

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

26 January 2018
SC(18)JAN04 – Public Order
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1 ISSUE

1.1 This meeting requires the sign off of the draft guidelines for Public Order offences.

2 RECOMMENDATION

2.1 The Council is asked to;

- review the draft guidelines for Public Order offences and;
- agree to sign off the guidelines for consultation.

3 CONSIDERATION

3.1 The Public order guideline has been in development since October 2016. The scope of the guideline has been agreed to include the offences of Riot, Violent Disorder, Affray, s4, s4a and s5 offences and their racially aggravated counterparts, and other hate crime offences provided for by the Public Order Act.

3.2 The agreed draft guidelines are included at **Annex A**, and a summary of decisions relating to the guidelines is included in this paper. **Annex B** includes a summary of cases which informed factors and sentence levels for some of the more serious offences.

3.3 For the offences of riot, violent disorder and affray, legislative provisions have been included in each draft guideline summary to provide context to agreed factors for members who were not present during their development.

Riot

3.4 The legislative provisions for the offence of riot are as follows;

The offence of Riot is provided for by s(1) Public Order Act 1986, which states;

(1)Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a

person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot.

(2) It is immaterial whether or not the 12 or more use or threaten unlawful violence simultaneously.

(3) The common purpose may be inferred from conduct.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Riot may be committed in private as well as in public places.

(6) A person guilty of riot is liable on conviction on indictment to imprisonment for a term not exceeding ten years or a fine or both

3.5 A draft guideline agreed at the January 2017 meeting for the offence of riot is included at page 1 of **Annex A**. A summary of the decisions in relation to the draft guideline is as follows;

Culpability factors

- It was agreed that the guideline should reflect established principles¹ that the role played by an individual offender within riot offences will not be the main driver of an individual's sentence. Rather, it is the incident itself and the overall level and scale which is the predominant factor influencing sentences, with the offenders' individual roles in the incidents assessed to a lesser extent.
- While the incident itself does result in a 'baseline' sentence, some individual behaviour – such as an organising or leading role, or throwing a petrol bomb or using a highly dangerous weapon such as a firearm - does inflate the sentence above this, so it was agreed such activity should attract the highest culpability categorisation.
- Only two culpability categories were included as it was agreed it is difficult to envisage, and no cases analysed identified, any case which would not be captured within the two categories proposed. All cases analysed were large scale and/or serious incidents, involved significant planning or were persistent and sustained, and it is likely that any offence charged as riot would include these characteristics.

Harm factors

3.6 Category 1 harm factors define the most serious harm resulting from riot offences, and category 2 captures 'cases where a lower level of harm is present than in category 1'. Consideration was given to replicating but modifying the harm 1 factors for harm 2 cases to reflect lower levels of seriousness. However, it is difficult to articulate and define an

¹ *R v Blackshaw (& others)* [2011] EWCA Crim 2312; *R v Caird* [1970] 54 Cr. App. R 499 at 506

exhaustive list of lower harm factors, and could result in some mis-categorisation or a lack of clarity as to which category is applicable. Other guidelines, including violent disorder, use the 'catch all' approach and it is thought this is the most suitable approach for this offence.

Aggravating and Mitigating Factors

3.7 The aggravating factors seek to capture factors relevant to an individual's role in an incident which would increase the offence seriousness. The factors included were all found to escalate the sentence from the baseline when current sentencing practice was analysed.

3.8 There are fewer mitigating factors as there is little which mitigates this offence. As the main driver of the sentence is the level or scale of the incident rather than an individual's role in an offence, the only non-standard factor identified as appropriate at Step Two was 'low level involvement' which cases illustrated could reduce the sentence slightly from the baseline.

Sentence levels

3.9 The sentence levels agreed were based on a number of cases analysed and align with current sentencing practice. A summary of the cases reviewed is provided at **Annex B**.

3.10 To reflect the approach taken in sentencing these cases and adequately provide for more serious offences, it was agreed that bold wording should be included in the guideline regarding adjustment to the starting point of a sentence in a case with a high number of aggravating factors.

Additional guidance – riot related offending

3.11 It was agreed that additional text should be included in the guideline to assist courts in sentencing other offences committed in the context of a riot, as sentencers would be likely to look to the guideline for guidance on this issue. The agreed wording is included at page 4 of **Annex A**.

3.12 The presentation of this information will be considered during the design of the draft guideline. One possibility is that it be given prominence on the title page of the guideline.

Question 1: Does the Council agree to sign off the draft guideline for the offence of Riot for consultation?

Violent Disorder

3.12 The offence of violent disorder is provided for by s(2) of the Public order Act, which states;

(1) Where 3 or more persons who are present together use or threaten unlawful violence and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety, each of the persons using or threatening unlawful violence is guilty of violent disorder.

(2) It is immaterial whether or not the 3 or more use or threaten unlawful violence simultaneously.

(3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(4) Violent disorder may be committed in private as well as in public places.

(5) A person guilty of violent disorder is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine or both, or on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

3.13 A draft guideline agreed at the April 2017 meeting is included at page 5 of **Annex A**. A summary of the decisions in relation to the draft guideline are as follows;

Culpability factors

3.14 The guideline is required to reflect a broad range of potential activity in relation to this offence. An analysis of cases identified that violent disorder can be charged in relation to offences akin to riot where all of the elements of a riot offence may not be made out, football related disorder, fights between groups in public places or group violence towards individuals. Existing MCSG guidance also recognises that violent disorder offences may involve rare cases which involve minor violence or threats of violence leading to no or minor injury. The factors are intended to capture all such offences.

