

Sentencing Council meeting: 26 January 2018
Paper number: SC(18)JAN06 – Intimidatory Offences
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1 ISSUE

1.1 This is the second consideration of the Intimidatory Offences Guideline following consultation earlier this year. There are two further scheduled meetings to consider the responses to consultation, with sign off of the guideline scheduled to take place at the April Council meeting, and publication of the definitive guideline in July 2018.

1.2 This meeting will concentrate on coercive and controlling behaviour, disclosing private sexual images, and threats to kill guidelines. Sentence levels across the offences will be discussed at the March Council meeting, so will not be discussed at this meeting.

2 RECOMMENDATION

2.1 That the Council:

- Considers the proposed changes to the coercive and controlling offences, disclosing private sexual images, and threats to kill guidelines
- Notes the changes made to the stalking and harassment guidelines following the last meeting, including the changes to the racially or religiously aggravated offence guidance

3 CONSIDERATION

Controlling and coercive behaviour-Annex A

3.1 Generally, this guideline was well received during consultation. One theme which emerged, similarly to the stalking and harassment guidelines discussed at the last meeting, was a request for factors within the medium categories at step one. Road testing also suggested a possible tendency for some of the high culpability and high harm factors to be over-used¹, which suggests a benefit to looking again at the factors in the top categories, and including some new factors in the medium categories. There was also a feeling expressed by a small number of respondents, and by some of the road testing participants, that the factors

¹ 4/5 judges categorised their cases as A1- this is a new offence (in force from December 2015) so the benchmarks may not yet be clear.

had not altogether captured the essence of the offence, particularly around the pattern of behaviour and the duration of offending.

3.2 Looking at the culpability factors first on page 2 of Annex A, it is proposed that the first high culpability factor is reworded to include 'fear', so reads '*conduct intended to maximise fear or distress,*' with a new medium factor of '*conduct designed to cause some fear or distress.*' All the Judges at road testing used the word 'fear' as the key effect on the victim, and one Judge felt strongly that that the word fear should appear in the guideline as this was the 'whole point of the offending'. These changes should help to ensure that only the most serious cases as categorised as high culpability.

3.3 A small number of respondents (Women's Aid, Law Society and two magistrates) felt that the duration of offending was an essential high culpability factor, to capture the 'drip, drip, drip' effect of this type of insidious behaviour. Sentencers during road testing also made references to the importance of this dimension. It is proposed that there is a new high culpability factor of '*persistent action over a prolonged and sustained period*'. For a case to be brought the offender has to 'repeatedly or continuously engage in behaviour' (the elements of the offences are at Annex B), so arguably this new factor goes somewhat further than what has to be proved for a charge to be brought, and addresses offending that is prolonged and sustained. It is proposed that in addition, there is a corresponding new medium factor of '*scope and duration of offence that falls between categories A and C*'.

3.4 As noted above, a small number of respondents and some judges at road testing felt that the guideline had not completely captured the essence of the offence, suggestions were made that the culpability factors should reference types of controlling or coercive behaviour, isolation, financial control, love bombing, gaslighting and so on. The culpability factors cannot hope to list all the examples of this type of behaviour, and it is not appropriate to reference some factors at the expense of others. The organisation 'Standing Together against Domestic Violence' proposed that there should be a high culpability factor of '*use of multiple methods of controlling and coercive behaviour*'. It is suggested that this is an appropriate factor to include, rather than listing types of behaviour it instead acknowledges the cumulative effect of the different ways the offender controls the victim.

3.5 It is proposed that the high culpability factor of '*the use of significant violence against the victim or others (where not charged separately)*' is removed. Some respondents, such as the Magistrates Association (MA) felt that it was not appropriate to include it, that such behaviour should be the subject of its own charge: it is not appropriate for the court to use in effect, an act which should have been the basis of a separate charge, to increase the sentence for this distinct offence.

Question 1: Does the Council agree with the proposed changes to the culpability factors for this offence?

