

23 February 2018

Dear Members

## Meeting of the Sentencing Council – 2 March 2018

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 2 March 2018 at 9:45.

A security pass is not needed to gain access to this building and members can head straight to the meeting room. Once at the Queen's building, go to the lifts and the floor is 2M. Alternatively, call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

### The agenda items for the Council meeting are:

- |   |             |
|---|-------------|
| ▪ Agenda                                | SC(18)MAR00 |
| ▪ Minutes of meeting held on 26 January | SC(17)JAN01 |
| ▪ Action Log                            | SC(18)MAR02 |
| ▪ Terrorism                             | SC(18)MAR03 |
| ▪ Manslaughter                          | SC(18)MAR04 |
| ▪ Child Cruelty                         | SC(18)MAR05 |
| ▪ Sex Evaluation                        | No Paper    |
| ▪ Intimidatory Offences                 | SC(18)MAR06 |
| ▪ Terrorism                             | SC(18)MAR07 |

Members can access papers via the members' area of the website. If you are unable to attend the meeting, we would welcome your comments in advance.

Also included are the 2019 Sentencing Council meeting dates.

Best wishes



**Steve Wade**

Head of the Office of the Sentencing Council

# **Sentencing Council Meeting Dates 2019**

**The meetings will start at 9:45 and end at 16:30, these times may change depending on workload etc.**

**Friday 25 January 2019 – RCJ Queen's Conference Room**

**Friday 1 March 2019 – RCJ Queen's Conference Room**

**Friday 5 April 2019 – RCJ Queen's Conference Room**

**Friday 10 May 2019 – RCJ Queen's Conference Room**

**Friday 14 June 2019 – RCJ Queen's Conference Room**

**Friday 26 July 2019 – RCJ Queen's Conference Room**

**Friday 27 September 2019 – RCJ Queen's Conference Room**

**Friday 25 October 2019 – RCJ Queen's Conference Room**

**Friday 22 November 2019 – RCJ Queen's Conference Room**

**Friday 20 December 2019 – RCJ Queen's Conference Room**

## COUNCIL MEETING AGENDA

**2 March 2018**  
**Royal Courts of Justice**  
**Queen's Building Conference Room**

- |               |  |
|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 11:00 | Terrorism - presented by Vicky Hunt (paper 3)                  |
| 11:00 – 12:00 | Manslaughter - presented by Ruth Pope (paper 4)                |
| 12:00 – 13:00 | Child Cruelty - presented by Eleanor Nicholls (paper 5)        |
| 13:00 – 13:30 | Lunch  |
| 13:30 – 14:00 | Sex Evaluation - presented by Pamela Jooman                    |
| 14:00 – 15:00 | Intimidatory offences - presented by Mandy Banks (paper 6)     |
| 15:00 – 16:00 | Terrorism - presented by Vicky Hunt (paper 7)                  |

# Sentencing Council

## **COUNCIL MEETING AGENDA**

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## MEETING OF THE SENTENCING COUNCIL

26 JANUARY 2018

### MINUTES

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Members present: Colman Treacy (Chairman)  
Mark Castle  
Rosina Cottage  
Rebecca Crane  
Julian Goose  
Martin Graham  
Jill Gramann  
Heather Hallett  
Tim Holroyde  
Maura McGowan  
Sarah Munro  
Julian Roberts  
Alison Saunders

Apologies: Olivia Pinkney

Representatives: Sophie Marlow for the Lord Chief Justice (Legal and Policy Adviser to Sir Brian Leveson, Head of Criminal Justice)  
Phil Douglas for the Lord Chancellor (Director, Offender and Youth Justice Policy)

Members of Office in Attendance: Mandy Banks  
Vicky Hunt  
Lisa Frost  
Eleanor Nicholls  
Ruth Pope

## **1. MINUTES OF LAST MEETING**

- 1.1. The minutes from the meeting of 15 December 2017 were agreed.

## **2. MATTERS ARISING**

- 2.1 The Chairman welcomed Phil Douglas to his first Council meeting since his appointment as MoJ Director of Offender and Youth Justice Policy.

## **3. DISCUSSION ON TERRORISM – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL**

- 3.1 The Council considered the Preparation of Terrorist Acts guideline and agreed some revisions to the culpability factors to deal better with a 'less sophisticated' type of terrorist attack. The Council also agreed changes to the sentencing table and the guidance on dangerousness. These changes will also be made to the Explosive Substances guideline for consistency.
- 3.2 The Council also discussed proposed changes to the harm model for the Preparation and Explosive Substances guideline but agreed that this needs further thought and so a working group will convene in February for this purpose. The Council also agreed to discuss some changes to the Failure to Disclose Information guideline at the same working group.
- 3.2 In considering the second terrorism paper the Council considered and agreed changes to both the culpability and harm factors in the Encouragement of Terrorism and Collection of Terrorist Information guidelines. The changes to the culpability factors in the 'Encouragement' guideline were made to provide greater clarity for sentencers, and the changes to the harm factors were made to link harm more closely to the severity of the material published or disseminated.
- 3.3 The changes to the 'Collection' guideline were made to ensure that the factors capture offences at the right level. Many respondents to the consultation felt that the factors described the type of activity that is more likely to be charged with a more serious offence.
- 3.4 Finally the Council made minor changes to the Possession for Terrorist Purposes guideline to help achieve consistency across the package of guidelines.