3.15 Initially the factors proposed were the same as for the offence of riot to ensure offences charged as violent disorder in a riot context could be adequately captured. However, this led to not all violent disorder offences being fully provided for. The approach agreed was based on the following;

- Highest culpability cases are those where a factor in category B is present and also involve the more the serious activity listed at category A.
- Highest culpability also captures targeting of an individual by a group, as analysis of cases indicated such offences currently attract sentences in the range of 3-4 years pre plea.
- Group fights involving active and enthusiastic participation currently attract sentences in the region of 12-18 months, and are intended to be captured by middle and lower culpability categories. Category B factors relating to serious violence and persistent

and sustained unlawful activity in a public place is intended to capture the most serious of these cases.

- A factor included at culpability A in the riot guideline relates to an offenders actions escalating the level of violence and disorder involved. It was agreed that this should only be included as an aggravating factor in the violent disorder guideline, as analysis of cases illustrated the potential for significant inflation of sentences for some violent disorder offences if this was included as a high culpability factor.
- As violent disorder can involve threats or minor violence it was suggested that Category C culpability should reflect these cases. The other factor agreed was 'offence involved lower level of violence or activity than included in Category B'.

Harm factors

3.16 In the cases analysed in developing the guideline all offences involved physical harm, fear or distress being caused to participants, victims and/or the wider public. Given the nature of the offence it was agreed there were not significant gradations of harm to provide for three harm categories. As for the riot offences guideline, only two categories of harm are included. Harm category A includes the same factors as were agreed for riot, as these would capture all types of harm in violent disorder offences, and the second category provides for all other cases where a lower level of harm is found to be present.

Sentence levels

3.17 The sentence levels agreed were based on a number of cases analysed, and align with current sentencing practice. A summary of the cases reviewed is provided at **Annex B**.

3.18 As for the riot guideline, to reflect the approach taken in sentencing these cases and adequately provide for more serious offences, it was agreed that bold wording should be included in the guideline regarding how to approach sentence in a case with a high number of aggravating factors.

Question 2: Does the Council agree to sign off the draft guideline for the offence of violent disorder for consultation?

Affray

3.19 Section 3 of the Public Order Act provides for the offence of Affray and states that;

(1) A person is guilty of affray if he uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

(2) Where 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).

(3) For the purposes of this section a threat cannot be made by the use of words alone.

(4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

(5) Affray may be committed in private as well as in public places.

Section(7) provides that the maximum penalty for the offence is 3 years or a fine or both in the Crown Court, or on summary conviction in the magistrates' court imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.

3.20 A draft guideline agreed at the May 2017 meeting for the offence of Affray is included at page 8 of **Annex A**. The offence falls between violent disorder and the s4 offence of threatening behaviour, and shares very similar elements with violent disorder, in that it requires the use or threat of unlawful violence towards another and conduct such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.

Culpability factors

3.21 The principle that the sentence should relate to the overall incident and not the offender's individual role in an incident does not apply to the offence of affray as it does for riot and in some cases of violent disorder. As the offence requires the use or threatening of unlawful violence, the factors agreed reflect gradations of this type of conduct.

Harm factors

3.22 It was agreed that harm in these offences will be fear/distress or physical injury, or both to varying degrees, which is reflected in factors.

Sentence levels

3.23 Sentences have not yet been finalised for this offence, as further work was required to ensure these were relative and proportionate to violent disorder sentences. The Council are now invited to review and agree the proposed sentence levels.

3.24 Statistics for offences sentenced in 2016 illustrate that 75% of offenders received immediate or suspended custodial sentences and 19% received Community orders.

Sentences of more than six and less than or equal to 18 months were the most frequently used immediate custodial sentences, given 63% of the time.

3.25 A number of case samples were reviewed to provide context to proposed factors and to inform sentences, and these are included below;

- R v Larter [2014] EWCA Crim 1610 (A1)

Fake hostage situation. Police called by appellant. He said he was armed with rifles and shotguns, that he was holding his daughter in his house, that he would "do his daughter" and that he would shoot any police who came to his house. The police responded with an armed response vehicle. During event, the appellant made further threats against police officers who attended and said that he was holding his step-son. A police negotiator was instructed to engage with the appellant. A substantial number of officers were engaged. The police soon became aware that the appellant's daughter and step-son were not in fact in the house, but the duration of the stand-off was in the region of four hours. The appellant spoke of coming out of the house "all guns blazing" and of killing as many of the police as he could. In the end he left the house voluntarily, stripping to show that he was not armed. Guilty plea, full credit, 27 months reduced to 18 for plea (serious previous convictions exacerbated sentences which Court of Appeal upheld noting it was severe, but not manifestly excessive.)
With guideline – Category A1 case

- R v Barratt [2015] EWCA Crim 1534

Offender and her husband forced entry to property of neighbour on day injunction had been granted against them prohibiting them from causing any nuisance to neighbour or her family. Offender threatened neighbour and offender's husband (also convicted of affray) went upstairs and took victim's baby out of cot, and stood with it at top of stairs threatening "This is what will happen and we're not afraid to do it". He put the child down and came downstairs. He then threatened to cut the brakes of the car of victim's partner. Offence was planned, victim was 8 months pregnant and alone with children in her home at night when offence occurred. Serious distress and fear caused with lasting impact. Late guilty plea so only 10% credit. Sentences: 25 months imprisonment imposed on both offenders in first instance (28 months pre plea). Court of Appeal agreed with sentences but reduced appellant's sentence to 18 months applying Petherick principle due to three children and newborn baby. No mention of husband's sentence being appealed so 25 months after plea appropriate

sentence in absence of issues specific to mother and Petherick consideration. With guideline – Category A1 case

- R v Beale (1st instance)