3.6 The draft guideline only contained a harm factor relating to psychological harm caused to the victim, Women's Aid suggested that a reference to distress should also be included, as it is for the rest of the offences within the Intimidatory guideline. Accordingly, it is proposed that category one harm includes the factors '*very serious distress caused to the victim*', and '*significant psychological harm caused to the victim.*' It is proposed that '*victim is particularly vulnerable*' is moved to become an aggravating factor, (as agreed last month for the stalking and harassment offences) with '*offence has a considerable practical impact on the victim*' remaining unchanged.

3.7 It is proposed that there are three new factors within category two harm, 'lesser' versions of the factors in category one, to try and ensure that only the most serious cases fall into category one. These factors are: '*some distress caused to the victim*', '*some psychological harm caused to the victim*' and '*offence has some practical impact on the person*'. In category three it is proposed that '*minimal*' distress is reworded to '*limited*' distress, as discussed last month. These factors can be seen on pages two and three of Annex A.

Question 2: Does the Council agree with the proposed changes to the harm factors for this offence?

3.8 Turning to the aggravating factors, which can be seen on page 4 of Annex A, as noted earlier, '*victim is particularly vulnerable (not all vulnerabilities are immediately apparent*' has been added. Women's Aid suggested adding as an aggravating factor '*victim left in debt, destitute or homeless due to exploitation of finances, withholding money, deception or fraud*', as financial abuse is a discrete form of coercive and controlling behaviour that has serious long term consequences for victims. The MA suggested removing '*established evidence of community/wider impact*' as it was hard to see cases where it would apply, or how evidence of such an impact could be obtained. Further, it is recommended that this factor is removed from all the offences within this guideline. There are no proposed changes to the mitigating factors, and the sentence levels will be discussed at the March meeting.

Question 3: Does the Council agree to the proposed changes to the aggravating factors?

Disclosing private sexual images- Annex C

3.9 Again, the draft guideline for this offence was generally received positively during the consultation, subject to some minor suggested amendments and proposed new factors.

Requests were also made for factors for the medium categories for these offences, as with the others already discussed.

3.10 A small number of respondents suggested that the focus should be on who the images were shared with, such as pupils if the victim worked in a school, and so on. Arguably this is already captured with factor '*conduct intended to maximise distress*'. This factor could be strengthened by adding 'and/or humiliation' to it, as can be seen on page two of Annex C. Two respondents, the Law Society and a magistrate believed that the length of time the images were available is an indication of high culpability. To reflect this, the existing high culpability factor of '*large number of images disclosed*' could be amended to read '*large number of images disclosed and/or images made available over lengthy period*'.

3.11 A small number of respondents felt that the range of different types of images that could be disclosed was not adequately captured within the guideline, that different types of material, nude photos, compared to footage of explicit sexual acts, carries different levels of culpability. The Council previously rejected this approach in the development of the guideline, believing that it was not appropriate to 'rate' one type of image as worse than another. However, rather than articulating that the disclosure of certain types of images is worse for some than for others, a factor of '*disclosure of images is particularly serious by virtue of their content*' could be included within high culpability. This would enable courts to judge in individual cases, that the disclosure was particularly serious because of their content.

3.12 It is proposed in medium culpability that there are three additional factors, '*some planning*', '*conduct intended to cause some distress and/or humiliation*' and '*scope and duration that falls between categories A and C*', and one additional factor in lesser culpability, '*offence was limited in scope and duration*'. These additional factors are also to ensure that only the most serious cases fall into high culpability.

Question 4: Does the Council agree with the proposed changes to the culpability factors?

3.13 The same changes for the three harm categories are proposed for this guideline as discussed for the controlling and coercive offence discussed above in paragraphs 3.6 and 3.7, and can be seen on pages 2 and 3 of Annex C.

Question 5: Does the Council agree with the proposed changes to the harm factors for this offence?

