

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**13 April 2018**  
**SC(18)MAR04 – Intimidatory Offences**  
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## **1 ISSUE**

1.1 This is the final sign-off of the Intimidatory Offences Guideline, ahead of the publication of the definitive guideline in July. The guideline is then due to come into force in October 2018. All the changes discussed at the last meeting have been made so, following a final review at this meeting, the Council is asked to confirm they are content with the guidelines ahead of publication. The consultation response document will be circulated via email in due course.

1.2 This guideline has been in development since May 2016, and included a 13 week consultation period in spring 2017. The response to the consultation was generally positive, so no major reworking of the guidelines was necessary post consultation. Initially the new Domestic Abuse Guideline was part of this project, but the two projects were separated and the definitive Domestic Abuse Guideline was published on 22 February.

1.3 As noted at the last meeting, all the changes to the guidelines (to sentence ranges, harm and culpability factors, and so on) made since consultation have been tested by re-sentencing cases from court case transcripts, to see what sentence the draft guideline would likely give rise to, compared to the actual sentence in a case.

## **2 RECOMMENDATION**

2.1 That the Council:

- notes the minor changes made following the last meeting to the coercive and controlling behaviour, disclosing private sexual images, and threats to kill guidelines, and
- confirms that it is content with the guideline as it relates to all five offences, ahead of publication of the definitive guideline in July.

## **3 CONSIDERATION**

*Coercive and controlling behaviour -Annex A*

3.1 At the March Council meeting revisions to the harm factors were discussed, following the decision to reword them entirely, and to reduce the amount of harm categories from three to two, at the January meeting. The Council then asked for some minor changes to wording

to be made. These have been done and the final version can be seen on page one of **Annex A**. For completeness, the harm categories are shown below with the changes in red, and the previous wording struck through. If required, the definitions of offences are at **Annex F**, and current sentencing data is at **Annex G**.

<p><b>Category 1</b></p> <ul style="list-style-type: none"><li>• Fear of violence on <b>a number of</b> <del>several</del> occasions</li><li>• Very serious alarm or distress which has a <del>very</del> substantial adverse effect on the victim's <del>usual day to day activities</del></li><li>• Significant psychological harm</li></ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"><li>• Fear of violence on at least two occasions</li><li>• Serious alarm or distress which has a substantial adverse effect on the victim <del>victim's usual day to day activities</del></li></ul>

3.2 The Council may recall that there had been some speculation as to whether there may be some legislative changes to this offence. It is not yet clear what, if anything, may happen. As part of the recently published Government consultation '*Transforming the response to Domestic Abuse*<sup>1</sup>' a question is asked as to whether there is any further action the Government could take to strengthen the effectiveness of this offence. It presumably will then be some time before any decision is made as to whether to make any changes, and then even longer before anything is implemented. The consultation closes on the 31<sup>st</sup> May. Given this, it is recommended that the Council continues with its planned timescale for the publication of this definitive guideline.

***Question 1: Does the Council agree to continue with the timescale for publication of the definitive guideline, given the uncertainty around if/when there may be any changes to the controlling and coercive behaviour offence?***

3.3 The Council may also be interested to note that the consultation states it welcomes the new domestic abuse guideline but that the Government continues to consider ways to strengthen the law. One of the ways suggested of doing this is to create a statutory aggravating factor, which could be drafted to include behaviour involving, or with particular impact on, a child. However, the consultation notes that a statutory aggravating factor would require the domestic abuse aggravation to be established beyond reasonable doubt, which risks placing additional evidential burdens on the police and CPS (where the factual circumstances are disputed) and increases the potential for more defendants to plead not guilty to the charges.

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<sup>1</sup> [https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting\\_documents/Transforming%20the%20response%20to%20domestic%20abuse.pdf](https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/supporting_documents/Transforming%20the%20response%20to%20domestic%20abuse.pdf).

The consultation asks if the new guideline is effective in ensuring sentences imposed reflect the seriousness of domestic abuse offences when it involves children and then whether a statutory aggravating factor is needed for courts to reflect the seriousness of offences involving domestic abuse and children.

3.4 There are also proposals to introduce a new statutory definition of domestic abuse, but this would use the existing definition as the basis, with minor changes, 'financial' abuse is changed to 'economic' abuse, and 'sexuality' is changed to 'sexual orientation'. It would also be accompanied by underpinning statutory guidance for professionals who have safeguarding obligations.

**Question 2: Is the Council content with this final version of the guideline, ahead of publication?**

*Disclosing private sexual images - Annex B*

3.5 At the last meeting the Council asked for a very minor change to be made to a factor in lesser culpability for this offence, that the word 'some' should be replaced with 'limited', so that it reads '*Conduct was intended to cause limited distress and/or humiliation*'. This can also be seen on page two of **Annex B**. This was the only change on the guideline that the Council asked to be made at the last meeting.

**Question 3: Is the Council content with this final version of the guideline, ahead of publication?**

*Threats to Kill- Annex C*

3.6 At the last meeting the Council again only asked for very minor changes to be made to this guideline, that the 's' at the end of the word 'threats' in two factors in high culpability should be placed in brackets, so it reads: '*threat(s) made in the presence of children*' and '*threat(s) with significant violence*'. These changes have been made and can be seen on page two of **Annex C**. This was the only change on the guideline that the Council asked to be made at the last meeting.