Shouted loud and violent threats to kill neighbours, forced entry to their flat and fired a nail gun (not loaded but victims did not know it was not) more than once. Victims terrified. Guilty plea at first opportunity, full credit. Sentence: 2 years imprisonment. With guideline – Category A1 case

- R v Parry, Burns, Williams, Mann & Nicoll (1st instance case)

Mindless, unprovoked, drunken violence in a small community public house holding a charity event which was ruined because of appalling behaviour. Terrifying incident, during which serious injuries were caused. Offenders described by more than one witness as behaving like wild animals. Heavily influenced by alcohol, behaviour escalated from boorish bravado, ignoring several polite requests to leave by those in charge, to what was an incident of serious violence, which they instigated and which resulted in the indiscriminate punching of people on the floor, kicking of people on the floor, having a total disregard to whether victims were male or female; described as group violence at its worst. One victim suffered a fractured skull, and had to undergo five general anaesthetics to stitch the wound and to stem the bleeding, and to have a plate inserted in his skull, landlady was punched to the face, females were kicked, some witnesses feared that victims were dead, glasses were broken determinately and people thought that those glasses were to be used as weapons; the public were left utterly shocked and frightened. Joint responsibility between offenders for causing utter terror. Guilty pleas on day of trial so only 10% credit.

Sentences all post plea (varied depending on relevant previous convictions): Burns 18 months custody; Nicoll 16 months custody; Parry 16 months custody; Williams 16 months custody; Mann 12 months custody. With guideline – Category A1 case

- R v Khalid [2014] EWCA Crim 2709

Bizarre incident where offender gave victim telephone number then wished his number to be deleted from victim's phone, so grabbed at victim's phone and threatened him with a knife (not produced). Sentence: Guilty plea 12 months (18

months before plea) imposed in first instance, reduced to 8 months (12 months before plea) by Court of Appeal. With guideline – Category B2/3 case

- R v Fox and Hicks [2005] EWCA Crim 1122

Football related group violence. Involved shouting, swearing and throwing debris, including stone, masonry and beer cans, in the direction of rivals and later the police who were trying to keep the two groups apart. Took place in a busy high street, crowded with traffic and with many members of public present. Continued over a significant period of time and calm was only restored after mounted police had arrived to supplement the uniformed police. Chaotic scenes which Judge said would have caused considerable alarm and disturbance to those present at the time.

Sentences: Fox – Guilty plea on day of trial for violent disorder to alternative count of affray. Credit not specified. Good character and not involved in second serious incident involving confrontation with police officers, so lesser role determined. 12 months reduced to 8 months imprisonment by Court of Appeal.

Hicks – Guilty plea on day of trial for violent disorder to alternative count of affray. Credit not specified. Recent and relevant previous convictions. Sentence of 12 months imprisonment upheld by Court of Appeal. With guideline – Category B1/2 case

- R v Bent (1st instance case)

Retaliation by offender when attacked by another by punching and being hit with a bottle. Could have extricated himself but did not; sought retribution and attacked with a plastic cleaning cone and bundled attacker to ground – appalling display. Only the two involved in fight were hurt. Guilty plea (full credit).

Sentence: 8 months imprisonment suspended for 12 months, including 200 hours of unpaid work. With guideline – Category C2/3 case

- R v Johnson (1st instance case)

Incident in betting shop in which offender retaliated after being punched. He continued confrontation, picking up the lid of a bin and wielding it in the course of that confrontation. No contact was made due to other party picking up a chair and fending it off and it was a short incident which was interrupted by the police but,

nonetheless, frightening for those who were involved in the betting shop at the time and causing disorder. Behaviour continued when Police arrived. NG plea- found guilty after trial. Sentence: 3 months custody suspended for 12 months (without requirements). With guideline – Category C2 case

- R v Tomkinson & Jackson (1st instance case)

Incident started in takeaway at end of a night out with another group. Not clear who instigated. Violence involved offenders punching, kicking and throwing others to the floor. Potential for serious injuries to be caused but only bumps and bruises eventuated. Judge said incident self-limiting (resolved itself) and not sustained. Considered immediate custodial sentence but offenders bailed with electronic monitoring for four months prior to hearing which Judge said was equivalent to two month custodial sentence. Guilty plea (offered on basis) – credit not specified.

Sentences: Intensive alternative to custody Community Order imposed on each offender, including: 12 months supervision, unpaid work 120 hours (Jackson) 160 hours (Tomkinson due to breach of SSO and precons). Electronically monitored curfew four months 8.00pm-7.00am. Accredited programme to address alcohol related aggression or violence, and three victim awareness sessions. With guideline – Category B2/3 case

R v Grant, Grant, Tyres and Grant (1st instance case)

- Revenge attack, offenders descended on the complainants' property. Tyres armed with a Samurai sword. There was some fighting. Hayley Grant threw a brick, and there was some scuffling involving Mark Grant. Donna Grant was verbally aggressive. The Prosecution said the Complainants 'gave as good as they got'. Anyone seeing it or witnessing it would be extremely frightened. All pleaded guilty on the day of trial.

Sentences: Tyres (possessed sword)- 6 months custody suspended for two years including supervision requirement for twelve months. With guideline – Category B2 case. Hayley Grant - Community Order with 100 hours unpaid work. Mark Grant - Community Order with 100 hours unpaid work. Donna Grant - Community Order with supervision for a period of twelve months. With guideline – Category C2 case

3.26 The review of cases indicates that the highest sentences in affray offences are attracted where weapons are used to inflict or threaten violence, there is a serious and malicious intention to cause fear of violence, and very serious or sustained violence is involved in an offence. A high proportion of affray cases involve drunken group violence or fighting between groups. Depending on the level of violence used and harm involved, these cases tend to attract sentences around the middle of the statutory maximum of three years imprisonment. Lower level sentences are imposed where no weapons are involved and threat or use of violence is minimal.

