

# Assault Definitive Guideline

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# Applicability of 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 13 June 2011, 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 guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

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

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

## Structure, ranges and starting points

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

Starting points define the position within a category range from which to start calculating the provisional sentence. **Starting points apply to all offences within the corresponding category and are applicable to all offenders in all cases irrespective of plea or previous convictions.** Once the starting point is established the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Credit for a guilty plea is taken into consideration only at step 4 in the process, after the appropriate sentence has been identified.

**Information on community orders and fine bands is set out in the annex at page 27.**

# Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

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This is a serious specified offence for the purposes of section 224  
of the Criminal Justice Act 2003

Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3–16 years' custody

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

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

**Factors indicating greater harm**

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is less serious in the context of the offence

**Factors indicating higher culpability***Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

*Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

**Factors indicating lower culpability**

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Previous violence or threats to the same victim

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

Determination, and/or demonstration of steps taken to address addiction or offending behaviour

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

Isolated incident

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

**STEP THREE****Consider any other 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**

Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm is a serious offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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 offending behaviour.

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

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

**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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

# Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

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These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 20): 5 years

Maximum (section 29): 7 years

Offence range: Community order – 4 years' custody



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

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Subordinate role in a group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	3 years' custody	2 years 6 months' – 4 years' custody
<b>Category 2</b>	1 year 6 months' custody	1 – 3 years' custody
<b>Category 3</b>	High level community order	Low level community order – 51 weeks' custody

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Location of the offence	Offences taken into consideration (TICs)	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions <b>or</b> no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Gratuitous degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
Failure to comply with current court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Age and/or lack of maturity where it affects the responsibility of the offender	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence	
Abuse of power and/or position of trust	Sole or primary carer for dependent relatives	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

**STEP THREE****Consider any other 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**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

**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 offending behaviour.

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

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

**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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

# Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

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These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 47): 5 years' custody

Maximum (section 29): 7 years' custody

Offence range: Fine – 3 years' custody

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

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	1 year 6 months' custody	1 – 3 years' custody
<b>Category 2</b>	26 weeks' custody	Low level community order – 51 weeks' custody
<b>Category 3</b>	Medium level community order	Band A fine – High level community order

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	
<i>Statutory aggravating factors:</i>	Exploiting contact arrangements with a child to commit an offence
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	Established evidence of community impact
Offence committed whilst on bail	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
<i>Other aggravating factors include:</i>	Offences taken into consideration (TICs)
Location of the offence	Factors reducing seriousness or reflecting personal mitigation
Timing of the offence	No previous convictions <b>or</b> no relevant/recent convictions
Ongoing effect upon the victim	Single blow
Offence committed against those working in the public sector or providing a service to the public	Remorse
Presence of others including relatives, especially children or partner of the victim	Good character and/or exemplary conduct
Gratuitous degradation of victim	Determination and/or demonstration of steps taken to address addiction or offending behaviour
In domestic violence cases, victim forced to leave their home	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Isolated incident
Offence committed whilst on licence	Age and/or lack of maturity where it affects the responsibility of the offender
An attempt to conceal or dispose of evidence	Lapse of time since the offence where this is not the fault of the offender
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
Commission of offence whilst under the influence of alcohol or drugs	Sole or primary carer for dependent relatives
Abuse of power and/or position of trust	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

**STEP THREE****Consider any other 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**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

**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 offending behaviour.

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

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

**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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault with intent to resist arrest

## Offences against the Person Act 1861 (section 38)

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This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way  
Maximum: 2 years' custody

Offence range: Fine – 51 weeks' custody



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

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

**Factors indicating greater harm**

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is less serious in the context of the offence

**Factors indicating higher culpability***Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

*Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

**Factors indicating lower culpability**

Subordinate role in group or gang

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	26 weeks' custody	12 weeks' – 51 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should consider whether the sentence can be suspended.

**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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

**STEP THREE****Consider any other 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**

Assault with intent to resist arrest is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

**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 offending behaviour.

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

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

**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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

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Triable only summarily  
Maximum: 26 weeks' custody

Offence range: Fine – 26 weeks' custody

**STEP ONE**

**Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender’s culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>
Sustained or repeated assault on the same victim
<b>Factors indicating lesser harm</b>
Injury which is less serious in the context of the offence

<b>Factors indicating higher culpability</b>
<i>Statutory aggravating factors:</i>
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)
<i>Other aggravating factors:</i>
A significant degree of premeditation
Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Intention to commit more serious harm than actually resulted from the offence
Deliberately causes more harm than is necessary for commission of offence
Leading role in group or gang
Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)
<b>Factors indicating lower culpability</b>
Subordinate role in group or gang
Lack of premeditation
Mental disorder or learning disability, where linked to commission of the offence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 weeks' custody	Low level community order – 26 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

**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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

### STEP THREE

#### **Consider any other 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 offending behaviour.

### STEP SIX

#### **Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

### 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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Common Assault

Criminal Justice Act 1988 (section 39)

# Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

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Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable only summarily

Maximum (section 39): 26 weeks' custody

Triable either way

Maximum (section 29): 2 years' custody

Offence range: Discharge – 26 weeks' custody



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

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm and higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Victim is particularly vulnerable because of personal circumstances	Intention to commit more serious harm than actually resulted from the offence
Sustained or repeated assault on the same victim	Deliberately causes more harm than is necessary for commission of offence
<b>Factors indicating lesser harm</b>	
Injury which is less serious in the context of the offence	Deliberate targeting of vulnerable victim
<b>Factors indicating higher culpability</b>	
<i>Statutory aggravating factors:</i>	
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Leading role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<i>Other aggravating factors:</i>	<b>Factors indicating lower culpability</b>
A significant degree of premeditation	Subordinate role in group or gang
	A greater degree of provocation than normally expected
	Lack of premeditation
	Mental disorder or learning disability, where linked to commission of the offence
	Excessive self defence

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

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	High level community order	Low level community order – 26 weeks' custody
<b>Category 2</b>	Medium level community order	Band A fine – High level community order
<b>Category 3</b>	Band A fine	Discharge – Band C fine

The table below contains 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. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

### 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 include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

### Factors reducing seriousness or reflecting personal mitigation

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

**STEP THREE****Consider any other 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**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

**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 offending behaviour.

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

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

**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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Annex:

## Fine bands and community orders

### FINE BANDS

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

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

### COMMUNITY ORDERS

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

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

<b>LOW</b>	<b>MEDIUM</b>	<b>HIGH</b>
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work</li> <li>• Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks)</li> <li>• Exclusion requirement, without electronic monitoring, for a few months</li> <li>• Prohibited activity requirement</li> <li>• Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Greater number of hours of unpaid work (e.g. 80–150 hours)</li> <li>• An activity requirement in the middle range (20 to 30 days)</li> <li>• Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months)</li> <li>• Exclusion requirement, lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours unpaid work</li> <li>• Activity requirement up to the maximum of 60 days</li> <li>• Curfew requirement up to 12 hours per day for 4–6 months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

## NOTES

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