

# Sexual activity in a public lavatory (Revised 2017)

Sexual Offences Act 2003, s.71

**Effective from:** 24 April 2017

**Triable only summarily:**

**Maximum: Unlimited fine and/or 6 months**

**Offence range: Band A fine – High level community order**

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## Step 1 – Determining the offence category

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

Category 1 Higher culpability **and** greater harm

Category 2 Higher culpability **and** lesser harm **or** lower culpability **and** greater harm

Category 3 Lower culpability **and** lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

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

### **Factors indicating higher culpability**

- Intimidating behaviour/threats of violence to member(s) of the public
- Blatant behaviour

### **Factors indicating lower culpability**

- All other cases

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

**Factors indicating greater harm**

- Distress suffered by members of the public
- Children or young persons present

**Factors indicating lesser harm**

- All other cases

**Step 2 – Starting point and category range**

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

<b>Offence Category</b>	<b>Starting Point</b>	<b>Range</b>
<b>Category 1</b>	Low level community order	Band C fine – High level community order
<b>Category 2</b>	Band C fine	Band B fine – Low level community order
<b>Category 3</b>	Band B fine	Band A fine – Band C fine

Persistent offending of this nature may justify an upward adjustment outside the category range and may cross the community threshold even though the offence otherwise warrants a lesser sentence.

The court should then consider adjustment for any aggravating or mitigating factors. The following 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 sentence arrived at so far.

### **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:*

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

### **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

### **Step 3 – 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.

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### **Step 4 – 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.

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### **Step 5 – 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.

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### **Step 6 – Compensation and ancillary orders**

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

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### **Step 7 – Reasons**

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