? If not, please tell us why.**

**Aggravating factors**

The aggravating factors for this offence are shown below. Specific factors which may make this offence more serious have been included in the guideline, namely '*steps taken to prevent the victim reporting an incident*', '*steps taken to prevent the victim obtaining assistance*', and '*a proven history of violence or threats by the offender in a domestic context*'.

For information on the rest of the aggravating factors proposed, please see the discussion on page 19.

**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:**

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

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Mitigating factors**

No additional specific mitigating factors have been included for this offence, other than those discussed for the earlier offences, please see the discussion on page 20.

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.**

Information on the rest of the steps in the guideline can be found on page 51.

**Case Study D**

D accused his wife of having an affair. Over a period of four months he stopped her going out, and started to control every aspect of her life, constantly checking on her and repeating his accusations. He confiscated her mobile phone and laptop and covertly recorded her conversations. He subjected her to strip searches. He did not physically attack her but his behaviour created an environment of fear. When she arranged to speak to her parish priest about her situation, he prevented her from doing so.

His wife and three daughters became extremely anxious as a result of his behaviour and continue to suffer emotional and psychological problems for which they are receiving counselling. He pleaded guilty at the first hearing. He had no previous convictions.

The obsessive and irrational nature of his offending prompted the court to order a psychiatric report as well as a pre-sentence report. The psychiatric report concluded that he had an underlying dissocial personality disorder but that his mental health issues were not of a type which would justify treatment through a hospital order.

The pre-sentence report noted that despite his guilty plea, D lacked insight into the serious consequences of his behaviour and did not show genuine remorse. The report concluded that he was unsuitable for any community based disposal.

**Applying the guideline****Step one: culpability and harm**

The high culpability factor of ‘conduct intended to humiliate and degrade the victim’ would apply in this case. The covert recording of the victim’s conversations is an indication of sophistication in the offending which is also a high culpability factor. The court considered whether D’s responsibility was substantially reduced by a mental disorder (a low culpability factor) – the conclusion of the psychiatric report does not support such a conclusion. On balance D’s culpability would be assessed as high.

The victim suffered serious psychological harm (a category one harm factor).

**Step two: starting point and category range**

The case would fall into A1 which has a starting point of two years’ custody.

The aggravating factor of ‘impact of offence on others particularly children’ applies to this case, as does ‘steps taken to prevent the victim obtaining assistance’.

The mitigating factors of ‘no previous convictions’ and ‘mental disorder or learning disability’ would apply.

On these facts the aggravating factors would outweigh the mitigating factors and would result in a sentence of three years’ custody.

**Other steps**

At step four the sentence would be reduced by one third to reflect the guilty plea.

At step six a restraining order could be imposed to prevent the offender from contacting the victim.

Q32

**Do you have any comments  
on using the guideline  
through case study D?**

# Section seven: Threats to kill

(Draft guideline at page 83)

The MCSG currently offers limited guidance for such a serious offence, merely signposting the more serious cases to the Crown Court. The Council decided to provide revised and expanded guidance for sentencing this offence, based on analysis of Crown Court transcripts, cases reported in the media, the current MCSG guidance and the expertise of the Council members. The draft guideline reflects the range of offending behaviour, from threats issued in the heat of the moment that cause temporary alarm and concern, through to carefully planned, sophisticated offences which result in longer term harm to victims.

## STEP ONE

There are three levels proposed for culpability and harm within this offence, as shown below.

### Culpability factors

#### Category A – High culpability

The factors proposed in this category '*threats made in the presence of children*' '*visible weapon*', and '*offence part of a campaign of violence or threats of violence*' all reflect the most culpable behaviour within this offence. Additionally, '*significant planning and/or sophisticated offence*' is designed to capture the offender who has carefully planned the offence, and has created ways to make the threat even more credible, real and alarming to the victim.

#### Category B – Medium culpability

This category is designed for any cases not captured by either the factors in the highest or lowest levels of culpability.

#### Category C – Lesser culpability

The factors in this category reflect offenders with the lowest levels of culpability, either because their responsibility was substantially reduced because of a mental disorder or learning disability, or because the offence was an isolated, brief incident.