3.14 A small number of respondents, including the Revenge Porn helpline proposed that repeated sharing or reposting of images after they had been removed from websites should be an aggravating factor, so a new factor of '*repeated efforts by offender to keep images*

available for viewing' is proposed and can be seen on page four of Annex C. Three respondents, again including the Revenge Porn helpline suggested that an offender's attempts to remove the images should be a mitigating factor, so a new factor of '*offender took steps to limit circulation of images*' is proposed. Sentence levels for this offence will be discussed at the next meeting.

Question 6: Does the Council agree with the proposed changes to the aggravating and mitigating factors?

Threats to kill- Annex D

3.15 This draft guideline was well received, save for a few suggested amendments to the proposed factors. Starting with high culpability, (page two of Annex D) a few respondents (Women's Aid and a magistrates' committee) suggested that instead of '*offence part of a campaign of violence or threats of violence*' this factor would read better as '*history of threats or violence towards the victim*'. If this proposed rewording of the factor is clearer for users, then it seems sensible to adopt. This factor, and the factor of '*visible weapon*' discussed further below, are included in high culpability as they reinforce the credibility of the threat, that someone has a previous history of threats/violence towards the victim, or that they have a weapon to hand when making the threat.

3.16 Two respondents (Womens' Aid and Mankind Initiative) suggested that examples should be given for the factor of '*visible weapon*', such as sharp instruments or poison. This could be quite problematic to do, particularly as one of the other suggestions was to reference the threat of strangulation, one of the most common ways offenders threaten to kill. Therefore, it is proposed that this factor remains unchanged, without examples.

3.17 With all the other guidelines discussed so far, the need for medium factors has been discussed. Although a general theme throughout the consultation, this issue was not referenced specifically in relation to this offence. Certainly for the culpability factors, it is difficult to think of appropriate medium factors, that are not just artificially created ones, in order to put something in this box. Therefore, it is suggested that for this serious offence, there are no specific medium culpability factors, and courts would assess in appropriate cases, if culpability fell between high and lesser culpability. It is proposed that there is wording to assist this assessment which would read: '*all other cases that fall between categories A and C because: factors are present in A and C which balance each other out **and/or** the offender's culpability falls between the factors described in A and C.*'

3.18 A small number of respondents queried the wording of the lesser culpability factor of '*isolated, brief incident*'. This factor was designed to capture an offence that was an impulsive, unplanned act, no prior history with the victim, and so on. There does need to be a lesser

culpability factor, particularly if there will be no medium culpability factors, but it could alternatively be reworded to *'offence was limited in scope or duration'*.

Question 7: Does the Council agree with the proposed changes to the culpability factors? Does the Council wish to reword the lesser culpability factor?

3.19 Although it is proposed that there are no medium culpability factors, it is suggested that there should be medium harm factors. One of the comments made by a consultation respondent was that offenders will often say that the threat was not meant, so more emphasis should be placed on harm to the victim, rather than culpability. Respondents also wished to see psychological harm referred to in the harm factors.

3.20 Therefore, it is proposed that there is an additional category one harm factor of *'significant psychological harm caused to the victim'*, and three new factors in category two harm of *'some distress caused to the victim'*, *'some psychological harm caused to the victim'* and *'offence has some practical impact on the victim'*. As with the other offences already discussed, it is proposed that the factor of *'victim is particularly vulnerable'* is moved to be an aggravating factor, and the category three factor of *'minimal'* distress is reworded to *'limited'*. All these changes can be seen on page two of Annex D. There are no suggested changes to the aggravating or mitigating factors for this offence, and sentence levels will be discussed at the next meeting.

Question 8: Does the Council agree with the proposed changes to the harm factors?

Harassment/stalking guidelines- Annexes E/F

3.21 The changes to the harm and culpability factors, agreed at the last meeting have been made to both guidelines, and can be seen in red on pages two and three of Annexes E and F. Changes have also been made to the guidance for racially or religiously aggravated offences, which can be seen at page five of both annexes. This follows on from a discussion at the last meeting on racially and religiously aggravated offences within public order. The discussion took place as to whether this guidance should be included as an extra step in the guideline, following concerns arising from the MA event that sentencers were not entirely clear on how to assess the level of aggravation.