3.27 For the most serious offences, the proposed sentences are reflective of current sentencing practice which appears to be broadly consistent and attract starting points of two years or more. However, other proposed sentence levels are in some places slightly lower than cases illustrate current sentencing practice to be (eg; Bent and Johnson), in the very limited case sample analysed. The starting points and ranges proposed are thought to be proportionate to violent disorder, and provide for non-custodial penalties to be imposed in offences of lower seriousness. Aggravating factors provide for an uplift in sentence where the offence involved elements increasing seriousness.

Question 3: Does the Council agree with the proposed sentences for the offence of Affray?

Question 4: Does the Council agree to sign off the draft guideline for the offence of Affray for consultation?

S4 – Threatening Behaviour, Section 4A -Disorderly behaviour with intent and S5 Disorderly behaviour

3.28 Draft guidelines for these offences have been agreed over the most recent meetings, and are included in pages 12-26 of **Annex A**.

Culpability factors

3.29 To provide for the overlap between offences, the culpability factors are broadly similar across the three guidelines, save for one or two additional factors in more serious offences; these are ‘production of a weapon’ in s4A and s4 and ‘missiles thrown’ in s4.

3.30 Given that for a s4 offence it is necessary for the offender to intend to cause a person to believe that immediate unlawful violence will be used, it was also agreed that an additional culpability factor ‘intention to cause fear of serious violence’ be included.

3.31 All offences include 'use of force' as a culpability factor, although for the s4 and s4A offences this is qualified as 'use of substantial force'. It was agreed that while any force would make a s5 offence more serious, a higher threshold would be required for the more serious offences to avoid potentially inflating sentences in s4 and s4A offences where force may be more prevalent.

Harm factors

3.32 The harm factors reflect the statutory definitions of the offences. The s4A and s5 offences are made out if the offences cause or are likely to cause harassment, alarm or distress. The s4 offence involves causing fear or provocation of violence. The high harm factors for s4A and s5 capture serious distress or alarm, or distress or alarm to multiple persons. The s4 high harm factors agreed relate to the fear of violence caused or incidents which escalate into violence. Category 2 captures all other cases.

Sentence levels

3.33 Consideration was given to sentence levels over a number of meetings. To provide for relativity with racially aggravated sentences, adjustments were made to s4 and s4A sentence levels at the last meeting. While ranges provide for custody in a number of categories for more serious offences, it was agreed that only the most serious s4 offences should attract a custodial starting point, given the relatively low level of seriousness of these offences.

Racially Aggravated guidance and sentence levels

3.34 At the last meeting a small scale testing exercise of the draft guideline for a s4A aggravated offence was discussed. It was highlighted that sentencers seemed to struggle with how to conduct the assessment of the level of aggravation based on the worded guidance which was included. This was as follows;

*'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. 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. The following is a **non-exhaustive** list of factors which the court should consider to determine the level of aggravation:*

- *Whether the offence was part of a pattern of similar offending by the offender*

- *Whether the aggravated nature of the offence caused particular distress to the victim or the victim's family (over and above the distress already considered at step one)*
- *Whether there is evidence that the aggravated nature of the offence caused fear and distress throughout a local community or more widely*
- *Whether the offender was a member of, or was associated with, a group promoting hostility based on race or religion*
- *Whether the aggravated element formed a minimal, a proportion of, or a substantial part of the offence as a whole.'*

3.35 It was suggested that presentation of this guidance be revised, and consideration given to including it as an additional Step in the guidelines. However, A&R colleagues have advised that an additional step approach was tried with the Intimidatory offences guideline, where the aggravated guidance was included as a Step 3. This proved problematic. Road testing identified that when presented as an extra step, this increased the variability of the sentencing overall and led to quite marked sentence inflation in some cases (when tested with judges). It was noted that introducing an extra step encouraged quite a mechanistic approach whereby judges reached a high level of harm/culpability initially then felt obliged to give a significant increase to the basic sentence because of the extra step, whereas when the additional information was integrated at Step 2, they were more able to tailor the sentence to a level they felt was appropriate.

3.36 Although two of the Public order offences include sentencing tables which would mitigate the risk of an inflated uplift in sentence, the s5 offence and racially aggravated offences in other guidelines do not include sentencing tables. The Council will recall that the limited statutory maximum for the aggravated s5 offence did not provide for a separate sentence table, so an adapted version of the uplift approach agreed for some other guidelines has been included, which provides for the uplift to only be applicable to the available penalties of a fine or discharge.

3.37 To provide for consistency of guidance across the different approaches, rather than include an additional step in the guidelines the worded guidance has been adapted and structured in a way intended to provide clearer guidance as to what constitutes high, medium and low racial or religious aggravation. This should provide for greater clarity and consistency of the assessment of aggravation. The revised guidance is included in the draft guidelines for the relevant s4, s4A and s5 offences.

Question 5: Does the Council agree to the revised guidance for assessing the level of racial or religious aggravation present in an offence?

Aggravating and Mitigating factors

3.38 It was agreed that due to the prevalence of these offences being directed towards those providing a public service, such as bar staff, traffic wardens and police officers, the factor relevant to this should be included as a Step Two factor rather than at Step One, given the potential for a high volume of cases to otherwise be captured in high culpability.

3.39 Other factors such as leading role and planning which are included as culpability factors in some other more serious Public Order offences are captured as aggravating factors, as this conduct would not be as serious when present in these offences as they would when present in offences such as riot and violent disorder.

Question 6: Does the Council agree to sign off the draft guideline for the s4, s4A and s5 Public Order offences for consultation?

