

Annex E

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: 10 years' custody

Offence range: Fine - 8 years' custody

**Racially or religiously aggravated harassment-
(Putting people in fear of violence)**
Crime and Disorder Act 1998 (section 32(1)(b))

**Racially or religiously aggravated stalking-
(with fear of violence)**
Crime and Disorder Act 1998 (section 32(1)(b))

Triable either way
Maximum: 14 years' custody.

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

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

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STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A- Very high culpability- the extreme nature of one or more culpability B factors or the extreme culpability indicated by a combination of culpability B factors may elevate to category A.

B - High culpability:

- Conduct intended to maximise fear or distress
- High degree of planning and/or sophisticated offence
- Persistent action over **prolonged** ~~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:

Cases that fall between categories B and D, and in particular:

- Conduct intended to cause some fear or distress
- Some planning
- Scope and duration of offence that falls between categories B and D

D - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Conduct unlikely to cause significant fear or distress
- Little or no planning
- 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

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

Harm that falls between categories 1 and 3, and in particular:

- Some distress caused to the victim
- Some psychological harm caused to the victim
- Victim caused to make some changes to lifestyle to avoid contact

Category 3

- Limited distress or harm caused to the victim

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STEP TWO**Starting point and category range**

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

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

Maximum 10 years' custody (basic offence)

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

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The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Using a position of trust to facilitate the offence
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Grossly violent or offensive material sent
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit the offence
- Offence committed against those working in the public sector or providing a service to the public
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity 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

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RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES ONLY

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

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

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ 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 (where linked to the commission of the offence) ▪ 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 or consider a more severe type of sentence than for the basic offence.</p>
LOW LEVEL OF RACIAL OR RELIGIOUS	SENTENCE UPLIFT

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AGGRAVATION	
<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). 	Consider a more onerous penalty of the same type identified for the basic offence.

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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

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

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Compensation and ancillary orders

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

Compensation order

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

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

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

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

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

STEP EIGHT**Reasons**

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

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

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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