3.22 The additional stepped approach was tried during the Intimidatory offences consultation, where the aggravated guidance was included as a step three, and this was found to be problematic, so as discussed in last month's paper, this approach was changed. However, to address some of the concerns and provide clearer guidance as to what constitutes a high, medium and low level of aggravation, the guidance has been restructured

across all guidelines with racially/religiously aggravated offences (as also discussed within the public order paper for this meeting). It is not possible to have a sentence table for this offence, so there is guidance on how to apply an uplift to the basic sentence.

Question 9: Is the Council content with the changes made to the stalking and harassment guidelines?

4 IMPACT/RISKS

4.1 A final resource assessment will be prepared and circulated to the Council in due course, ahead of the publication of the definitive guideline.

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Controlling or Coercive Behaviour in an Intimate or Family Relationship

Serious Crime Act 2015, s.76

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: Five years' custody

Offence range: Discharge to 4 years' custody

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability:

- Conduct intended to maximise fear or distress
- ~~The use of significant violence against the victim or others (where not separately charged)~~
- Persistent action over a prolonged and sustained period
- Use of multiple methods of controlling or coercive behaviour
- Sophisticated offence
- Conduct intended to humiliate and degrade the victim

B - Medium culpability:

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

C - Lesser culpability:

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

Harm

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

Category 1

- Very serious distress caused to the victim
- ~~Significant~~Very serious psychological harm caused to the victim
- ~~Victim is particularly vulnerable~~
- Offence has a considerable practical impact on the victim

Category 2

- Harm that falls between categories 1 and 3, and in particular:
- Some distress caused to the victim
- Some psychological harm caused to the victim

- Offence has some practical impact on the victim

Category 3

- Limited Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 5 years

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 2 years' custody</p> <p>Category range 1 year- 4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 6 months- 2 years' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order-1 years' custody</p>
Category 2	<p>Starting point 1 years' custody</p> <p>Category range 6 months- 2 years' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order- 1 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order- 6 months custody</p>
Category 3	<p>Starting point 6 months custody</p> <p>Category range High level community order-1 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order- 6 months custody</p>	<p>Starting point Low level community order</p> <p>Category range Discharge –High Level community order</p>

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

Compensation order

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

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, s.5).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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

Elements of the offence:

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

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

OR

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

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

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

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

Elements of the offence:

Course of conduct

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

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

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

Elements of the offence:

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

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

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

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

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

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

Elements of the offence:

Course of conduct

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

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

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

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

Threats to Kill –Offences Against the Person 1861 s16

Elements of the offence:

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

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

Elements of the offence:

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

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

Elements of the offence:

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

'Personally connected' means

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

Behaviour has a 'serious effect' if

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

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

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Disclosing Private Sexual Images

(Disclosing private sexual photographs or films without the consent of an individual who appears in them and with intent to cause that individual distress)

Criminal Justice and Courts Act 2015, s.33

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years.

Offence range: Discharge to 1 year 6 months

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

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A- High Culpability

- Conduct intended to maximise distress and/or humiliation
- Images circulated widely/publically
- Significant planning and/or sophisticated offence
- Large number of images disclosed and/or images made available over lengthy period
- Release of images particularly serious by virtue of their content

B – Medium Culpability

- All other cases that fall between categories A and C
- Conduct intended to cause some distress and/or humiliation
- Some planning
- Scope and duration that falls between categories A and C

C – Lesser Culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability.
- Little or no planning
- Offence was limited in scope and duration

Harm

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

Category 1

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- ~~Victim is particularly vulnerable~~
- Offence has a considerable practical impact on the victim

Category 2

- Harm that falls between categories 1 and 3, and in particular:
- Some distress caused to the victim
- Some psychological harm caused to the victim
- Offence has some practical impact on the victim

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

Category 3

- Minimal/limited distress or harm caused to the victim

STEP TWO**Starting point and category range**

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

Maximum 2 years

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

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

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

context of the offence and factors relating to the offender.