Q33

**Do you agree with the proposed factors within the three levels of culpability? If not, please tell us why.**

**STEP ONE****Determining the offence category**

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

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

**Culpability** demonstrated by one or more of the following:

**A - High culpability:**

- Significant planning and/or sophisticated offence
- Visible weapon
- Threats made in the presence of children
- Offence part of a campaign of violence or threats of violence

**B - Medium culpability:**

- All other cases that fall between categories A and C

**C - Lesser culpability:**

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Isolated, brief incident

**Harm**

Category one reflects the most serious types of harm caused, such as *'very serious distress caused to the victim'*, *'victim is particularly vulnerable'* and *'offence has a considerable practical impact on the victim'*. The last factor is designed to capture the practical effect on victims by such offences who, because of the credibility of the threats made against them, have to move house, change all their contact details, or change the location of their job, and so on.

Category three reflects cases where minimal distress or harm has been caused to the victim. Category two has been designed to capture harm that falls between category one and three, which allows courts to decide on the facts before them what level of harm would cause a case to fall into category two, rather than the guideline imposing rigid definitions of levels of harm.

**Harm**

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

**Category 1**

- Very serious distress caused to the victim
- Victim is particularly vulnerable
- Offence has a considerable practical impact on the victim

**Category 2**

- Harm that falls between categories 1 and 3

**Category 3**

- Minimal distress or harm caused to the victim

Q34

Do you agree with the proposed approach and factors included in the assessment of harm? If not, please tell us why.

## STEP TWO

The sentence levels for this offence, as shown below, have been developed on the current sentencing data for this offence.

### 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 10 years

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

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 44.

Q35

Do you agree with the proposed sentence table? If not, please tell us why.

## Aggravating and mitigating factors

The proposed aggravating and mitigating factors for this guideline, as shown below, are ones used in the previous offence guidelines discussed in this document; please see the discussion on pages 19 and 20.

**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:**

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

Impact of offence on others, particularly children

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Good character and/or exemplary conduct

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

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

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

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.**

Information on the rest of the steps in the guideline can be found on page 51.

**Case Study E**

J had been lodging with a female friend, but had been given a week to leave. He returned to the house to collect some belongings and on being told by his friend's father that his belongings were not there he began to swear and make threats.

J told the victim that he would 'knock his head off' and he picked up a lump of wood and swung it around, coming within a metre of the victim. He then picked up a broken bottle in his other hand and jabbed it at the victim, shouting, 'I swear to God I will kill you, give me back my stuff.' He continued to wield the wood and bottle and repeat the threats.

The victim was standing in the front garden of the house with his daughter in the house. He was not easily intimidated but became increasingly frightened and concerned that J would carry out his threats. The police were called and when they arrived J dropped the weapons, but continued to shout and swear at the victim accusing him of having taken his belongings.

J pleaded guilty at the first hearing. He had no previous convictions.

**Applying the guideline****Step one: culpability and harm**

The high culpability factor of 'visible weapon' would apply in this case. No other culpability factors apply so J's culpability would be assessed as high.

The distress suffered by the victim would fall between category one (very serious distress) and category three (minimal distress) and so would be assessed as category two.

**Step two: starting point and category range**

The case would fall into A2 which has a starting point of two years' custody.

The aggravating factor of 'impact of offence on others particularly children' could apply in this case as the victim's adult daughter was also affected by the incident.

The mitigating factor of 'no previous convictions' would apply.

On these facts the aggravating factor would balance out the mitigating factor and would result in a sentence of around two years' custody.

**Other steps**

At step four the sentence would be reduced by one third to reflect the guilty plea.

At step seven a restraining order could be imposed to prevent the offender from contacting the victim or the victim's daughter or going to her home.

Q37

**Do you have any comments on using the guideline through case study E?**

The Council is interested in whether or not the draft guidelines will have any unintended equality impacts, so would welcome views or any evidence on this issue.