**Question 4: Is the Council content with this final version of the guideline, ahead of publication?**

*Harassment and stalking guidelines- Annexes D and E*

3.7 The Council discussed these guidelines at the December meeting, and changes were made following that meeting which were provided for the January meeting. On reviewing these guidelines in preparation for final sign off- one further amendment is proposed. For both guidelines, there is a high culpability factor of '*persistent action over sustained period*'. The

use of the phrase '*persistent action over a sustained period*' did give rise to some inconsistent categorisation during road testing, for example, in one scenario only three out of seven participants felt that harassing behaviour over six months was persistent/ sustained and so placed the offender in high culpability. In addition, several magistrates said they would like more guidance on the meaning of 'sustained'.

3.8 Given that this seemingly straightforward factor gave rise to some confusion, perhaps 'prolonged' could be used instead of sustained. The Council has added a new high culpability factor to the controlling or coercive behaviour offence of '*persistent action over a prolonged period*', so it would be consistent across all the guidelines if 'prolonged' was used in this context. The culpability factors can be seen on page two of **Annexes D and E**, if the Council agree to the suggestion, the change would be made to both guidelines.

***Question 5: Does the Council agree to change the word 'sustained' to 'prolonged' within high culpability for both stalking/harassment guidelines? Is the Council content with this final version of the guidelines, ahead of publication?***

#### **4 IMPACT/RISKS**

4.1 It is likely that the publication of the definitive guideline will generally be well received. Changes have been made following suggestions during consultation, such as including factors within the medium levels of culpability and harm, improving the guidance for the racially or religiously aggravated offences, and making some changes to the sentence ranges, thus showing the Council is genuinely open and consultative in its proposals on draft guidelines. Some of the organisations representing victims of stalking (Paladin, Suzy Lamplugh Trust) however will not be happy that the harassment and stalking guidelines remain combined, as they felt that stalking offences required a separate guideline. Prior to publication this decision will be discussed in detail with the organisations, in the hope of countering any negative public reaction once the guideline is published.

4.2 A final resource assessment will be prepared and circulated to the Council in due course, ahead of the publication of the definitive guideline. The aim of the guideline is to promote consistency of sentencing for the five offences. It is hoped that producing sentencing guidelines for the newer offences of controlling and coercive behaviour and disclosing private sexual images, where no guidance previously existed, in particular will promote consistency of sentencing.

4.3 As discussed in previous meetings, for the newer offences such as coercive and controlling behaviour, and disclosing private sexual images, there has only been limited data on sentencing practice available to develop the guidelines. However, in due course, as with other guidelines, an evaluation of the impact of the guideline will be conducted and published.

***Question 6: Is the Council content that the impact and risks have been adequately considered in preparation for the publication of the definitive guideline?***

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# **Controlling or coercive behaviour in an intimate or family relationship**

**Serious Crime Act 2015 (section 76)**

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**Triable either way**

Maximum: 5 years' custody

Offence range: Community order - 4 years' custody

**Also refer to the *Domestic Abuse: Overarching Principles* guideline**

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

The court should determine the offence category with reference only to the factors 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 - High culpability**

- Conduct intended to maximise fear or distress
- Persistent action over a prolonged period
- Use of multiple methods of controlling or coercive behaviour
- Sophisticated offence
- Conduct intended to humiliate and degrade the victim

**B - Medium culpability**

- Conduct intended to cause some fear or distress
- Scope and duration of offence that falls between categories A and C
- All other cases that fall between categories A and C

**C - Lesser culpability**

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Offence was limited in scope and duration

**Harm**

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

**Category 1**

- Fear of violence on a number of occasions
- Very serious alarm or distress which has a substantial adverse effect on the victim
- Significant psychological harm

**Category 2**

- Fear of violence on at least two occasions
- Serious alarm or distress which has a substantial adverse effect on the victim



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

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

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 2 years 6 months' custody</p> <p><b>Category range</b> 1 - 4 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' - 2 years 6 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> High level community order – 1 year's custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks'- 2 years 6 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> High level community order- 1 year's custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order- 26 weeks' custody</p>

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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.

**Other aggravating factors:**

- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- A proven history of violence or threats by the offender in a domestic context
- Impact of offence on others particularly children
- Exploiting contact arrangements with a child to commit the offence
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Victim left in debt, destitute or homeless due to exploitation of finances
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not taken into account at step one)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

**STEP THREE**

**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

#### **STEP FIVE**

##### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

#### **STEP SIX**

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

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

##### ***Compensation order***

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

##### **Other ancillary orders available include:**

##### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (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 SEVEN**

##### **Reasons**

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

#### **STEP EIGHT**

##### **Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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## **Disclosing private sexual images**

### **Criminal Justice and Courts Act 2015 (section 33)**

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**Triable either way**

Maximum: 2 years' custody.

Offence range: Discharge to 1 year 6 months' custody

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

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference only to the factors 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- High Culpability

- Conduct intended to maximise distress and/or humiliation
- Images circulated widely/publically
- Significant planning and/or sophisticated offence
- Repeated efforts to keep images available for viewing

#### B – Medium Culpability

- Some planning
- Scope and duration that falls between categories A and C
- All other cases that fall between categories A and C

#### C – Lesser Culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability.
- Little or no planning
- Conduct intended to cause limited distress and/or humiliation
- 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
- Offence has a considerable practical impact on the victim

#### 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
- Offence has some practical impact on the victim

#### Category 3

- Limited distress or harm caused to the victim

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

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

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' - 1 year 6 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> 12 weeks' custody -1 year's custody</p>	<p><b>Starting point</b> 12 weeks' custody</p> <p><b>Category range</b> High level community order - 26 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> 12 weeks' - 1 year's custody</p>	<p><b>Starting point</b> 12 weeks' custody</p> <p><b>Category range</b> High level community order - 26 weeks' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order - 12 weeks' custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 12 weeks' custody</p> <p><b>Category range</b> High level community order - 26 weeks' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order - 12 weeks' custody.</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Discharge - High level community order</p>

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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.

