

**Non-fatal strangulation and
suffocation offences
Consultation**

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About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 15 May 2024 to 14 August 2024
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
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- How to respond:** Please send your response by 14 August 2024:
By email to Lisa Frost:
consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: 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.
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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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 consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of non-fatal strangulation and suffocation offences. However, it is important to clarify that the Council is consulting on sentencing guidelines for these offences and not 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.

Why non-fatal strangulation and suffocation offences?

In revising its assault offences guidelines which were published in 2021 the Council had considered research highlighting the seriousness of strangulation as a form of assault. As a result, the revised guidelines provided for the culpability of the perpetrator of any assault involving strangulation, suffocation or asphyxiation to be assessed at the highest level of seriousness.

Subsequently, the Government decided that specific offences of non-fatal strangulation and suffocation were necessary to ensure perpetrators could be charged and prosecuted with a sufficiently serious offence even in the absence of physical injuries.

Section 70(1) of the Domestic Abuse Act 2021 created an offence of non-fatal strangulation and a separate offence of non-fatal suffocation. The offences were introduced as part of the Government's Violence Against Women and Girls Strategy and came into force on 7 June 2022.

The legislation does not provide definitions of strangulation or suffocation, but CPS charging guidance for prosecutors states that: 'the word should be given its ordinary meaning which is the obstruction or compression of blood vessels and/or airways by external pressure to the neck impeding normal breathing or circulation of the blood.' The guidance provides common examples of acts which may be charged as non-fatal strangulation as:

- one or two hands held around the neck of a person;
- chokehold or head lock – external pressure applied by an arm around the neck;
- ligature – for example a scarf or belt tightened around the neck;
- pressure on the neck from a foot or knee.

CPS prosecution guidance also provides a definition of non-fatal suffocation, confirming this has a wider ordinary definition and is to 'deprive a person of air which affects their normal breathing.' Common examples of suffocation are given as:

- putting a hand over the mouth and nose;
- compressing the chest;
- any other force or suppression applied to a person to cause a restriction of breath.

Given that strangulation and suffocation are both forms of assault which are provided for in the assault guidelines as high culpability offences, many sentencers referred to these guidelines when sentencing the new offences after their introduction. In particular the [ABH guideline](#) was referred to, as ABH shares the same statutory maximum sentence as the new offences. However, the ABH guideline assesses actual harm caused, and in the absence of physical injuries sentences were not always reflective of the seriousness of the harm caused or risked by an offence. This was noted by the Court of Appeal in [R v Cook \[2023\] EWCA Crim 452](#), which set out the approach to sentencing these offences until such time a sentencing guideline was available.

This guideline consolidates aspects of that judgment into a guideline format, using the Council's stepped approach to sentencing. The format of a judgment differs to a guideline meaning some features highlighted as increasing or decreasing seriousness by the Court of Appeal are assessed at step one of the guideline's seriousness assessment, and others at step two. The rationale for the proposed assessment is explained in this consultation document and anticipated impacts are highlighted in the accompanying resource assessment.

The guideline seeks to ensure appropriate sentences for these offences, as well as proportionality and relativity with sentences for related offences and other sentencing guidelines.

Responding to the consultation

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

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the types and lengths of sentence that should be passed;
- whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address, and;
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims and their families;
- defendants and their families;

- those under probation supervision or youth offending teams/supervision;
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In the following sections the proposed changes are outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to consultation@sentencingcouncil.gov.uk or by using the online consultation at <https://consult.justice.gov.uk/>. 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 12 week public consultation. The Council has not yet planned any consultation meetings but would be happy to arrange a meeting to discuss any of the issues raised if this would be helpful. Once the results of the consultation have been considered, the updated guidelines will be published and used by all courts.

Approach to the guidelines

In preparing the guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties.

Applicability of guidelines

When issued as definitive guidelines following consultation the guidelines will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are set out in the Sentencing Council's definitive guideline, Sentencing children and young people.

Initial questions:

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Equality and Diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council published the report '[Equality and diversity in the work of the Sentencing Council](#)' in January 2023, designed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups.

In addition, the available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines, for example because of a lack of available data or because volumes of data are too low. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

The Council has had regard to its duty under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics.

The demographic data on sex, age and ethnicity have been presented for the period July 2022 to June 2023. The statistics discussed below can be found within the data tables published on the [Council's website](#).