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 A: Summary of consultation questions

## Section one: Overarching Principles: Domestic Abuse Guideline

- Q1 Please tell us your views on the decision to provide a standalone guideline, which will be cross referenced digitally to all relevant guidelines. Do you agree? If not, please tell us why and suggest any alternative approach.
- Q2 Please tell us your views on the scope of the guideline section - is there any other information that you think should be removed or added?
- Q3 Please tell us your views on the assessing seriousness section - is there any information that you think should be removed or added?
- Q4 Do you agree with the proposed list of aggravating factors? Are there any that should be removed or added?
- Q5 Do you agree with the proposed list of mitigating factors? In particular, what is your view of the mitigating factor relating to provocation?
- Q6 Do you have any comments on the other factors influencing sentence section?
- Q7 Do you have any comments on the factors to take into consideration section?
- Q8 Overall, do you feel that the level of information provided in this section is right? Is there any information not included that you think should be? Or is there any information included that you think should be removed?
- Q9 Are there any equality or diversity matters that the Council should consider for this guideline? Please provide evidence of any issues where possible.

## Section three: Harassment/racially or religiously aggravated harassment (putting people in fear of violence), stalking/racially or religiously aggravated stalking (involving fear of violence)

- Q10 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 levels? 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?

#### **Section four: Harassment/racially or religiously aggravated harassment and stalking/ racially or religiously aggravated stalking**

- 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 levels? 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 question 16, on the proposed guidance for the sentencing of the racially and religiously aggravated forms of this offence?
- Q22 Do you have any comments on using the guideline through case study B?

#### **Section five: Disclosing private sexual images**

- 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 levels? 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?

**Section six: Controlling or coercive behaviour in an intimate or family relationship**

- 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 levels? 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?

**Section seven: Threats to kill**

- 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 levels? 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: Background to guidelines

## Statutory Requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;<sup>10</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>11</sup> and,
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>12</sup>

Section 125(a) of the Coroners and Justice Act 2009 states that, *'every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case'*. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;

<sup>10</sup> s.120 Coroners and Justice Act 2009

<sup>11</sup> s.127(2) *ibid*

<sup>12</sup> s.127(3) *ibid*

- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.<sup>13</sup>

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.<sup>14</sup>

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

### **Applicability of guidelines**

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after the guideline comes into force, regardless of the date of the offence.

Section 125(1) 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 guideline which is relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Council's definitive guideline, *Overarching Principles – Sentencing Youths*.<sup>15</sup>

<sup>13</sup> s.120(11) Coroners and Justice Act 2009

<sup>14</sup> s.127(3)

<sup>15</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_overarching\\_principles\\_sentencing\\_youths.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf)

## 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. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. 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 in the decision making process, after the appropriate sentence has been identified.

## Assessing seriousness

The guideline sets out a step-by-step decision making process for the court to use when sentencing each type of offence. This means that all sentencers are adopting a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline which reaches court will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors which in turn determine what the sentence starting point should be.

The first two steps that the sentencer follows are about assessing the seriousness of an individual offence. These two steps are described below and are the same throughout the guidelines discussed.

### STEP ONE

#### Determining the offence category

The first step that the court will take is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The draft guideline directs the court to consider the factors relating to the **culpability** of the offender in committing the offence and the **harm** that has been caused. The culpability factors have been developed to assess the differing levels of culpability which may be present in these offences. In broad terms, for this offence culpability relates to how deliberate and intentional or otherwise, an offender's behaviour may have been.

Some offences may have characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability.

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

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive; therefore the court is able to take into account factors that have not been listed where they are deemed to be pertinent to the particular case.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are further steps to follow, which vary slightly between the guidelines, as set out below.

For the two harassment and stalking guidelines (discussed at sections three and four) step three provides guidance for the sentencing of the racially and religiously aggravated offences (see further discussion on page 21). For all the other offences, step three is as shown below:

**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.

All of the guidelines include a step relating to a reduction for guilty pleas, as shown below.

**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.<sup>16</sup>

Some of the offences (those discussed at section three and section seven) include a step relating to dangerousness, as shown below.