Other Hate crime offences

3.40 At the last meeting the Council agreed that the scope of the Public Order guideline should be expanded to include a number of other hate crime offences provided for by the Public Order Act. These include stirring up racial or religious hatred and hatred based on sexual orientation.

3.41 The agreed draft guideline is included at page 27 of **Annex A**. It was agreed that culpability factors should relate to the intention to stir up hatred and the outcome of such activity, as this is the essence of these offences, rather than the level or content of threats, abuse or insults which are captured as aggravating factors. Given the similarities which exist between hatred offences and some terrorism related incitement offences, some culpability and harm factors which were recently subject to consultation for the encouragement of terrorism guideline were adapted and included. It was agreed that other factors relating to intention included in other Public Order guidelines should also be adapted and incorporated.

3.42 Sentence levels were based on a limited number of cases which were available for review, and on the sentences agreed for the offence of encouragement of terrorism in the Terrorism guideline.

Question 7: Does the Council agree to sign off the draft guideline for other hate crime offences for consultation?

4 ISSUES

4.1 The guideline does not include any intended inflationary effects, although in some offences of lower seriousness a proportionate approach to sentences favouring non custodial starting points has been taken. Due to the differing format of the guidelines from existing MCSG guidance some of the lower level offences may appear to have deflationary impacts. A draft resource assessment will consider any inflationary and deflationary impacts of the guideline. This will be prepared and circulated to the Council in due course, ahead of the publication of the draft guideline.

4.2 There is currently no existing guidance available for a number of draft guidelines included, some of which are high volume such as affray, and others, such as riot and hate crime offences, which are lower volume. There is likely to be a positive reputational impact for the Council in developing guidance for both high volume offences, and for providing guidance for offences which are less regularly seen by the courts.

5 RISKS

5.1 While it is not anticipated that any significant inflationary or deflationary effects upon sentencing will arise from the guideline, this will be considered and addressed in the draft resource assessment.

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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 following 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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Riot – Case summariesBradford riots (2001)

Race riots between right wing extremists and the Asian community. Widespread and sustained disorder, causing damage in the region of £27 million and injury to over 300 police officers as well as others. According to transcripts more than 100 offenders sentenced, mostly for riot. Most serious offender threw petrol bombs, many acts of violence.

Sentences

- Khalil – Seen putting things in a vehicle others were trying to set fire to. He rolled a beer barrel towards the police lines. He held a petrol bomb in his hand. Another person ignited it and Khalil rushed towards the police lines and threw the bomb directly at the officers. 6 and a half years – (pre G plea sentence of nearly 10 years assumed)
- Azad- At or near the front of the rioters throughout. On a number of occasions threw stones and missiles at the police, also seen near a burning barricade and near an overturned car. On occasions he was hooded. On others his sweater was pulled up to conceal his face years 9 months after plea– (pre G plea sentence of 7 years assumed)
- Hussain – Active participant, there for 8 hours, threw three missiles and concealed face. 4 years 6 months (pre G plea sentence of 7 years assumed).
- Hanif- Active participant, there for 2 hours, threw stones or missiles at police on 6 separate occasions, attacked police van and threw metal fence at it, encouraged others with victory gestures. 4 years 9 months (pre G plea sentence of 7 years assumed).
- Qurban – participated for 4 hours, threw nine missiles at police, brandished light tube said to have been used to encourage others. 4 years 9 months (pre G plea sentence of 7 years assumed).
- Raza- Leading role in group of youths, threw missiles, instructed group on how to damage a car which was subsequently set on fire and pushed towards police lines, repeatedly depicted in videos in the front line of those facing the police. 5 years – (pre G plea sentence of 7 and a half years assumed)

- Najeed- Fairly active participant and present throughout most of riot- threw one missile. 4 years reduced to 3 on appeal (Sentence 4 and a half years before plea assumed)

Birmingham pub riot (2011)

42 masked or hooded individuals assembled outside a public house in Birmingham which had occupants upstairs. Members of the group proceeded to break in and set the ground floor alight with petrol bombs which they had brought with them; its furniture was strewn over the A34 road outside. This was done deliberately to entice the police to the scene. When police officers arrived, members of the group used at least four different firearms to discharge at least 12 rounds in their direction. The police were forced to withdraw and, fortunately, nobody was struck.

Sentences (all after trial):

- Lewis- 7 years – Drove leading member to scene knowing he had gun which he intended to use.
- Laidley- 7 years – directly involved in attack on pub; one of planners; fired shot at helicopter
- Francis- 7 years- full and active part in riot, armed with a gun. Judge concluded he had fired a shot at police.
- Laing- 7 years- one of organisers of riot. Armed.
- Gray- 7 years- armed and fired at least one shot
- Collins – 6 years - with a leading role member (Francis) and knew he had gun; played no active part but presence acted as encouragement to others.

(It should be noted that nearly all offenders were also charged with firearm related offences for which much higher sentences were received than for the riot offence.)

London related breakout riots in Nottingham (2012)

Organised attack on a police station, involving petrol bombs, gang of around 30 people.

Involved mob violence and a deliberate attack on police.