**Other aggravating factors:**

- Impact of offence on others, especially children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- 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
- Offender took steps to limit circulation of images
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not taken into account at step one)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

**STEP THREE**

**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.



#### **STEP FIVE**

##### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

#### **STEP SIX**

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

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

##### ***Compensation order***

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

##### **Other ancillary orders available include:**

##### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (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 SEVEN**

##### **Reasons**

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

#### **STEP EIGHT**

##### **Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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## Annex C

### **Threats to kill** **Offences Against the Person Act 1861 (section 16)**

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**Triable either way**

Maximum: 10 years' custody

Offence range: Community order - 7 years' custody

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

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

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

The court should determine the offence category with reference only to the factors 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 - High culpability**

- Significant planning and/or sophisticated offence
- Visible weapon
- Threat(s) made in the presence of children
- History of and/or campaign of violence towards the victim
- Threat(s) with significant violence

**B - Medium culpability**

Cases that fall between categories A and C because:

- Factors are present in A and C which balance each other out **and/or**
- The offender's culpability falls between the factors described in A and C

**C - Lesser culpability**

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Offence was limited in scope and duration

**Harm**

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

**Category 1**

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Offence has a considerable practical impact on the victim

**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
- Offence has some practical impact on the victim

**Category 3**

- Little or no distress or harm caused to the victim

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

**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.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 4 years' custody  <b>Category range</b> 2 - 7 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 - 4 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' -2 years 6 months' custody
<b>Category 2</b>	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 year – 4 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' - 2 years 6 months' custody	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> High level community order - 1 year's custody
<b>Category 3</b>	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' -2 years 6 months' custody	<b>Starting point</b> 26 weeks' custody  <b>Category range</b> High level community order - 1 year's custody	<b>Starting point</b> Medium level community order  <b>Category range</b> Low level community-High level community order

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

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

**Factors increasing seriousness**

**Statutory aggravating factors:**

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

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

- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.

**Other aggravating factors:**

- Offence committed against those working in the public sector or providing a service to the public
- Impact of offence on others, particularly children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not taken into account at step one)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

**STEP THREE**

**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE**

**Dangerousness**

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

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A)

#### **STEP SIX**

##### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

#### **STEP SEVEN**

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

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

##### ***Compensation order***

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

##### **Other ancillary orders available include:**

##### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (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.

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

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



### **Harassment**

**Protection from Harassment Act 1997 (section 2)**

### **Stalking**

**Protection from Harassment Act 1997 (section 2A)**

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**Triable only summarily**

Maximum: 6 months' custody

Offence range: Discharge - 26 weeks custody

### **Racially or religiously aggravated harassment**

**Crime and Disorder Act 1998 (section 32(1)(a))**

### **Racially or religiously aggravated stalking-**

**Crime and Disorder Act 1998 (section 32(1)(a))**

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**Triable either way**

Maximum: 2 years' custody

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

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

The court should determine the offence category with reference only to the factors 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.**

<p><b>Culpability</b> demonstrated by one or more of the following:</p> <p><b>A - High culpability:</b></p> <ul style="list-style-type: none"> <li>• Conduct intended to maximise fear or distress</li> <li>• High degree of planning and/or sophisticated offence</li> <li>• Persistent action over <u>prolonged sustained</u> period</li> <li>• Threat of serious violence</li> <li>• 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</li> </ul> <p><b>B - Medium culpability:</b></p> <p>Cases that fall between categories A and C, in particular:</p> <ul style="list-style-type: none"> <li>• Conduct intended to cause some fear or distress</li> <li>• Some planning</li> <li>• Threat of some violence</li> <li>• Scope and duration of offence that falls between categories A and C</li> </ul> <p><b>C - Lesser culpability:</b></p> <ul style="list-style-type: none"> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Little or no planning</li> <li>• Offence was limited in scope and duration</li> </ul>
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**Harm**

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

<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Very serious distress caused to the victim</li> <li>• Significant psychological harm caused to the victim</li> <li>• Victim caused to make considerable changes to lifestyle to avoid contact</li> </ul>
<p><b>Category 2</b></p> <p>Harm that falls between categories 1 and 3, and in particular:</p> <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Victim caused to make some changes to lifestyle to avoid contact</li> </ul>
<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• Limited distress or harm caused to the victim</li> </ul>

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

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

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

**Maximum 6 months' custody (basic offence)**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 12 weeks' custody</p> <p><b>Category range</b> High level community order-26 weeks' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Medium level community order-16 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order-12 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Medium level community order-16 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order-12 weeks' custody</p>	<p><b>Starting point</b> Low level Community order</p> <p><b>Category range</b> Band B fine - Medium level community order</p>
<b>Category 3</b>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order-12 weeks' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band B fine- Medium level community order</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category range</b> Discharge - Low level community order</p>

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

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

- has elapsed since the conviction
- Offence committed whilst on bail

**Other aggravating factors:**

- Using a position of trust to facilitate the offences
- 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 an 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

**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 2 years' custody (maximum for the basic offence is 6 months' custody)**

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ 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).</li> <li>▪ 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).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ 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).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <b>or</b> consider a more severe type of sentence than for the basic offence.</p>
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ 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).</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

