

Riot – draft guideline**Levels of Culpability**

A	<p>Factors in Category B present AND any of;</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon • Offender was a ringleader or carried out a leading role • Offenders actions escalated level of violence and/or disorder
B	<ul style="list-style-type: none"> • Offender participated in incident which caused widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity in a public place

Levels of Harm**Harm**

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress and/or disruption • Incident causes serious detrimental impact to community • Incident causes loss of livelihood or significant costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability	
	A	B
Category 1	Starting point 7 years Category range 6 – 9 years	Starting point 6 years Category range 4- 7 years
Category 2	Starting point 6 years Category range 4 – 7 years	Starting point 5 years Category range 3 – 6 years

The non-exhaustive lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offenders role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Relevant mitigating factors should then be considered to determine if further adjustment to the sentence is required.

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

Other aggravating factors:

- Active and persistent participant
- Incitement of others
- Offender masked or disguised to evade detection
- Incident occurred in busy public area
- Took steps to prevent emergency services from carrying out their duties
- Offender used weapon
- Offender threw missiles/objects
- Use of significant physical violence
- Injury to animal carrying out public duty
- Actively recruited other participants
- Possession of weapon or article intended to injure
- Vulnerable persons or children present during incident
- Commission of offence whilst under the influence of alcohol or drugs
- Ignored warnings or exclusion notices
- Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where linked to commission of offence
- Low level involvement
- Previous good character
- Sole or primary carer for dependent relatives

Other offences committed within incidents of riot

Where sentencing other offences committed in the context of riot, the court should treat the context of the offending as a severely aggravating feature of any offence charged.

Violent Disorder – draft guideline**Levels of Culpability**

A	<p>Factors in Category B present AND any of;</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon • Offender was a ringleader or carried out a leading role • Targeting of individual by a group
B	<ul style="list-style-type: none"> • Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving serious acts of violence • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity
C	<ul style="list-style-type: none"> • Offence involved threats of violence only • Offence involved lower level of violence or activity than included in Category B

Levels of Harm**Harm**

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress and/or disruption • Serious detrimental impact on community • Incident causes loss of livelihood or significant costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident results in attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years Category range 2 – 4 years	Starting point 2 years Category range 1 – 3 years	Starting point 1 year Category range HL CO - 2 years
Category 2	Starting point 2 years Category range 1 – 3 years	Starting point 1 year Category range HL CO - 2 years	Starting point 6 mths imp Category range ML CO – 1 year 6 months

The non-exhaustive lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offenders role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

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

Other aggravating factors:

- Active and persistent participant
- Offenders actions escalated level of violence and/or disorder
- Incitement of others
- Offender masked or disguised to evade detection
- Incident occurred in busy public area
- Offender used weapon
- Offender threw missiles/objects
- Use of significant physical violence
- Injury to animal carrying out public duty
- Possession of weapon or article intended to injure
- Incident occurred in victim's home
- Vulnerable persons or children present during incident
- Commission of offence whilst under the influence of alcohol or drugs
- Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions
- Evidence of steps initially taken to defuse incident
- Low level involvement
- Minor/peripheral role
- Remorse
- Previous good character
- Sole or primary carer for dependent relatives
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where linked to commission of offence

Affray – draft guideline**Levels of Culpability**

A	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Use of serious or sustained violence • Intention to cause fear of serious violence • Leading role where offending is part of group activity
B	<ul style="list-style-type: none"> • Threat of violence by any weapon (whether or not produced) • Lesser role where offending is part of group activity • Threat or use of violence falling between levels in categories A and C
C	<ul style="list-style-type: none"> • Threat or use of minimal violence • The offender acted in self-defence or in fear of violence (where not amounting to a defence) • Minimal/incidental role where offending is part of group activity

Levels of Harm**Harm**

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

Category 1	<ul style="list-style-type: none"> • Serious physical injury to others • Serious fear/distress caused
Category 2	<ul style="list-style-type: none"> • Harm falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Little or no physical injury to others • Little or no minimal fear/distress caused