Sentences:

- Deejean – Pivotal role, petrol bombs made at his house. Only 15% credit as very late plea. 10 years for explosive offence, 6 years for riot. Arson 10 years. Total 10 years YOI. (Sentence slightly lower due to youth).
- Francis – Found guilty after trial. Enthusiastic and leading rioter, threw at least one petrol bomb. 7 years. (Convicted of other offences including arson with intent; Total 12 years).
- Wilson – Leading role – recruited others and involved directly with petrol bombs, not clear if he threw any. Very late plea, only 15% credit. 6 years for riot.
- McCalla – pleaded on second day of trial - very limited credit. No evidence directly involved with petrol bombs, but knew purpose of attack and recruited two others. 4 and a half years.
- Edwards- guilty plea – not directly connected to petrol bombs no evidence of recruiting others. Sentence delayed and serving a period of recall for a different offence, so sentence for riot reduced to 3 years 9 months.
- Alexander – Late guilty plea. 19 yrs old, part of a group some distance away but moving towards it, no petrol bomb involvement or recruiting. 4 years YOI.
- Powell – Found guilty after trial. Not linked to petrol bombs and recruited late but happy to join in attacking police station. On bail at time of offence, serious pre cons. 5 and a half years YOI.
- Robinson – Found guilty after trial - Judge said 'lightly convicted' as riot only - 5 years.
- Coleman- Found G after trial - Judge said 'lightly convicted' as riot only – 5 years YOI.
- Stapleton – sentence reduced as offence committed when 17 years old; 2 years 9 months.

Birmingham international airport riot (2010)

Riot between rival biker gangs at planned and premeditated event, both sides came armed and additional gang members arrived at airport. Very grave injuries were inflicted during violence between participants. The riot took place in a crowded and public area.

Sentences (all after trial):

- All received 6 years' imprisonment, regardless of role/activity, although nearly all offenders used dangerous weapons including knives and machetes, and if not they were an organiser or carried out a leading or particularly violent role in the offence. The Court of Appeal said it was right that no distinction between the offenders was drawn, saying that while participation varied, all were involved in the incident fair and square and the trial judge was justified in making no distinction between the sentences passed with all sentences richly deserved.

Violent Disorder – Case summariesMoffatt & Others

EDL demonstration in Birmingham city centre, in aftermath of Lee Rigby murder. Serious incident which involved offenders using racially/religiously insulting language and acts of violent disorder, attempting to push barriers; throwing bricks, metal barriers and portaloos, breaking through police lines and damaging public property and business premises. Even officers trained in public disorders, and who had experience of such situations, told the jury how scared they were of what was taking place as they had not seen aggression like this before.

Sentences

- Parker - forced self to front of crowds, led disorder at Portaloos, lashing out at police officers, kicking officer in the chest, shouting racially/religiously aggravated chants. Guilty plea at preliminary hearing so one third reduction; Starting point – 3 years reduced to 2 for plea (Leading role - Categorisation in draft guideline = A1)
- Rowland - contribution most serious of all. Acted aggressively towards police, tore down metal boarding, threw it and hit police officer with wood, threw metal sign at police, chanted racially/religiously abusive messages, threw liquid and fire extinguisher at police. Guilty plea at PCMH (25% credit) 3 yrs 6 months reduced to 2

years 7 months for plea (Ringleader/leading role - Categorisation in draft guideline = A1)

- Moffatt - Involvement summarised as being present at six of the seven sites, chanting racist slogans, intimidating police officers, repeatedly kicking down protective hoardings outside a convention centre, ripping up a concrete bollard from the ground, and persistently threatening violence. Removed top (aggressive gesture) Guilty plea (25% discount) 2 years 6 months reduced to 22 months for plea (Ringleader/leading role - Categorisation in draft guideline = A1)
- Purvis - Present at four sites of the disorder. Used violence at each one. Quite determined to attack police officers, and in several places on the video appeared to be enjoying himself because on more than on occasion seen smiling. Guilty plea (25% discount) 3 years reduced to 27 months for plea (Ringleader/leading role - Categorisation in draft guideline = A1 or B1 and aggravated as active and persistent participant)
- Graham - Chanting 'Ingerland', broke slab to be used as missiles, threw missiles at Police. Offending was persistent. Involved at four separate sites of the disorder. Used violence against police officers in two separate places and used violence against property. Aged only 20 which Judge noted ordinarily counts for a lot, but antecedent history detracted from that fact. Already convicted of 26 offences, and previous conviction for battery, so no stranger to violence. Guilty plea. 2 and a half years' detention in a Young Offenders' Institution. 25% credit for guilty plea. So detention for 22 months. (Ringleader/leading role - Categorisation in draft guideline = A1 or B1 and aggravated as active and persistent participant).
- Webster - Did more than other people involved in incident, pushed portaloo over, chanted, disguised himself, damaged property. Found Guilty after trial 21 months (Sentence reduced as helped injured man during incident) (Ringleader/leading role - Categorisation in draft guideline = A1)

Alhaddad & others

Violent disorder concerned demonstrations at Iraq Embassy, varying degrees of violence and seriousness on different occasions. Not far off of a riot.

- Alhaddad - The activity in which he was engaged lasted about two hours. He raised a barrier. He threw sticks at the police. He threw barriers at the police. He covered his

face when throwing objects at the police, and he was asked to desist but he did not do so. Guilty plea 2 years imp. Reduced to 21 mths on appeal. (Categorisation in draft guideline B1 and aggravated as active and persistent participant, covered face, threw missiles and objects)

