

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**.

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.**

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse'

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

- Targeting of individual(s) by a group (*new factor as included in public order offences as would increase seriousness. Role assessed at step two instead of existing guideline step one*)
- Deliberate targeting of vulnerable victim (*existing higher culpability factor*)
- Sustained or repeated assault (*replaces greater harm factor of sustained or repeated assault on same victim*)
- Use of substantial force (*replaces higher culpability factors: intention to commit more serious harm and deliberately causes more harm than necessary*)
- Threatened or actual use of weapon or weapon equivalent* (*including shod foot, headbutting, use of acid, use of animal*) retained from existing guideline
- Significant planning (*replaces higher culpability factor significant degree of premeditation*)
- Intention to cause fear of serious harm (*to capture assault offences where victim apprehends use of force but force not actually used*)

B – Lesser culpability

- Minor or no physical contact;
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

*Examples of a weapon equivalent can include but are not limited to: a shod foot, headbutting, use of acid, use of animal in commission of offence

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	More than minor physical or psychological harm
Category 2	Minor physical or psychological harm
Category 3	No physical injury Very low level of distress

STEP TWO

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

(SENTENCE TABLE TO BE INSERTED WHEN DEVELOPED)

Aggravating and mitigating factors**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: disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting

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

Leading role in group

History of antagonising the victim

Victim had no opportunity to escape situation (ie: on public transport)

Presence of others including relatives, particularly children or partner of the victim

Gratuitous degradation of victim

Abuse of power and/or position of trust

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Other offences taken into consideration (TICs)

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

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Minor or peripheral role in group activity

Significant degree of provocation

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 taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Lapse of time since the offence where this is not the fault of the offender

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