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**

##### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

#### **STEP SIX**

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

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

##### ***Compensation order***

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

##### **Other ancillary orders available include:**

##### ***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (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 SEVEN****Reasons**

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

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

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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## 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)**

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**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))**

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**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*

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

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference only to the factors 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

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

**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
<b>Category 1</b>	<b>Starting point</b> 5 years' custody  <b>Category range</b> 3 years 6 months' - 8 years' custody	<b>Starting point</b> 2 years 6 months' custody  <b>Category range</b> 1 - 4 years' custody	<b>Starting point</b> 36 weeks' custody  <b>Category range</b> 12 weeks' – 1 year 6 months' custody	<b>Starting point</b> 12 weeks' custody  <b>Category range</b> High level community order - 36 weeks' custody
<b>Category 2</b>	<b>Starting point</b> 2 years 6 months' custody  <b>Category range</b> 1 - 4 years' custody	<b>Starting point</b> 36 weeks' custody  <b>Category range</b> 12 weeks' - 1 year 6 months' custody	<b>Starting point</b> 12 weeks' custody  <b>Category range</b> High level community order - 36 weeks' custody	<b>Starting point</b> High level community order  <b>Category range</b> Low level Community order - 12 weeks' custody
<b>Category 3</b>	<b>Starting point</b> 36 weeks' custody  <b>Category range</b> 12 weeks' - 1 year 6 months' custody	<b>Starting point</b> 12 weeks' custody  <b>Category range</b> High level community order - 36 weeks' custody	<b>Starting point</b> High level community order  <b>Category range</b> Low level community order - 12 weeks' custody	<b>Starting point</b> Low level community order  <b>Category range</b> Band C fine - High level community order

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

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

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

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES ONLY</b>
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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)**

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ 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)</li> <li>▪ 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).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ 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).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <b>or</b> consider a more severe type of sentence than for the basic offence.</p>
<b>LOW LEVEL OF RACIAL OR RELIGIOUS</b>	<b>SENTENCE UPLIFT</b>

<p><b>Where offence committed in a domestic context, also refer to the <i>Domestic Abuse: Overarching Principles</i> guideline</b></p>
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<b>AGGRAVATION</b>	
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ 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).</li> </ul>	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**

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

**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.

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

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



## Annex F

### **Harassment (without violence)** – Protection from Harassment Act 1997, s 2,

#### **Elements of the offence:**

Course of conduct (conduct on at least two occasions in relation to that person)

- that amounts to harassment (includes alarming or causing distress) of another and
- offender knows or ought to know that it amounts to harassment of another.

#### **OR**

Course of conduct (conduct on at least one occasion in relation to each of those persons)

- which involves harassment (includes alarming or causing distress) of 2 or more persons and
- offender knows or ought to know that it involves harassment of those persons and
- by which he intends to persuade any person (whether or not one of those mentioned above)
- not to do something that he is entitled or required to do or
- to do something that he is not under any obligation to do.

Offender ought to know if a reasonable person in possession of the same information would think it amounted to or involved harassment of the other.

### **Harassment (putting people in fear of violence)** – Protection from Harassment Act 1997, s 4

#### **Elements of the offence:**

Course of conduct

- that causes another to fear on at least 2 occasions that violence will be used against him and
- offender knows or ought to know that it will cause the other to fear violence on each of those occasions.

Offender ought to know if a reasonable person in possession of the same information would think it would cause fear.

### **Stalking (harassment which involves a course of conduct that amounts to stalking)** – Protection from Harassment Act 1997 s2A

#### **Elements of the offence:**

Course of conduct (conduct on at least two occasions in relation to that person)

- that amounts to harassment (includes alarming or causing distress) of another and
- offender knows or ought to know that it amounts to harassment of another and
- the course of conduct amounts to stalking

The following are examples of acts or omissions that are associated with stalking:

- following a person
- contacting, or attempting to contact, a person by any means
- publishing any statement or other material -  
(i) relating or purporting to relate to a person, or

- (ii) purporting to originate from a person,
- monitoring the use by a person of the internet, email or any other form of electronic communication
- loitering in any place (whether public or private)
- interfering with any property in the possession of a person
- watching or spying on a person.

**Stalking (involving fear of violence or serious alarm or distress)** –Protection from Harassment Act 1997, s 4A

**Elements of the offence:**

Course of conduct

- that amounts to stalking and
- causes another to fear on at least 2 occasions that violence will be used against him **OR**
- causes another to serious alarm or distress which has a substantial adverse effect on usual day-to-day activities
- offender knows or ought to know that it will cause the other to fear violence on each of those occasions or cause serious alarm or distress.

Offender ought to know if a reasonable person in possession of the same information would think it would cause fear or cause serious alarm or distress.

The following are examples of acts or omissions that are associated with stalking:

- following a person
- contacting, or attempting to contact, a person by any means
- publishing any statement or other material -
  - (i) relating or purporting to relate to a person, or
  - (ii) purporting to originate from a person,
- monitoring the use by a person of the internet, email or any other form of electronic communication
- loitering in any place (whether public or private)
- interfering with any property in the possession of a person
- watching or spying on a person.

**Threats to Kill** –Offences Against the Person 1861 s16

**Elements of the offence:**

Making a threat to another, intending that that other would fear it would be carried out, to kill that other or a third person.

**Disclosing private images** - Criminal Justice and Courts Act 2015, s33

**Elements of the offence:**

Disclosing a private sexual photograph or film to a third person or persons without the consent of the person who appears in the photograph or film with the intention of causing that person distress.