- Feodorovs - He threw wood and a barrier through the window of the coffee shop, acts of mindless vandalism and then he threw wooden sticks at other people. Guilty plea 18 months. Upheld on appeal. (Categorisation in draft guideline B1 and aggravated as threw missiles and objects)
- Tamuri - Activity was limited to a thirty minute period; with his face covered he threw a pole at the police, he threw other objects at the police and banged sticks together. Guilty plea 2 years and 6 months' custody. Reduced to 12 months custody on appeal in view of his youth. (Categorisation in draft guideline B1 and aggravated as threw missiles and objects)
- Hassan - Entered a coffee shop, picked something up and left. But the judge accepted that he had gone into the coffee shop to see if there was a rear exit. He threw missiles at the police and either threw a bottle or shoe. His face was covered with a scarf. He led a group into the coffee shop holding a police shield. Guilty plea 18 months. Reduced to 10 months on appeal (in line with other sentences) (Categorisation in draft guideline B1 and aggravated as covered face, threw missiles and objects)
- El-Araj - He threw objects at the police, probably a stick. He struck a police horse with a stick, probably a broom handle. He entered the coffee shop and took items. He again threw other objects and sticks. Guilty plea 2 years imp. Reduced to 18 months on appeal. (Categorisation in draft guideline B1 and aggravated as threw objects, and struck police horse)
- Samad - The activity in which he was engaged was that he broke down barriers and threw sticks. He threw one of the barrier clips which weighed somewhere in the region of 2.5 lb which was considered a serious and important aggravating factor. It was said to be important to mark that conduct out as being strikingly different from that of others. Guilty plea 20 months custody. Upheld on appeal. (Categorisation in draft guideline could be A1 if barrier clip classed as highly dangerous weapon, otherwise B1 and aggravated as threw objects and possession of article intended to injure)

- Zenaf - He hit out at the police with sticks, kicked at the police and engaged in this activity again at a later period. He also threw a barrier at the police. Guilty plea - original sentence not specified – court said cannot see that he is different from someone who should have what the judge described as a ‘standard sentence.’ Reduced to 18 months. (Categorisation in draft guideline B1 and aggravated as threw objects)
- Al-Ani - His activity was not only less serious than the others but also the overall violence was less serious. He threw a bottle at the embassy which would have hit a policeman if the police had not been sheltered by a shield. The violence plainly must have been anticipated as directed at the police. Guilty plea - 12 months custody. Reduced on appeal to a Community Order and said; ‘We would have ordered an unpaid work requirement of 200 hours had we been sentencing initially but in the light of the period he has spent in custody we would not do so, merely imposing a nominal requirement as the Criminal Justice Act 2003 requires us to do rather than adding nothing which would have been both just and sensible.’ (Categorisation in draft guideline B1 and aggravated as threw objects, but minor role/low level involvement mitigates)
- Rizvi - The activity that he was engaged in was that he lashed out with a placard, he threw sticks at the police and attacked police lines with a stick. On another occasion he threw objects at the police, he lunged with a stick, he joined in going into the coffee shop and continued with attacks on the police. Guilty plea 18 months for 1st count 2 years for 2nd. Should have been consecutive, so reduced sentence on 2nd count to 6 months so total same. (Categorisation in draft guideline B1 and aggravated as threw objects)
- Ali - The activity in which he was engaged was for a longer period. He dismantled barriers. He covered his face when throwing barriers. He hit the police with a placard and threw objects at the coffee shop. Guilty plea 18 months. Reduced to 10 months on appeal. (Categorisation in draft guideline B1 and aggravated as covered face, threw missiles and objects).

Potter & Others

Football related violent disorder. Very large crowd attacked rival fans and police, throwing rocks and missiles repeatedly, smoke bombs discharged and bins set alight. Described as major disturbance in city centre on Sunday afternoon. Public terrified and at risk of serious injury. Judge said ‘not pre-planned but involved persistent and sequential intimidation and

violence in four different locations under the umbrella of constant threats, chanting and gesturing’.

- Harrison – Often at front of crowd, encouraging the crowd by lifting arms up and down, told Probation Officer trying to get the crowd going. Judge said ‘played no small part in encouraging the crowd to behave as it did’. Guilty plea on day of trial. 10% discount. 14 months. (Categorisation in draft guideline B1 and aggravated as incitement of others)
- Perkins - During the first surge seen near the front charging towards the Police lines. Participated in second aggressive surge and seen at the front of the crowd with hood up attempting to conceal identity. Remained at the front of the volatile crowd with hood up making no attempt to leave as the chanting and jumping around continued. Guilty plea on day of trial. 10% discount. 11 months YOI. (Categorisation in draft guideline B1 and potentially aggravated as concealed identity)
- Potter – Involved in first two surges against Police line. Thereafter remained at the front of the volatile crowd clapping and shouting at the Police and making no effort to leave the scene. Wearing someone else's jacket with the hood up to disguise appearance. Guilty plea first reasonable opportunity. 15% discount. 9 months YOI. (Categorisation in draft guideline B1 and aggravated as active and persistent and concealed identity)

Kavanagh & others (1st instance case)

Group fight outside a club early in morning.

Sentences

- Kavanagh - attempted to discourage others from violence at different times. Initially seen at the back of the group and not involved in attempts to re-enter the club or in being aggressive to the door staff. However, after the main conflict started, he was seen to punch another participant and throw a metal barrier at another. At a later stage, he restrained an unidentified male from attacking another participant. Role was limited, reluctant and influenced by misplaced peer loyalty. Late Guilty plea-approximately 20% discount – Community Order 150 Hours unpaid work (180 before plea), 12 week curfew (15 before plea) (Categorisation in draft guideline B1 and aggravated for throwing missile, but likely to be mitigated through reluctant and limited role)