**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).

All of the guidelines include a step relating to the totality principle, as shown below.

**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.<sup>17</sup>

<sup>16</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Reduction\\_in\\_Sentence\\_for\\_a\\_Guilty\\_Plea\\_-\\_Revised\\_2007.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-_Revised_2007.pdf).

<sup>17</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Definitive\\_guideline\\_TICs\\_\\_totality\\_Final\\_web.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Definitive_guideline_TICs__totality_Final_web.pdf).

All of the guidelines include a step relating to compensation and ancillary orders, as shown below.

### **Compensation and ancillary orders**

In all cases the court should consider whether to make compensation 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 (Protection from Harassment Act 1997, section 5).

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.

All of the guidelines include a step relating to giving reasons, as shown below.

### **Reasons**

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

All of the guidelines include a step relating to consideration for time spent on bail, as shown below.

### **Consideration for time spent on bail**

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

**Information on community orders and fine bands is set out at Annex D.**

# Annex C: Draft guidelines

## Overarching Principles: Domestic Abuse Applicability of the Guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after xxxxxx, 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.”

## Scope of the guideline

1. This guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. There is no specific offence of domestic abuse,<sup>18</sup> it is a general term describing a range of violent and/or controlling or coercive behaviour.
2. A useful, but not statutory, definition of domestic abuse used by the Government is:

***Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial, or emotional.***

3. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.
4. Coercive behaviour is an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim.
5. The Government definition includes so called 'honour' based abuse, such as female genital mutilation (FGM) and forced marriage. Domestic abuse occurs amongst men and women, people of all ethnicities, sexualities, ages, disabilities, immigration status, religion or beliefs, and socio-economic backgrounds. Care should be taken to avoid stereotypical assumptions regarding domestic abuse.
6. Many different criminal offences can involve domestic abuse and, where they do, the court should ensure that the sentence reflects that an offence has been committed within this context.
7. Cases in which the victim has withdrawn from the prosecution do not indicate a lack of seriousness and no inference should be made regarding the lack of involvement of the victim in a case.

## Assessing Seriousness

8. The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.
9. Domestic abuse offences are regarded as particularly serious within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them.

<sup>18</sup> Guidance for sentencing the offence of controlling or coercive behaviour in an intimate or family relationship (s.76 of the Serious Crime Act 2015) can be found in the *Intimidatory Offences* guideline.

## **Aggravating and Mitigating Factors**

The following aggravating and mitigating factors (which are not intended to be exhaustive) are of particular relevance to offences committed in a domestic context.

### **Aggravating Factors**

- Abuse of trust and/or abuse of power
- Victim is particularly vulnerable (*some victims of domestic abuse may be more vulnerable than others, and may find it almost impossible to leave an abusive relationship*)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (*children can be adversely impacted by both direct and indirect exposure to domestic abuse*)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (*such as but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders - this is not an exhaustive list*)

### **Mitigating Factors**

- Positive good character (*however an offender's good character in relation to conduct outside the relationship should generally be of no relevance where there is a proven pattern of domestic abuse behaviour*)
- Provocation (*it is likely that cases where the provocation is sufficient to mitigate the seriousness of the offence will be rare. Any such assertions need to be examined with great care, to determine whether they have a factual basis and in recognition that these assertions can be used by offenders to deflect responsibility*)
- Self-referral for help, treatment, and counselling (*recognition by an offender of the need to change and demonstration of steps taken to confront and prevent abusive behaviour*)

### Other factors influencing sentence

10. As a matter of general principle, a sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by the expressed wishes of the victim.
11. There are a number of reasons why it may be particularly important that this principle is observed within this context:
  - the court is sentencing on behalf of the wider public;
  - it is undesirable that a victim should feel a responsibility for the sentence imposed;
  - there is a risk that a plea for mercy made by a victim will be induced by threats made by, or by a fear of, the offender;
  - the risk of such threats will be increased if it is generally believed that the severity of the sentence may be affected by the wishes of the victim.
12. The offender or the victim may ask the court to consider the interests of any children by imposing a less severe sentence. The court should consider not only the effect on the children if the relationship is disrupted but also the likely effect of any further incidents of domestic abuse. The court should take great care with such requests, as the sentence should primarily be determined by the seriousness of the offence.