Sex

Across the offences in scope for this consultation, substantially more males were sentenced compared to females. Of the around 700 offenders sentenced between July 2022 and June 2023, the majority were male, with fewer than 10 female offenders sentenced in total. For male offenders, immediate custody was the most common sentence, comprising 57 per cent of sentences imposed over the 12 months from July 2022 to June 2023, followed by 29 per cent receiving a suspended sentence order and 13 per cent a community order. For female offenders, slightly under half (43 per cent) received a suspended sentence order, 29 per cent received an immediate custodial sentence and 29 per cent received a community order.

Age group

Immediate custody was typically the most common sentence outcome across all the age groups. The majority (88 per cent) of offenders sentenced were under the age of 50. Between the ages of 25 and 49, the mean average custodial sentence length (ACSL) after any reduction for a guilty plea was fairly consistent at around 17 months' custody for the 12 month period July 2022 to June 2023. There were some variations in ACSL for the younger and older age groups. However, these groups included lower numbers of offenders sentenced and therefore the ACSLs derived are more sensitive to small shifts in volume.

Ethnicity

In general, across these offences, most offenders were white (87 per cent, where ethnicity was known). Across all ethnicities, immediate custody was the most frequent outcome. There was some variation in the ACSL across ethnicity groups, although caution should be taken comparing between groups as some ethnicities contained much smaller volumes of offenders sentenced.

The guideline and its factors are intended to apply equally to all offenders aged 18 or over. Throughout this document your views will be sought on whether there are any disparity issues with proposals, such as whether there are any factors or aspects of the guideline which may disadvantage one group over another.

Non-fatal strangulation and suffocation

Section 70(1) of the Domestic Abuse Act 2021 inserted [section 75A](#) into Part 5 of the Serious Crime Act 2015 (SCA 2015) creating an offence of non-fatal strangulation (section 75A(1)(a)) and a separate offence of non-fatal suffocation (section 75A(1)(b)). The offences came into force on 7 June 2022.

75A Strangulation or suffocation

- (1) A person ("A") commits an offence if—
- (a) A intentionally strangles another person ("B"), or
 - (b) A does any other act to B that—
 - (i) affects B's ability to breathe, and
 - (ii) constitutes battery of B.

The statutory maximum sentence for either offence is 5 years imprisonment. There are racially or religiously aggravated versions of the offences which carry a maximum of 7 years.

The Sentencing Council proposes to have one guideline covering both offences, with the same culpability and harm factors, and the same aggravating and mitigating factors.

While the offence was introduced in the Domestic Abuse Act and is predominantly a domestic abuse related offence, the Council notes that the offence is increasingly being charged in a non-domestic context. The proposed guideline factors take this into account.

Step One

The first step of the guideline requires the sentencer to assess the culpability level of the offender and the harm caused by the offence.

Culpability factors

Culpability factors provide for assessment of an offender's intention or blameworthiness in committing the offence. The Council considers that all offences of strangulation and suffocation are very serious. However, even with this as the starting position, it is necessary for the guideline to provide for the full spectrum of culpability of an offender. To identify factors relevant to the seriousness of offences analysis of a high proportion of transcripts of recently sentenced offences was undertaken, and the factors below reflect the range of relevant culpability features identified. Some of these were also noted as

factors which aggravated an offence, or in some instances made it less serious, in the R v Cook judgment.

Three levels of culpability are proposed:

Culpability
<p>A - High culpability</p> <ul style="list-style-type: none"> • Sustained or repeated strangulation or suffocation • Use of ligature
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Cases falling between category A or C because: <ul style="list-style-type: none"> ○ Factors in both high and lesser categories are present which balance each other out; and/or ○ The offender’s culpability falls between the factors as described in high and lesser culpability
<p>C – Lesser culpability</p> <ul style="list-style-type: none"> • Very brief incident and voluntary desistance • Excessive self defence • Mental disorder or learning disability, where linked to the commission of the offence

High culpability

The Council considers that offences involving sustained or repeated acts or use of ligature are particularly serious and demonstrate a high level of culpability of an offender.

In other assault offence guidelines the culpability factor ‘sustained or repeated’ was replaced with ‘prolonged and persistent’ when the guidelines were revised. However, the Council approved of the reference in R v Cook to sustained and repeated in the context of acts of strangulation and suffocation. It considers the factor has an appropriately lower threshold and is more applicable in the context of these acts than ‘prolonged or persistent’. The Council also considers that use of a ligature indicates a very specific intention on the part of an offender to cause serious fear of, or serious actual, harm.

The Council considered whether the vulnerability of a victim should be included as a high culpability factor as it is for other assault offence guidelines. However, it decided that any domestic context is an aggravating feature of an offence in any category and should increase the starting point at step two. Other specific features relating to a victim’s vulnerability, such as being isolated and unable to seek assistance, will further aggravate an offence.