- McLaren - attempted to push past door staff and threw punches at them. At a later stage, he punched another participant. He was not involved in throwing missiles and did not arm himself. Guilty plea. Intensive Alternative to Custody Community Order with supervision for a period of 12 Months; 100 Hours of Unpaid Work; 3 month curfew. (Categorisation in draft guideline B1, mitigated by minor role/low level involvement)
- Halford - armed himself with a brick, which he threw in the direction of others in the car park. He threw a second brick and was seen to break a brick on the ground, handing part to another participant and he then threw a piece of brick at rival participant. He was also seen to throw one of the metal barriers. Guilty plea, 12 Months YOI. (25% credit for guilty plea.) (Categorisation in draft guideline B1, aggravated by throwing missiles)
- Gleave - on leaving the club, immediately involved himself in violence by throwing a metal barrier and using a metal barrier to charge at the other group. He again threw a metal barrier and punched at those in the first group. Armed with a brick, he chased rival participant. Guilty plea on day of trial so only 10% credit -70 weeks imprisonment. (Categorisation in draft guideline B1, aggravated by throwing missiles)
- Elms - on leaving the club punched another participant; picked up and threw a metal barrier; picked up another metal barrier and charged towards the other group, before throwing it at them at point blank range. He later sustained an injury to his left arm, when it was struck by a metal bar projectile. Judge said '(he) greatly escalated the levels of violence and disorder and you bear heavy responsibility for the events.' Guilty plea on day of trial so only 10% credit - 70 Weeks imprisonment. (Categorisation in draft guideline B1, aggravated by throwing missiles and actions escalated levels of violence and disorder)
- Afzal - attempted to strike other participants with some unknown object. He later struck an opposing member with a bottle, causing a deep cut to his forehead. He also attempted to hit another participant with a bottle. He then picked up a metal bar, which he threw at the opposing group. Early guilty plea; 64 Weeks in custody reduced by one third to 43 Weeks. (Categorisation in draft guideline B1, aggravated by throwing missiles, and use of significant physical violence)
- Ali - unable to control himself after being removed from the club. He was the main problem for the door staff, as he repeatedly remonstrated aggressively and kicked at them. His behaviour significantly contributed to the later trouble and in the course of

it, he punched rival participant and was himself knocked to the ground. Lesser role in the subsequent violence, but Judge said important contributor overall. Guilty plea at pre trial stage so 25% discount. 25 weeks YOI. (Categorisation in draft guideline B1, aggravated by actions escalating violence)

- Nisar - Appeared initially as a peacemaker, attempting to move people away and to exert a calming influence, then overtaken by misplaced loyalties and in the course of the animosities he received a brick from which he threw at rival participant, who then chased him. Guilty plea 25% discount. Community Punishment Order 200 hrs unpaid work and activity requirement. (Categorisation in draft guideline B1, mitigated by minor role/low level involvement but aggravated by throwing missile)
- Costello - One of the first group who was behaving badly after being removed from the club. He was remonstrating and kicking out at staff and attempting to re-enter. Behaviour was bizarre and undisciplined. Significant responsibility for the trouble. Lesser role in the subsequent violence, but an important contributor overall. Guilty plea (stage and discount not specified) Intensive alternative to custody Community Order inc supervision for a period of 9 Months, 3 month curfew and Unpaid Work for 100 Hours. (Categorisation in draft guideline B1, aggravated by actions escalating violence)
- Russell - first involvement on leaving the club was to throw a punch at rival participant. In the course of the following minute, he also punched two others and he was himself badly cut by the bottle thrown. Late Guilty plea (credit not specified) 12 Months imprisonment 'suspended' for a period of 2 Years with a 'Supervision Requirement' for a period of 9 Months. (Categorisation in draft guideline B1)
- Afzal - After initially departing the scene, he returned and began punching out at others. He threw two bricks and believes that one may have hit a member of the rival group. He then left the scene. Early Guilty plea- full credit – SSO 6 Months YOI suspended for 2 Years with Unpaid Work for 150 Hours. (Categorisation in draft guideline B1, aggravated by throwing missile)

Chadwick & Others

Offence was committed in a club on and spilled out onto the street. Sustained brawl. If one watched it on a film, one would think of it as the Wild West gone mad. Quickly developed and spread rapidly. It involved some 10 or so minutes of brawling inside the club; bottles being thrown; punches being thrown; tables and chairs being thrown.

Sentences

- Chadwick - most accurately involved and not far behind, but some way behind, Saunders in participation. Guilty plea at PCMH - one third reduction - 14 Months (21 Months pre plea) Categorisation in draft guideline B1)
- Saunders - of the three, most clearly involved. Guilty plea at PCMH – one third reduction - 20 Months (30 Months pre plea) (Categorisation in draft guideline B1)
- Taylor - didn't take part inside club, 'merely stood there watching it.' Role was much more outside, came down a side street with a bottle and quite deliberately threw it at people in the doorway - described by Judge as 'like throwing petrol on burning embers'; it erupted again not in the confines of a club, but out onto the street. Guilty plea at PCMH – one third reduction - 8 Months (12 Months pre plea) (Categorisation in draft guideline B1 – aggravated as actions escalated level of violence)

Bennellick & Others

Savage attack on two individuals in a private property to enforce a drug debt. Serious injuries inflicted upon victims.

Sentences

- Bennellick – Planned and intended attack and recruited co-defendants. Guilty Plea - 3 years imprisonment (4 and a half years pre plea). (Categorisation in draft guideline A1 – Targeting of individual and leading role)
- Freshney, Whelby & Hearn – violence towards victims. Guilty pleas - 28 months imprisonment (3 and a half years pre plea) (Categorisation in draft guideline A1 – Targeting of individual)

Spooner & Others

Gained entry to a property armed with weapons at 6am in morning, female occupant forced to sit in chair while offenders rampaged through property causing very serious damage. Catastrophic effect on victim; left very nervous and great concern for future safety. Judge said very serious offence and offenders lucky Crown accepted pleas to violent disorder rather than aggravated burglary which carries 10 year maximum.

Sentences

- Wilkinson - Guilty plea 3 years imprisonment (25% credit so 4 years pre plea) (Categorisation in draft guideline A1 – Targeting of individual)

- Spooner –Lower starting point as no previous convictions. Guilty plea - 30 months imprisonment, (25% credit so 30 mths imp pre plea) (Categorisation in draft guideline A1 – Targeting of individual)