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, sex, age or transgender identity.
- Impact of offence on others, especially children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Repeated efforts by offender to keep images available for viewing
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

offending behaviour

STEP THREE

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

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

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STEP SIX

Compensation and ancillary orders

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

Compensation order

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

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, s.5).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence

The order may have effect for a specified period or until further order

STEP SEVEN

Reasons

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

STEP EIGHT

5

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

Consideration for time spent on bail

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

Annex D

Threats to kill

Offences Against the Person Act 1861, s.16

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Offence range: Discharge to 7 years

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

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

STEP ONE**Determining the offence category**

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability:

- Significant planning and/or sophisticated offence
- Visible weapon
- Threats made in the presence of children
- History of threats or violence towards the victim
- ~~Offence part of a campaign of violence or threats of violence~~
-

B - Medium culpability:

- All other cases that fall between categories A and C because:
- Factors are present in A and C which balance each other out and/or
- The offender's culpability falls between the factors described in A and C

C - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- Isolated, brief incident

Harm

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

Category 1

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- ~~Victim is particularly vulnerable~~
- Offence has a considerable practical impact on the victim

Category 2

- Harm that falls between categories 1 and 3, and in particular:
- Some distress caused to the victim
- Some psychological harm caused to the victim
- Offence has some practical impact on the victim

Category 3

- ~~Limited~~Minimal distress or harm caused to the victim

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

STEP TWO**Starting point and category range**

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

Maximum 10 years

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

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

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

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

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:

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

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

STEP SEVEN**Compensation and ancillary orders**

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

Compensation order

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

Other ancillary orders available include:***Restraining order***

Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, s.5).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence

The order may have effect for a specified period or until further order

STEP EIGHT**Reasons**

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

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

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

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

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

Harassment

Protection from Harassment Act 1997, s.2

Stalking

Protection from Harassment Act 1997, s.2A

Triable only summarily

Maximum: Level 5 fine and/or 6 months

Offence range: Discharge to 26 weeks custody

Racially or religiously aggravated harassment

Crime and Disorder Act 1998, s.32 (1)(a)

Racially or religiously aggravated stalking-

Crime and Disorder Act 1998, s.32 (1)(a)

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years.

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

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability:

- Conduct intended to maximise **fear or** distress
- **High degree of** planning and/or sophisticated offence
- Persistent action over sustained period
- **Threat of serious violence**
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim, age, sex, disability, sexual orientation or transgender identity

B - Medium culpability:

- All other cases that fall between categories A and C, **in particular:**
- **Conduct intended to cause some fear or distress**
- **Some planning**
- **Threat of some violence**
- **Scope and duration of offence that falls between categories A and C**

C - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- **Little or no planning**
- Offence was limited in scope and duration

Harm

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

Category 1

- **Very serious** caused to the victim
- **Significant psychological harm caused to the victim**
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

- Harm that falls between categories 1 and 3, **and in particular:**
- **Some distress caused to the victim**
- **Some psychological harm caused to the victim**
- **Victim caused to make some changes to lifestyle to avoid contact**

Category 3

- **Limited** distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 6 months (basic offence)

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

- 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:

- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit an offence
- Offence committed against those working in the public sector or providing a service to the public
- **Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)**
- **Grossly violent or offensive material sent**
- ~~Established evidence of community/wider impact~~
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance

these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum for the basic offence is 6 months' custody)

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>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</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). 	<p>Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.</p>

<ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<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>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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

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

STEP FOUR
Reduction for guilty pleas

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

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

Compensation order

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

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, s.5).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence

The order may have effect for a specified period or until further order

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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Annex F

Harassment (Putting people in fear of violence)

Protection from Harassment Act 1997, s.4

Stalking (involving fear of violence or serious alarm or distress)

Protection from Harassment Act 1997, s.4A

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Offence range: Discharge to 8 years' custody

Racially or religiously aggravated harassment- (Putting people in fear of violence)

Crime and Disorder Act 1998, s.32 (1)(b)

Racially or religiously aggravated stalking- (with fear of violence)

Crime and Disorder Act 1998, s.32 (1)(b)

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years.