Medium culpability

Offences falling within this category do not fall squarely within a higher or lesser culpability category, either having higher and lesser culpability factors present, or the culpability falls between the factors specified in higher and lesser culpability.

Lesser culpability

This category includes factors which indicate a difference in intention or responsibility from high and medium culpability offences. This is not to say they are still not serious, as is reflected in the sentence starting points for offences within this category. It is expected that only a small proportion of offences are likely to fall squarely within this category.

The Council agreed with the Court of Appeal that a very brief incident involving voluntary desistance by the offender is in a different category than a sustained and determined effort by an offender to terrify or seriously harm a victim. The threshold for this factor is high and requires that the incident be both very brief **and** that there be voluntary desistance.

The Council also considered the excessive self-defence factor included in assault guidelines may be relevant to a small number of these offences, such as where an offender uses strangulation during the course of fending off an attacker.

Finally, the factor relating to mental disorder or learning disability is also provided for in other assault offence guidelines and was noted as present in a small number of offences considered. Where present this factor may reduce the responsibility of the offender, such as where they are suffering from paranoia and believe they are subject to an imminent threat. This factor would usually require supportive medical or other professional evidence and is not easily relied upon.

Question 5: Do you have any comments on the proposed culpability factors?

Question 6: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence.

Harm in these offences is different from other serious assault offences, as often a very high degree of harm will result although little or no visible injury may occur. The Council considered a range of research on the harm present in strangulation offences and agreed that a high degree of psychological harm will nearly always be present, particularly in a domestic abuse offence. A victim subjected to this offence is highly likely to experience sheer terror at their breathing being restricted, and fear for their life and be deeply traumatised.

Research the Council considered confirmed that there is a high risk of loss of consciousness or death from even a brief offence, and where physical injuries do occur these can include difficulties in swallowing and breathing, bruising, internal injuries and

loss of consciousness. Research highlights that delayed impacts of restricted breathing can include increased risk of strokes, heart attack, anxiety, depression and issues with memory and concentration.

Given the harm inherent in strangulation and research findings that a very high risk of harm or death is likely even where an offence is short-lived, the Council considers that there can only be two categories of harm. The highest category provides for severe harm which has substantial ongoing impacts and long-term effects on a victim. The other harm category provides for all other cases.

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

Category 1

- Offence results in a severe physical injury or psychological condition which has a substantial and long-term effect on the victim's ability to carry out their normal day to day activities or on their ability to work.

Category 2

- All other cases

Question 7: Do you have any comments on the proposed harm factors?

Question 8: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Step Two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The maximum sentence for the non-racially or religiously aggravated offence is 5 years imprisonment, which is the same as the statutory maximum sentence for ABH and section 20 GBH offences.

The proposed sentences maintain the starting point of 18 months custody which the Court of Appeal stated would be appropriate for offences involving particular features. Only the lowest category of offence has a lower starting point. This would be an offence involving a lesser culpability factor and the lowest level of harm. The guideline provides for an increase on starting points at step two where aggravating features are present, such as the offence being committed in a domestic context, the victim being isolated and unable to seek assistance and the presence of children. Multiple aggravating factors will increase the sentence significantly above the starting point.

An important objective of sentencing guidelines is that relativity and proportionality between sentences for related offences is achieved. The starting point sentence for category A1 offences, which are the most serious, is slightly lower than an equivalent category GBH s20 offence. This is because a category A1 GBH s20 offence requires a “permanent, irreversible injury or condition which has a substantial and long-term effect on the victim’s ability to carry out their normal day to day activities or on their ability to work,” whereas that level of harm would not be present in offences charged as non-fatal strangulation or suffocation. The starting point is significantly higher than the same category of an equivalent ABH offence. A category A2 offence starting point is aligned with the highest category starting point for an ABH offence.

Sentence types

In the Cook judgment, the Court of Appeal specified that offences with particular features should ordinarily receive immediate custody. The Council considered whether this was a principle that should be explicitly specified in the guideline.

The Sentencing Council’s guideline for the [Imposition of Community and Custodial sentences](#) is the overarching guideline which sets out the considerations sentencers must undertake in determining whether a custodial sentence is capable of being suspended. Where a sentence is over 2 years it cannot be suspended. For any offence receiving a sentence of 2 years custody or less, the court must consider if the sentence is capable of being suspended with reference to a weighted assessment which includes a number of factors. The Council considered if it would be appropriate in sentencing these particular offences to disregard the Imposition guideline and specify that only immediate custody should be imposed but decided that this would be wrong in principle. This is because it would be unjust to distinguish non-fatal strangulation and suffocation from other offences which are equally serious, as well as undermining broader sentencing principles in the Imposition guideline which courts are required to follow for all other imprisonable offences. The overarching Domestic abuse guideline will also apply where offences are committed in a domestic context.