**Domestic Abuse** – Controlling or coercive behaviour in an intimate or family relationship – Serious Crime Act 2015, s 76,

**Elements of the offence:**

Repeatedly or continuously engaging in behaviour towards a 'personally connected' person that is controlling or coercive and has a serious effect on that person and offender knows or ought to know that the behaviour will have a serious effect.

'Personally connected' means

- in an intimate personal relationship with or
- living with and members of the same family or
- living with and have previously have been in an intimate personal relationship.

Behaviour has a 'serious effect' if

- it causes victim fear, on at least two occasions, that violence will be used against victim or
- (b) it causes victim serious alarm or distress which has a substantial adverse effect on victim's usual day-to-day activities.

Offender ought to know if a reasonable person in possession of the same information would know.

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Table 1: Number of adult offenders sentenced for specified intimidatory offences, 2006-2016<sup>1</sup>

Offence	Court type	Number of adult offenders sentenced										
		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4	MC	385	333	353	387	411	341	278	322	384	413	365
	CC	348	375	365	304	300	364	239	279	368	393	308
	<b>Total</b>	<b>733</b>	<b>708</b>	<b>718</b>	<b>691</b>	<b>711</b>	<b>705</b>	<b>517</b>	<b>601</b>	<b>752</b>	<b>806</b>	<b>673</b>
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32	MC	12	12	4	9	13	29	19	15	24	26	27
	CC	33	24	29	28	25	17	11	14	10	8	14
	<b>Total</b>	<b>45</b>	<b>36</b>	<b>33</b>	<b>37</b>	<b>38</b>	<b>46</b>	<b>30</b>	<b>29</b>	<b>34</b>	<b>34</b>	<b>41</b>
Harassment (without violence), Protection from Harassment Act 1997, S2	MC	3,241	3,239	3,382	3,821	4,228	3,939	3,893	4,250	4,853	5,218	5,072
	CC	179	169	212	236	258	187	119	137	196	210	177
	<b>Total</b>	<b>3,420</b>	<b>3,408</b>	<b>3,594</b>	<b>4,057</b>	<b>4,486</b>	<b>4,126</b>	<b>4,012</b>	<b>4,387</b>	<b>5,049</b>	<b>5,428</b>	<b>5,249</b>
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32	MC	46	41	52	38	76	61	80	81	107	130	93
	CC	40	35	35	38	39	31	22	15	19	13	5
	<b>Total</b>	<b>86</b>	<b>76</b>	<b>87</b>	<b>76</b>	<b>115</b>	<b>92</b>	<b>102</b>	<b>96</b>	<b>126</b>	<b>143</b>	<b>98</b>
Threats to kill, Offences Against the Person Act 1861, S16	MC	148	138	121	122	138	109	103	112	144	170	159
	CC	301	250	254	230	283	306	298	294	344	339	319
	<b>Total</b>	<b>449</b>	<b>388</b>	<b>375</b>	<b>352</b>	<b>421</b>	<b>415</b>	<b>401</b>	<b>406</b>	<b>488</b>	<b>509</b>	<b>478</b>
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A	MC							2	191	336	316	223
	CC								1	13	19	18
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>192</b>	<b>349</b>	<b>241</b>
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A	MC								27	70	86	76
	CC								14	69	105	97
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>41</b>	<b>139</b>	<b>173</b>
Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33	MC										57	190
	CC										5	36
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>62</b>	<b>226</b>
Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76	MC											25
	CC											33
	<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>58</b>

Source: Court Proceedings Database, Ministry of Justice

## Note

1) Excludes data for Cardiff magistrates' court for April, July and August 2008

Table 2: Sentence outcomes for adult offenders sentenced for specified intimidatory offences, 2016

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with <sup>1</sup>	Total
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4	0	16	5	129	228	276	19	673
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32	0	2	3	6	16	14	0	41
Harassment (without violence), Protection from Harassment Act 1997, S2	7	613	935	2,143	857	556	138	5,249
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32	1	7	9	37	26	15	3	98
Threats to kill, Offences Against the Person Act 1861, S16		5	4	53	135	255	26	478
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A	0	11	22	88	79	39	2	241
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A	0	1	2	30	64	71	5	173
Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33	0	10	16	59	85	52	4	226
Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76	0	2	0	9	19	28	0	58

Source: Court Proceedings Database, Ministry of Justice

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with <sup>1</sup>	Total
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4	0%	2%	1%	19%	34%	41%	3%	100%
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32 <sup>2</sup>	0%	5%	7%	15%	39%	34%	0%	100%
Harassment (without violence), Protection from Harassment Act 1997, S2	<0.5%	12%	18%	41%	16%	11%	3%	100%
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32	1%	7%	9%	38%	27%	15%	3%	100%
Threats to kill, Offences Against the Person Act 1861, S16	0%	1%	1%	11%	28%	53%	5%	100%
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A	0%	5%	9%	37%	33%	16%	1%	100%
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A	0%	1%	1%	17%	37%	41%	3%	100%
Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33	0%	4%	7%	26%	38%	23%	2%	100%
Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76	0%	3%	0%	16%	33%	48%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

## Note

1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders

Table 3: Average and maximum custodial sentence lengths for adult offenders sentenced to immediate custody for specified intimidatory offences, 2016 <sup>1</sup>