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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 2 years</p> <p>Category range 1 year 6 months - 2 years 9 months custody</p>	<p>Starting point 1 year</p> <p>Category range 6 months - 1 year 6 months custody</p>	<p>Starting point 6 months custody</p> <p>Category range ML CO - 1 year custody</p>
Category 2	<p>Starting point 1 year custody</p> <p>Category range 6 months - 1 year 6 months custody</p>	<p>Starting point 6 months custody</p> <p>Category range ML CO - 1 year custody</p>	<p>Starting point HL CO</p> <p>Category range LL CO – 9 months custody</p>
Category 3	<p>Starting point 6 months custody</p> <p>Category range ML CO - 1 year custody</p>	<p>Starting point HL CO</p> <p>Category range LL CO – 9 months custody</p>	<p>Starting point ML CO</p> <p>Category range Band C Fine - HL CO</p>

The non-exhaustive lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offenders role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

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 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
- Offence committed whilst on bail

Other aggravating factors

- Incident occurred in busy public area
- Offender threw missiles/objects (where not deciding factor in Step One assessment)
- Vulnerable persons or children present during incident
- Incident occurred in victim's home
- Prolonged incident
- Significant impact on public resources
- Threats or violence directed towards public servants in the course of their duty
- Commission of offence whilst under the influence of alcohol or drugs
- Large number of persons affected
- Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions
- Previous good character
- Remorse
- Incident shortlived
- Evidence of steps initially taken to defuse incident
- Low level involvement
- Minor/peripheral role
- No members of public present other than those participating in violence
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where linked to commission of offence
- Sole or primary carer for dependent relatives

Section 4 – threatening behaviour – fear or provocation of violence**STEP ONE****Determining the offence category**

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

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:**A - High culpability:**

- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Victim feared serious violence
- Fear of immediate violence caused to multiple persons present
- Incident escalated into violence

Category 2

- All other cases

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	<p>Starting point 12 weeks' custody</p> <p>Range Medium Level community order - 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>
Category 2	<p>Starting point High level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Range Discharge - medium level community order</p>

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one).

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below;

Basic Offence Category	Level of Racial / Religious Aggravation		
	High	Medium	Low
A1	<p>Starting point 36 weeks' custody</p> <p>Range 16 weeks' – 1 year 6 month's custody</p>	<p>Starting point 26 weeks' custody</p> <p>Range 6 weeks' – 1 year's custody</p>	<p>Starting point 16 weeks' custody</p> <p>Range High level community order – 36 weeks' custody</p>
A2 or B1	<p>Starting point 12 weeks' custody</p> <p>Range 6 weeks' – 1 year's custody</p>	<p>Starting point 6 weeks' custody</p> <p>Range Medium level community order – 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Range Low level community order – 16 weeks' custody</p>
B2	<p>Starting point 6 weeks' custody</p> <p>Range High level community order – 26 weeks' custody</p>	<p>Starting point High Level community order</p> <p>Range Low level community order – 12 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Range Band C fine - High level community order</p>

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

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 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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

Other aggravating factors:

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Leading role in group
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation
- History of antagonising the victim
- Victim had no opportunity to escape situation (ie: on public transport)
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or subject to post sentence supervision
- History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

- Peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where linked to commission of offence
- Sole or primary carer for dependent relatives

Section 4A – disorderly behaviour with intent to cause harassment, alarm or distress

STEP ONE
Determining the offence category

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

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Sustained incident
- Use of substantial force
- Production of weapon

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	<p>Starting point High level community order</p> <p>Range Medium level community order – 26 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>
Category 2	<p>Starting point Low level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Range Discharge – low level community order</p>

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence).. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one).