The Council considers that for a high proportion of offences the starting points and aggravating factors present, particularly where an offence is committed in a domestic context, mean that sentences will be of such a duration that they are not capable of being suspended. Where they are, the Council considers it is right that the court considers whether the seriousness of the offence means that immediate custody is unavoidable with reference to the relevant factors in the Imposition guideline.

Proposed sentences are included in the table below. As noted above, it is intended that they are relative and proportionate to sentences for offences of related seriousness. Starting points are considered proportionate and the category range provides for increases or decreases from this starting point where aggravating and mitigating factors are present.

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.

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

Question 9: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

Once the starting point has been identified the court then considers any additional factors, not identified at step one, which may aggravate or mitigate the offence and increase or decrease the starting point.

The proposed factors are:

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 in domestic context
- Victim isolated and unable to seek assistance
- Offence was committed against person providing a public service, performing a public duty or providing services to the public
- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of trust or power
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

Question 10: Do you have any comments on the proposed aggravating factors?

Question 11: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age, or ethnicity?

The majority of mitigating factors are standard factors included in sentencing guidelines, with one factor from the assault guidelines included:

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- History of significant violence or abuse towards the offender by the victim
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Pregnancy, childbirth and post-natal care

- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

Question 12: Do you have any comments on the proposed mitigating factors?

Question 13: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Racially and Religiously aggravated offences

Sentencing guidelines provide for the assessment of seriousness of racially and religiously aggravated offences at step three of the guideline. The starting point of the sentence will be determined by the step one seriousness assessment and adjusted for aggravating and mitigating factors at step two, before further adjustment at step three to reflect the increased statutory maximum sentence for the aggravated offence.

Other steps

There are then a number of other steps the court will consider in finalising the sentence. These are steps 4 – 10 included in the draft guideline. These are standard steps in Sentencing Council guidelines and are not specific to this offence so are not subject to consultation.

Question 14: Do you have any other comments on the proposed guideline that have not been covered elsewhere?

ANNEX A: Draft guideline

Strangulation or suffocation / Racially or religiously aggravated strangulation or suffocation

Serious Crime Act 2015, s.75A

Non-fatal strangulation, Serious Crime Act 2015 (section 75A(1)(a)) **Non-fatal suffocation**, Serious Crime Act 2015 (section 75A(1)(b))

Racially or religiously aggravated offences, Crime and Disorder Act 1998 (section 29)

Triable either way

Section 75A

Maximum: 5 years' custody

Offence range: High level community order – 4 years 6 months' custody

Section 29

Maximum: 7 years' custody

These are specified offences listed in [part 1 of Schedule 18](#) for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – 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.

Culpability

A - High culpability

- Sustained or repeated strangulation or suffocation
- Use of ligature

B – Medium culpability

- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender’s culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- Very brief incident **and** voluntary desistance
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

Category 1

- Offence results in a severe physical injury or psychological condition which has a substantial and long-term effect on the victim’s ability to carry out their normal day to day activities or on their ability to work.

Category 2

- All other cases

Step 2 – 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.

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

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 in domestic context
- Victim isolated and unable to seek assistance
- Offence was committed against person providing a public service, performing a public duty or providing services to the public

- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of trust or power
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- History of significant violence or abuse towards the offender by the victim
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Pregnancy, childbirth and post-natal care
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

Step 3 – Racially and Religiously Aggravated offences

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the racially or religiously aggravated offence is 7 years' custody

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> • Racial or religious aggravation was the predominant motivation for the offence. • Offender was a member of, or was associated with, a group promoting hostility based on race or religion. • Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). • Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> • Racial or religious aggravation formed a significant proportion of the offence as a whole. • Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). • Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>
<p>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.</p>	

STEP 4**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 5**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea guideline](#).

STEP 6**Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP 7**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 [Totality](#) guideline.

STEP 8**Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP 9**Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP 10**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

ANNEX B

List of Consultation questions

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Question 5: Do you have any comments on the proposed culpability factors?

Question 6: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Question 7: Do you have any comments on the proposed harm factors?

Question 8: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Question 9: Do you have any comments on the proposed sentence levels?

Question 10: Do you have any comments on the proposed aggravating factors?

Question 11: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age, or ethnicity?

Question 12: Do you have any comments on the proposed mitigating factors?

Question 13: Are there any factors you consider could unfairly impact certain groups in respect of (for example) sex, age or ethnicity?

Question 14: Do you have any other comments on the proposed guideline that have not been covered elsewhere?