Offence	Post guilty plea			Pre guilty plea (estimated)		
	Mean sentence length (in months) <sup>2,4</sup>	Median sentence length (in months) <sup>3,4</sup>	Maximum sentence length (in months)	Mean sentence length (in months) <sup>2,4</sup>	Median sentence length (in months) <sup>3,5</sup>	Maximum sentence length (in months)
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4	10 months	6 months	5 years	1 year 2 months	9 months	5 years
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32 <sup>4</sup>	1 year	8 months	4 years	1 year 5 months	9 months	5 years 4 months
Harassment (without violence), Protection from Harassment Act 1997, S2	3 months	2 months	6 months	3 months	4 months	6 months
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32 <sup>4,5</sup>	5 months	4 months	12 months	6 months	5 months	1 year 4 months
Threats to kill, Offences Against the Person Act 1861, S16	1 year 5 months	1 year 2 months	9 years	1 year 11 months	1 year 6 months	10 years
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A	3 months	3 months	6 months	4 months	4 months	6 months
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A	1 year 1 month	1 year	3 years	1 year 7 months	1 year 4 months	3 years 6 months
Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33 <sup>6</sup>	5 months	4 months	2 years	8 months	6 months	2 years
Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76 <sup>4</sup>	1 year 5 months	1 year 4 months	3 years	1 year 11 months	1 year 8 months	4 years 6 months

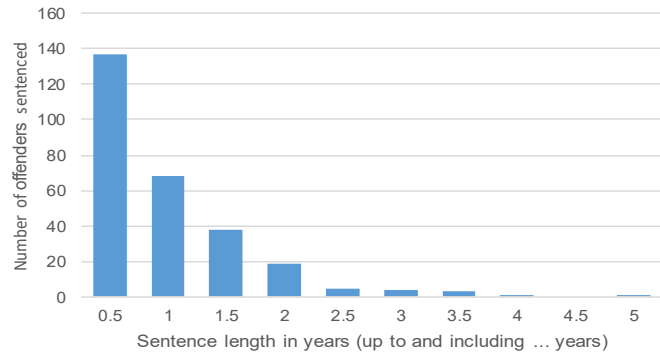
Source: Court Proceedings Database, Ministry of Justice

## Notes

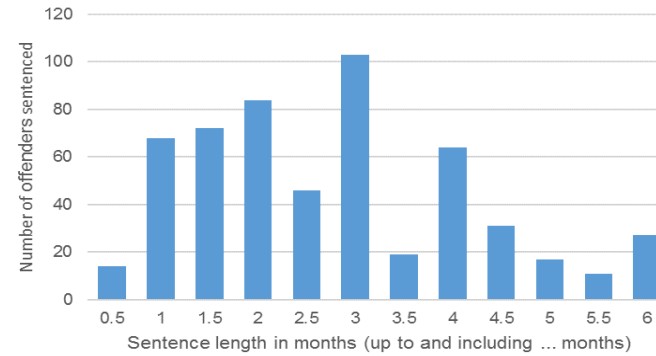
- 1) To estimate the pre guilty plea sentence lengths for most offences in this table, it has been assumed that around 90% of offenders sentenced pleaded guilty, and that those who pleaded guilty received a reduction in line with the reductions observed in the CCSS data (for example, 65% of offenders who pleaded guilty received a 33% reduction, 13% received a 25% reduction etc.). For offenders sentenced to immediate custody in magistrates' courts, the offenders who received an uplift were selected at random. There were two offences where analysis suggested that the proportion of offenders pleading guilty was different to 90%. Where this was the case a footnote has been added to indicate what proportion was used instead.
- 2) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 3) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order
- 4) Mean and median should be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence
- 5) For this offence it was assumed that 80% of offenders sentenced pleaded guilty
- 5) For this offence it was assumed that 100% of offenders sentenced pleaded guilty

**Figure 1: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for specified intimidatory offences, after any reduction for guilty plea, 2016**

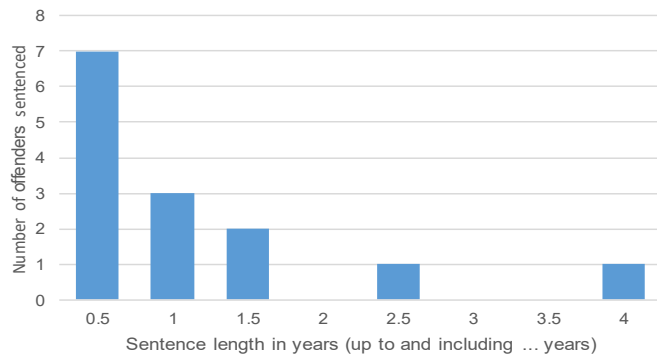
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



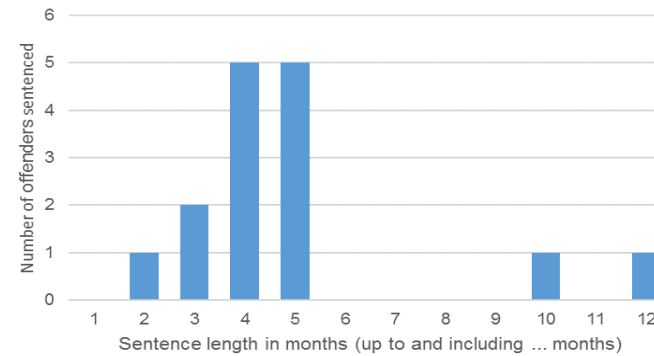
Harassment (without violence), Protection from Harassment Act 1997, S2



Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32

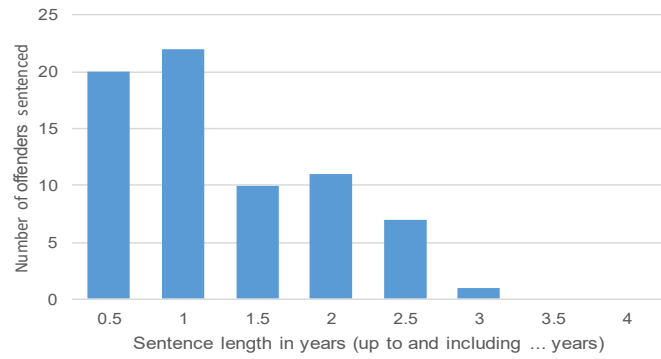


Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32

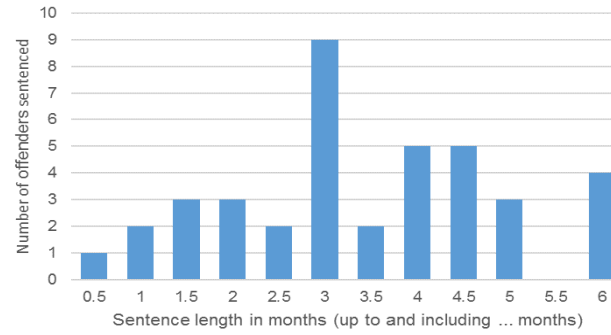




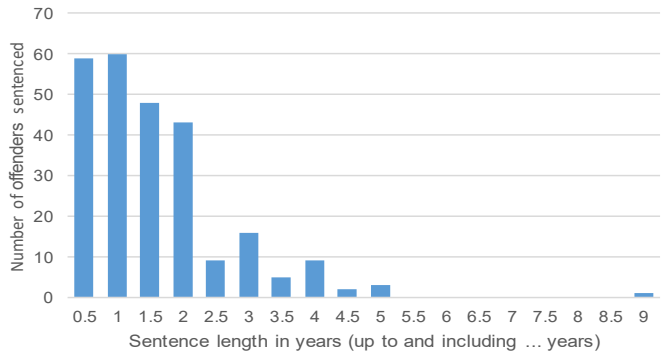
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



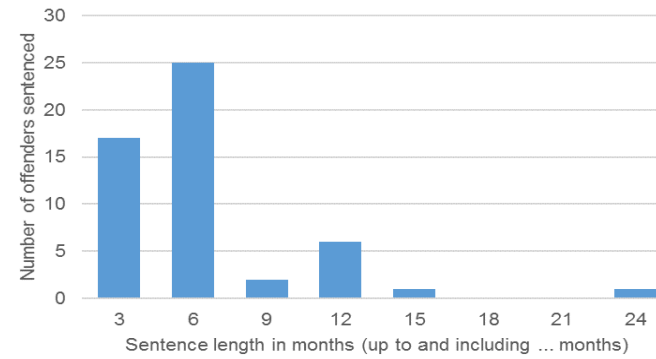
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



Threats to kill, Offences Against the Person Act 1861, S16



Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33



Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76

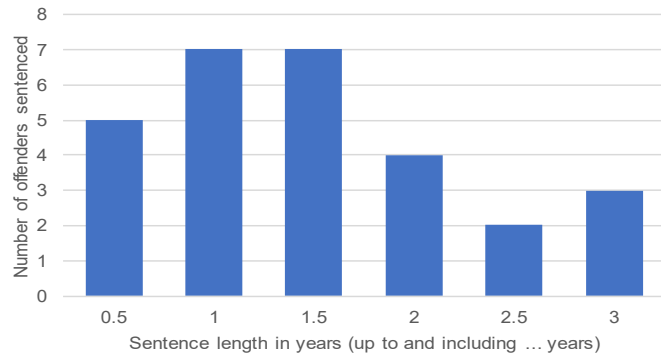
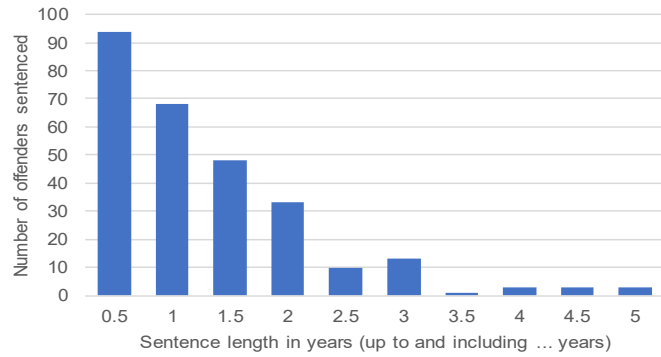
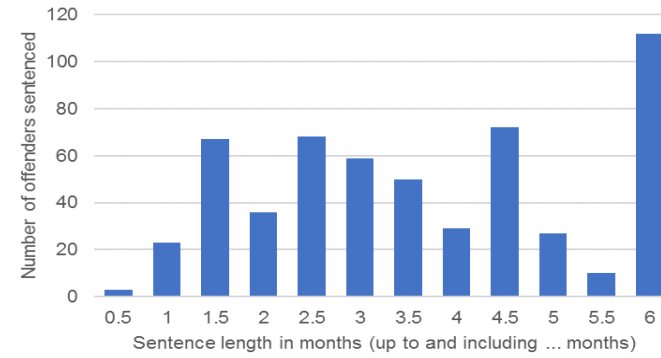


Figure 2: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for specified intimidatory offences, before any reduction for guilty plea, 2016

