

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,¹⁸ 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.

¹⁸ 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.¹⁹ 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.

¹⁹ 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

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

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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases that fall between categories B and D
D – Lesser culpability	<ul style="list-style-type: none"> • Offender's responsibility substantially reduced by mental disorder or learning disability • Offence was limited in scope and duration

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious distress caused to the victim • Physical violence used • Victim is particularly vulnerable • Victim caused to change lifestyle to avoid contact
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Minimal distress or harm caused to the victim

STEP TWO**Starting point and category range**

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

Maximum 10 years (basic offence)

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

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

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

A – High culpability	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases that fall between categories A or C
C – Lesser culpability	<ul style="list-style-type: none"> • Offender's responsibility substantially reduced by mental disorder or learning disability • Offence was limited in scope and duration

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious distress caused to the victim • Victim is particularly vulnerable • Victim caused to change lifestyle to avoid contact
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 6 months (basic offence)

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 26 weeks' custody	Category range Medium level community order – 12 weeks' custody	Category range Low level community order – High level community order
Category 2	Starting point High level community order	Starting point Medium level community order	Starting point Band C fine
	Category range Medium level community order – 12 weeks' custody	Category range Low level community order – High level community order	Category range Band B fine – Low level community order
Category 3	Starting point Medium level community order	Starting point Band C fine	Starting point Band A fine
	Category range Low level community order – High level community order	Category range Band B fine – Low level community order	Category range 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 mitigationNo 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)

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

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

A – High culpability	<ul style="list-style-type: none"> • Conduct intended to maximise distress • Images circulated widely/publically • Significant planning and/or sophisticated offence • Large number of images disclosed
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Offender's responsibility substantially reduced by mental disorder or learning disability • Little or no planning

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious distress caused to the victim • Victim is particularly vulnerable • Offence has a considerable practical impact on the victim
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 2 years

Harm	Culpability		
	A	B	C
Category 1	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point 12 weeks' custody
	Category range 26 weeks' – 1 year 6 months' custody	Category range 12 weeks' custody – 1 year's custody	Category range High level community order – 26 weeks' custody
Category 2	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Medium level community order
	Category range 12 weeks' – 1 year's custody	Category range High level community order – 26 weeks' custody	Category range Low level community order – High level community order
Category 3	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range 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)

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

A – High culpability	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Offender's responsibility substantially reduced by mental disorder or learning disability • Offence was limited in scope and duration

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious psychological harm caused to the victim • Victim is particularly vulnerable • Offence has a considerable practical impact on the victim
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 5 years

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

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

A – High culpability	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Offender's responsibility substantially reduced by mental disorder or learning disability • Isolated, brief incident

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious distress caused to the victim • Victim is particularly vulnerable • Offence has a considerable practical impact on the victim
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 10 years

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 2 year's custody	Starting point 1 year's custody
	Category range 2 years' – 7 years' custody	Category range 1 – 4 years' custody	Category range 6 months' – 2 years 6 months' custody
Category 2	Starting point 2 year's custody	Starting point 1 year's custody	Starting point 6 months' custody
	Category range 1 – 4 years' custody	Category range 6 months' – 2 years 6 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 1 year's custody	Starting point 6 months' custody	Starting point Medium level community order
	Category range 6 months' – 2 years 6 months' custody	Category range High level community order – 1 year's custody	Category range 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 mitigationNo 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.