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category below;

Basic Offence Category	Level of Racial / Religious Aggravation		
	High	Medium	Low
A1	<p>Starting point 26 weeks' custody</p> <p>Range 6 weeks' – 1 year custody</p>	<p>Starting point 12 weeks' custody</p> <p>Range High Level CO – 36 weeks' custody</p>	<p>Starting point 6 weeks' custody</p> <p>Range Medium level community order – 26 weeks' custody</p>
A2 or B1	<p>Starting point 6 weeks' custody</p> <p>Range High Level community order – 36 weeks' custody</p>	<p>Starting point High Level CO</p> <p>Range Medium level community order – 26 weeks' custody</p>	<p>Starting point Medium Level CO</p> <p>Range Band C fine – 16 weeks' custody</p>
B2	<p>Starting point High Level CO</p> <p>Range Medium level community order – 12 weeks' custody</p>	<p>Starting point Medium Level CO</p> <p>Range Band C fine – 6 weeks' custody</p>	<p>Starting point Low Level community order</p> <p>Range Band B fine - High level community order</p>

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

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 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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

Other aggravating factors:

- Planning
- Leading role in group
- Offence committed against those providing a service to the public
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- History of antagonising the victim
- Victim had no opportunity to escape situation (ie: on public transport)
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or post sentence supervision
- History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

- Peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where related to the commission of the offence
- Sole or primary carer for dependent relatives

S5 Disorderly Behaviour**STEP ONE**
Determining the offence category

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

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance at Step Two to identify the appropriate final sentence category.

Culpability

Demonstrated by one or more of the following:

A - High culpability:

- Sustained incident
- Use of force
- Offence committed against those working in the public sector or providing a service to the public
- Leading role in group

B – Lesser culpability

- All other cases

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
Category 1	Starting point Band C fine Range Band B – Band C fine	Starting point Band B fine Range Band A – Band C fine
Category 2	Starting point Band B fine Range Band A – Band C fine	Starting point Band A fine Range Conditional discharge – Band B fine

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Summary only offence. Maximum sentence for the aggravated offence is level 4 fine.

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 table includes 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, and apply the appropriate uplift to the sentence.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Fine for basic offence: Multiply basic fine by 2.5</p> <p>Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<p>Fine for basic offence: Multiply basic fine by 2</p> <p>Discharge for basic offence: impose fine at mid-top of basic offence category range</p>

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Fine for basic offence: Multiply basic fine by 1.5</p> <p>Discharge for basic offence: impose fine at low-mid of basic offence category range</p>

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

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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

Other aggravating factors:

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

- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- History of antagonising the victim
- Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)
- Offence committed whilst on licence or subject to post sentence supervision
- History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where related to the commission of the offence
- Sole or primary carer for dependent relatives

Stirring up racial or religious hatred or hatred towards sexual orientation**STEP ONE**
Determining the offence category

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

Culpability demonstrated by one or more of the following:
A - High culpability: <ul style="list-style-type: none"> • Offender in position of trust, authority or influence and abuses their position to stir up hatred • Intention to incite serious violence • Persistent activity
B – Medium culpability <ul style="list-style-type: none"> • Other cases falling between categories A and C
C – Lesser culpability <ul style="list-style-type: none"> • Reckless as to whether hatred would be stirred up

Harm
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life • widespread dissemination of statement/publication/performance broadcast and/or strong likelihood that many would be influenced
Category 2	<ul style="list-style-type: none"> • All other cases

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability		
	A	B	C
CATEGORY 1	Starting point 3 years' custody Category range 2 – 6 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 years' custody Category range 1 – 3 years' custody
CATEGORY 2	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range HL CO – 2 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 sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. 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:

- Planning of event or campaign designed to stir up hatred
- Timing of incident – particularly sensitive social climate
- Vulnerable/impressionable audience
- Significant volume of publications published or disseminated (where not taken into account at Step One)
- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- Offence committed whilst on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- Peripheral role in group activity
- Previous good character
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where linked to the commission of the offence
- Sole or primary carer for dependent relatives

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