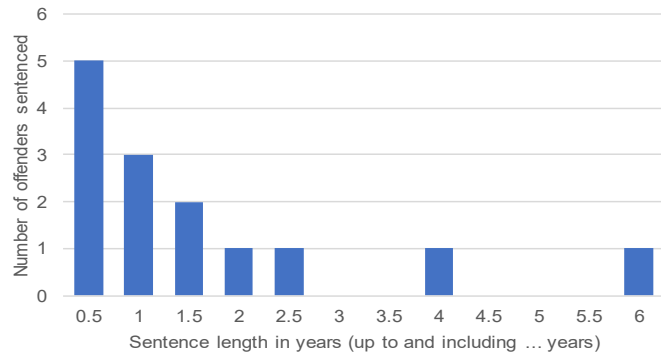
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



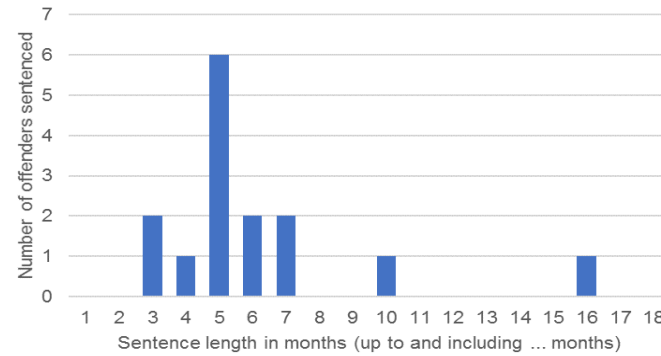
Harassment (without violence), Protection from Harassment Act 1997, S2



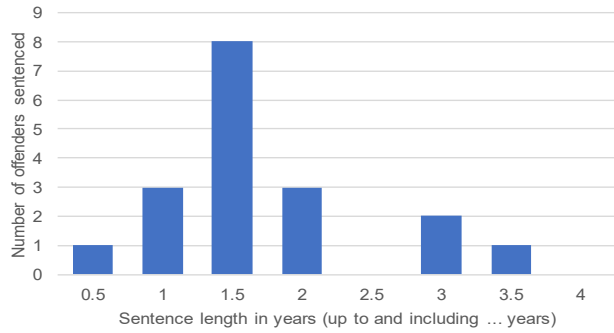
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32



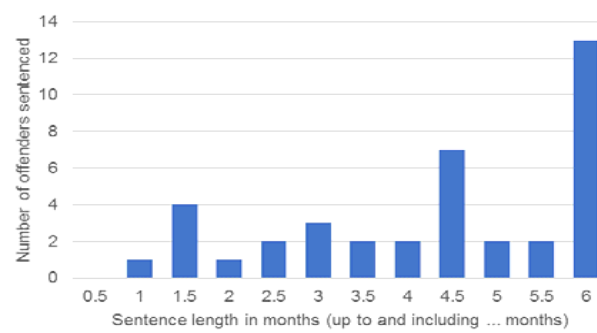
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32



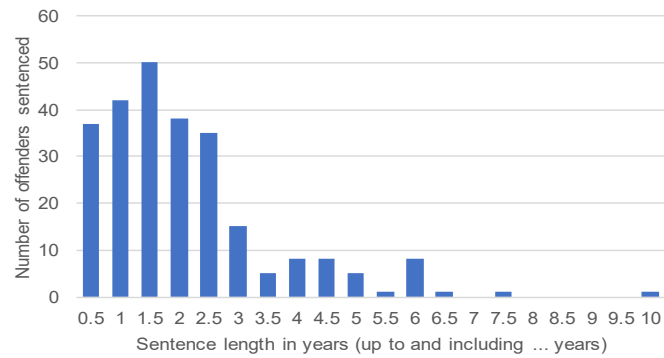
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



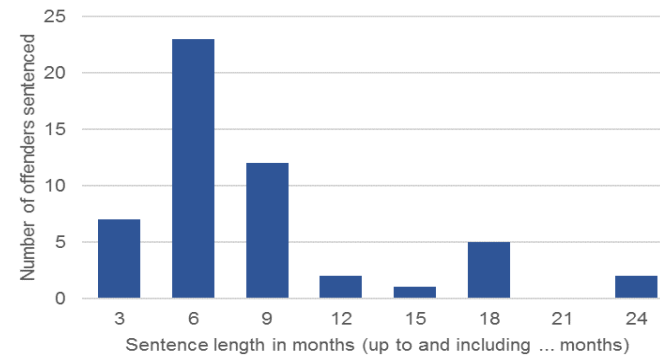
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



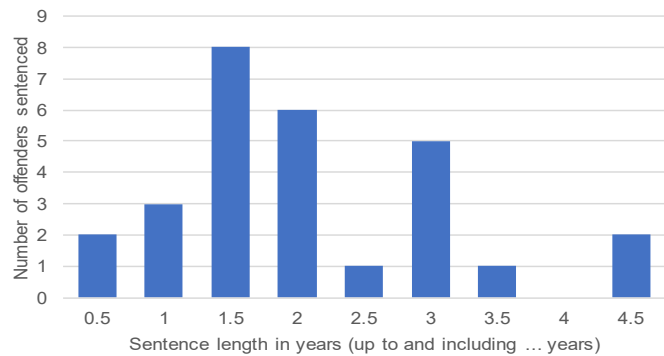
Threats to kill, Offences Against the Person Act 1861, S16



Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33



Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76



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