### Factors to take into consideration

The following points of principle should be considered by a court when imposing sentence for any offences committed in a domestic context.

13. Offences involving serious violence, or where the emotional/psychological harm caused is severe, will warrant a custodial sentence in the majority of cases.
14. Some offences will be specified offences for the purposes of the dangerous offender provisions.<sup>19</sup> In such circumstances, consideration will need to be given to whether there is significant risk of serious harm to members of the public by the commission of further specified offences. The 'public' includes family members and if this test is met, the court will be required to impose a life sentence, or an extended sentence in appropriate cases.
15. Where the custody threshold is only just crossed, so that if a custodial sentence is imposed it will be a short sentence, the court will wish to consider whether the better option is to suspend the custodial sentence or instead impose a community order, including in either case a requirement to attend an accredited domestic abuse programme. Such an option will normally only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful. Such a situation is unlikely to arise where there has been a pattern of abuse, or the offender has denied responsibility for the offence.

<sup>19</sup> ss. 224-229 Criminal Justice Act 2003 (as amended)

16. The court should also consider whether it is appropriate to make a restraining order, and if doing so, should ensure that it has all relevant up to date information. The court may also wish to consider making other orders, such as a European protection order, sexual harm prevention order, criminal behaviour order (this is not an exhaustive list). Further details for restraining orders are set out below.

### **Restraining Order**

17. Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, section 5).
18. 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.
19. The order may have effect for a specified period or until further order.
20. A court before which a person is **acquitted** of an offence may make a restraining order if the court considers that it is necessary to protect a person from harassment by the defendant (Protection from Harassment Act 1997, section 5A).

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## 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)

Triable either way

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

Maximum when tried on indictment: 10 years

Offence range: Discharge to 8 years' custody

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## 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

(with fear of violence)

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

Triable either way

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

Maximum when tried on indictment: 14 years' custody

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

## APPROACH

### RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES (Crime and Disorder Act 1998, s.32)

The court should decide on the sentence for the basic offence first, without taking account of the element of aggravation, and then make an addition to the sentence considering the level of aggravation involved. Guidance on sentencing a racially or religiously aggravated harassment offence follows at step 3.

## BASIC OFFENCE

### STEP ONE

#### Determining the offence category

The court should determine the offence category with reference **only** to the factors listed 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 of 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 – 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 <b>may</b> elevate to category A.
<b>B – High culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise distress</li> <li>• Significant planning and/or sophisticated offence</li> <li>• Persistent action over sustained 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 – Medium culpability</b>	<ul style="list-style-type: none"> <li>• All other cases that fall between categories B and D</li> </ul>
<b>D – 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>• Physical violence used</li> <li>• Victim is particularly vulnerable</li> <li>• Victim caused to change lifestyle to avoid contact</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal distress or harm caused to 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.

**Maximum 10 years (basic offence)**

Harm	Culpability			
	A	B	C	D
<b>Category 1</b>	<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
<b>Category 2</b>	<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> Medium 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 – High level community order
<b>Category 3</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<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 – High level community order	<b>Category range</b> Discharge – Low level community order

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this consideration may be relevant.

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:**

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

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Good character and/or exemplary conduct

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

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

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****Racially or religiously aggravated offence - section 32 offences only**

Having determined the sentence for the basic offence, the court should now increase the sentence to reflect the level of aggravation involved. The nature and extent of the increase will depend on the seriousness of the aggravation, and the individual circumstances of the particular case. 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 following is a **non-exhaustive** list of factors which the court should consider to decide the level of aggravation (where not already taken into account at step one):

The nature of the hostility (language, gestures, or weapons)
The duration (isolated, repeated or persistent)
Location
Whether the hostility was minor and incidental
The number of both those participating in and those targeted by the offence
Whether the offence was part of a pattern of similar offending by the offender
Whether the offender was a member of, or was associated with, a group promoting hostility based on race or religion
Whether the aggravated nature of the offence caused particular distress to the victim or victim's family
Whether there is evidence that the aggravated nature of the offence caused fear and distress throughout a local community or more widely