<p>Where offence committed in a domestic context, also refer to the <i>Domestic Abuse: Overarching Principles</i> guideline</p>
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STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:

A- Very high culpability- the extreme nature of one or more culpability B factors or the extreme culpability indicated by a combination of culpability B factors may elevate to category A.

B - High culpability:

- Conduct **intended to maximise fear** or distress
- **High degree of significant** planning and/or sophisticated offence
- Persistent action over sustained period
- Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim, age, sex, disability, sexual orientation or transgender identity

C - Medium culpability:

- All other cases that fall between categories B and D, and in particular:
- **Conduct intended to cause some fear or distress**
- **Some planning**
- **Scope and duration of offence that falls between categories B and D**

D - Lesser culpability:

- Offender's responsibility substantially reduced by mental disorder or learning disability
- **Conduct unlikely to cause significant fear or distress**
- **Little or no planning**
- Offence was limited in scope and duration

Harm

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

Category 1

- **Very serious distress** caused to the victim
- **Significant psychological harm caused to the victim**
- Victim caused to make considerable changes to lifestyle to avoid contact

Category 2

Harm that falls between categories 1 and 3, and in particular:

- Some distress caused to the victim
- Some psychological harm caused to the victim
- Victim caused to make some changes to lifestyle to avoid contact

Category 3

- **Limited** Minimal distress or harm caused to the victim

STEP TWO

Starting point and category range

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

Maximum 10 years (basic offence)

Harm	Culpability			
	A	B	C	D
Category 1	<p>Starting point 5 years custody</p> <p>Category range 3 years 6 months-8 years custody</p>	<p>Starting point 2 years 6 months custody</p> <p>Category range 1 year to 4 years custody</p>	<p>Starting point 36 weeks custody</p> <p>Category range 12 weeks – 1 year 6 months custody</p>	<p>Starting point 12 weeks custody</p> <p>Category range High level Community order-36 weeks custody</p>
Category 2	<p>Starting point 2 years 6 months custody</p> <p>Category range 1 year to 4 years custody</p>	<p>Starting point 36 weeks custody</p> <p>Category range 12 weeks to 1 year 6 months custody</p>	<p>Starting point 12 weeks custody</p> <p>Category range High level Community order-36 weeks custody</p>	<p>Starting point Medium level Community order</p> <p>Category range Low Level Community order- High level Community order</p>
Category 3	<p>Starting point 36 weeks custody</p> <p>Category range 12 weeks to 1 year 6 months custody</p>	<p>Starting point 12 weeks custody</p> <p>Category range High level Community order-36 weeks custody</p>	<p>Starting point Medium level Community order</p> <p>Category range Low Level Community order-High level Community order</p>	<p>Starting point Band C fine</p> <p>Category range Discharge-Low level Community order</p>

Sentencers should consider whether to ask for psychiatric reports in order to

assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this consideration may be relevant.

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Using a position of trust to facilitate the offence
- **Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)**
- **Grossly violent or offensive material sent**
- Impact of offence on others, particularly children
- Exploiting contact arrangements with a child to commit the offence
- Offence committed against those working in the public sector or providing a service to the public
- ~~Established evidence of community/wider impact~~
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where **not** linked to the commission of the offence)
- Sole or primary carer for dependent relatives

- Determination and/or demonstration of steps having been taken to address offending behaviour

RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 14 years custody (maximum for the basic offence is 10 years)

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>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</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>Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.</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>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

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

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

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

Compensation order

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

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (Protection from Harassment Act 1997, s.5).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence

The order may have effect for a specified period or until further order

STEP EIGHT**Reasons**

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

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

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