**Maximum sentence for the aggravated offence on indictment is 14 years custody (maximum for the basic offence is 10 years)**

<b>High level of racial or religious aggravation</b>	Increase the length of custodial sentence imposed for the basic offence <b>or</b> impose a custodial sentence if not already imposed for the basic offence.
<b>Medium level of racial or religious aggravation</b>	Impose a significantly more onerous penalty of the same type <b>or</b> impose a more severe type of sentence than for the basic offence.
<b>Low level of racial or religious aggravation</b>	Impose a more onerous penalty of the same type identified for the basic offence.

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

#### **STEP FOUR**

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

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

#### **STEP FIVE**

##### **Reduction for guilty pleas**

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

**STEP SIX****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

**STEP SEVEN****Totality principle**

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

**STEP EIGHT****Compensation and ancillary orders**

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

***Compensation order***

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

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

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

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 NINE****Reasons**

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

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

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

## Harassment

Protection from Harassment Act 1997 (section 2)

## Stalking

Protection from Harassment Act 1997 (section 2A)

Triable only summarily

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

Offence range: Discharge to 26 weeks' custody

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## Racially or religiously aggravated harassment-

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

## Racially or religiously aggravated stalking- (with fear of violence)

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

Triable either way

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

Maximum when tried on indictment: 2 years' custody

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

## APPROACH

### RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES (Crime and Disorder Act 1998, s.32)

The court should decide on the sentence for the basic offence first, without taking account of the element of aggravation, and then make an addition to the sentence considering the level of aggravation involved. Guidance on sentencing a racially or religiously aggravated harassment offence follows at step 3.

## BASIC OFFENCE

### STEP ONE Determining the offence category

The court should determine the offence category with reference **only** to the factors listed 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 of 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 – High culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise distress</li> <li>• Significant planning and/or sophisticated offence</li> <li>• Persistent action over sustained period</li> <li>• Threatening violence</li> <li>• Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: age, sex, disability, sexual orientation or transgender identity</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• All other cases that fall between categories A or 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>• Victim is particularly vulnerable</li> <li>• Victim caused to change lifestyle to avoid contact</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal distress or harm caused to 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.

#### Maximum 6 months (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 – 12 weeks' custody	<b>Category range</b> Low level community order – High level community order
Category 2	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> Medium level community order – 12 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order
Category 3	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine	<b>Starting point</b> Band A fine
	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order	<b>Category range</b> Discharge – Band C fine

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:*

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

**Factors increasing seriousness**

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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

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****Racially or religiously aggravated offence- section 32 offences only:**

Having determined the sentence for the basic offence, the court should now increase the sentence to reflect the level of aggravation involved. The nature and extent of the increase will depend on the seriousness of the aggravation, and the individual circumstances of the particular case. 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 following is a **non-exhaustive** list of factors which the court should consider to decide the level of aggravation in each particular case (where not taken into account at step one).

The nature of the hostility (language, gestures, or weapons)

The duration (isolated, repeated or persistent)

Location

Whether the hostility was minor and incidental

The number of both those participating in and those targeted by the offence

Whether the offence was part of a pattern of similar offending by the offender

Whether the offender was a member of, or was associated with, a group promoting hostility based on race or religion

Whether the aggravated nature of the offence caused particular distress to the victim or victim's family

Whether there is evidence that the aggravated nature of the offence caused fear and distress throughout a local community or more widely

**Maximum sentence for the aggravated offence is 2 years' custody (maximum for the basic offence is 6 months' custody)**

<b>High level of racial or religious aggravation</b>	Increase the length of custodial sentence imposed for the basic offence <b>or</b> impose a custodial sentence if not already imposed for the basic offence.
<b>Medium level of racial or religious aggravation</b>	Impose a significantly more onerous penalty of the same type <b>or</b> impose a more severe type of sentence than for the basic offence.
<b>Low level of racial or religious aggravation</b>	Impose a more onerous penalty of the same type identified for the basic offence.

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

#### **STEP FOUR**

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

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

#### **STEP FIVE**

##### **Reduction for guilty pleas**

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

#### **STEP SIX**

##### **Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

***Compensation order***

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

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

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

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**

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

# Disclosing Private Sexual Images

(Disclosing private sexual photographs or films without the consent of an individual who appears in them and with intent to cause that individual distress)

Criminal Justice and Courts Act 2015 (section 33)

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Triable either way

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

Maximum when tried on indictment: 2 years' custody

Offence range: Discharge to 1 year 6 months' custody

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

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference **only** to the factors listed 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 of 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 – High culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise distress</li> <li>• Images circulated widely/publically</li> <li>• Significant planning and/or sophisticated offence</li> <li>• Large number of images disclosed</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <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> </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>• Victim is particularly vulnerable</li> <li>• Offence has a considerable practical impact on the victim</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal distress or harm caused to 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.

#### Maximum 2 years

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' custody – 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> Medium 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 – High level community order
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> High level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Discharge – Low level community order

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:*

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

Impact of offence on others, especially children

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

#### Factors reducing seriousness or reflecting personal mitigation

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

Remorse

Good character and/or exemplary conduct

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

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

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 (Protection from Harassment Act 1997, section 5).

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**

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

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# Controlling or Coercive Behaviour in an Intimate or Family Relationship

Serious Crime Act 2015 (section 76)

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**Triable either way**

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

**Maximum when tried on indictment: 5 years' custody**

**Offence range: Discharge to 4 years' custody**

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference **only** to the factors listed 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 of 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 – High culpability</b>	<ul style="list-style-type: none"> <li>• Conduct intended to maximise distress</li> <li>• The use of significant violence against the victim or others (where not separately charged)</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>• 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>• Very serious psychological harm caused to the victim</li> <li>• Victim is particularly vulnerable</li> <li>• Offence has a considerable practical impact on the victim</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal distress or harm caused to 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.

#### Maximum 5 years

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 6 months' – 2 years' 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> 6 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> 6 months' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody	<b>Category range</b> Medium level community order – 6 months' custody
Category 3	<b>Starting point</b> 6 months' 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 – 1 year's custody	<b>Category range</b> Medium level community order – 6 months' custody	<b>Category range</b> Discharge – High level community order

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:**

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

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Good character and/or exemplary conduct

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

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

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 (Protection from Harassment Act 1997, section 5).

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**

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

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# Threats to kill

## Offences Against the Person Act 1861 (section 16)

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Triable either way

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

Maximum when tried on indictment: 10 years' custody

Offence range: Discharge to 7 years' custody

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

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference **only** to the factors listed 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 of 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 – High culpability</b>	<ul style="list-style-type: none"> <li>• Significant planning and/or sophisticated offence</li> <li>• Visible weapon</li> <li>• Threats made in the presence of children</li> <li>• Offence part of a campaign of violence or threats of violence</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <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>• Isolated, brief incident</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>• Victim is particularly vulnerable</li> <li>• Offence has a considerable practical impact on the victim</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Minimal distress or harm caused to 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.

#### Maximum 10 years

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 year's custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 years' – 7 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 6 months' – 2 years 6 months' custody
Category 2	<b>Starting point</b> 2 year's custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 6 months' – 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> 6 months' custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 6 months' – 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

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:**

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

Impact of offence on others, particularly children

Established evidence of community/wider impact

**Factors increasing seriousness**

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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

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****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.

**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 (Protection from Harassment Act 1997, section 5).

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**

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

# Annex D:

## Fine bands and community orders

### FINE BANDS

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

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 or 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 requirements(s)</li> <li>• 40 – 80 hours 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 requirements(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 two to three 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 requirements(s)</li> <li>• 150 – 300 hours unpaid work</li> <li>• Curfew requirement up to 16 hours per day for four to twelve months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and the *Imposition of Community and Custodial Sentences* guideline provides further guidance on community orders.