## **4. DISCUSSION ON PUBLIC ORDER – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL**

- 4.1 The Council gave final consideration to the draft guideline for Public Order offences. The package of guidelines includes Riot, Violent

Disorder, Affray, s4, s4A and s5 Public Order Act offences and their racially or religiously aggravated counterparts, and a guideline for a number of related hate crime offences. A number of minor revisions to factors were agreed and the guideline was signed off for consultation, with consultation planned to commence on 12 April 2018.

## **5. DISCUSSION ON SERIOUSNESS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The Council discussed how additional information could be made available on factors in existing guidelines, once all guidelines are available digitally. At this meeting the Council looked at the Assault, Burglary, Sex, Robbery, Drugs, Fraud, Environmental Offences, Possession of Offensive Weapon/ Bladed Article and Theft Definitive Guidelines.
- 5.2 The Council agreed to consult on proposals to include additional information on many of the standard aggravating and mitigating factors in offence specific guidelines. The Council also agreed to consult on including some tailored information in different offence specific guidelines.
- 5.3 The Council agreed that where guidelines define medium culpability or harm by the absence of factors in high or low, it would consult on changing the wording to give more guidance.

## **6. DISCUSSION ON INTIMIDATORY OFFENCES – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council considered consultation responses on the Coercive and Controlling Behaviour, Disclosing Private Sexual Images and Threats to Kill guidelines. Some amendments and changes to the culpability, harm, and aggravating and mitigating factors across the three offences were agreed as a result of the discussion. Some changes to the guidance for sentencing racially or religiously aggravated harassment and stalking offences were also agreed.
- 6.2 The Council agreed that sentence levels across all the offences will be discussed at the next Council meeting.

## **7. DISCUSSION ON CHILD CRUELTY – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 This was the first discussion of the guideline following the consultation on the draft guideline in summer 2017. The Council discussed the approach to the assessment of culpability and the culpability factors in the guidelines for the Cruelty to a Child and Causing or Allowing a Child to Die or Suffer Serious Physical Harm offences. Other aspects of these guidelines, and the guideline for the Failure to Protect a Girl from the Risk of FGM offence will be discussed at future meetings.

- 7.2 The Council considered comments made in consultation responses and noted the broad agreement from consultees with the approach to assessing culpability for both offences. The Council made some changes to the culpability factors, particularly to ensure that all types of child cruelty were clearly covered by the guideline, and to provide appropriate guidance on balancing different factors.

**8. DISCUSSION ON MANSLAUGHTER – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 8.1 The Council considered the responses to the consultation on the Gross Negligence Manslaughter guideline and the results of research with judges on the draft guideline. The Council noted that some of the factors in the draft guideline could have unintended consequences in some cases. The Council agreed to remove some factors and redraft others.
- 8.2 It was agreed to re-test the revised guideline with judges before finalising the definitive version.



## ACTION AND ACTIVITY LOG – as at 23 February 2018

	Topic	What	Who	Actions to date	Outcome
<b>SENTENCING COUNCIL MEETING 20 November 2015</b>					
1	Assault	Council to review decision to postpone assault work in June/ July 2016.	Lisa Frost	The Council discussed and agreed at the March meeting to bring assault back to the September meeting.	<b>ACTION ONGOING:</b> This timetable will now slip as a result of expediting the terrorism guidelines and now likely to be scheduled for Spring 2018
<b>SENTENCING COUNCIL MEETING 15 December 2017</b>					
2	Sentencing Code Consultation	A draft response to the Law Commission Sentencing Code will be circulated for Council member's comments. Responses to Ruth by 22 January 2017	Ruth Pope / Council members		<b>ACTION COMPLETE:</b> Comments have been received and the Council's response sent to the Law Commission
3	Release of Professor Bottom's report	Bottoms' report to be published January 2018 together with a summary outlining the broad areas of work that the Council is taking forward as a result. Prof. Bottom to be informed in advance.	Steve Wade	<b>ACTION ONGOING:</b> Report is now amended and Tony Bottoms has agreed content. Emma is producing the summary of what we are doing in response and will share with Council members for their approval / comments in advance of publishing.	
<b>SENTENCING COUNCIL MEETING 26 January 2018</b>					
4	Terrorism Working Group	Vicky to set up a working group meeting for February	Vicky Hunt/ Council members		<b>ACTION COMPLETE:</b> Working Group met and agreed proposed draft guidelines ready for Council's consideration in March

5	Manslaughter	Ruth to circulate suggested factors for 'obviously dangerous' cases to Council members for comments. Revised version to be road-tested with judges who considered the consultation version	Ruth Pope/ Council members	<b>ACTION ONGOING:</b> Council members have provided comments and a revised draft has been sent to judges to 'sentence' a case.	
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**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**2 March 2018**  
**SC(18)MAR03 Terrorism Paper 1**  
**Julian Goose**  
**Vicky Hunt**  
**020 7071 5786**

## **1 ISSUE**

1.1 The Council is invited to consider a redraft of the Preparation for Terrorist Acts guideline, the Explosive Substances guideline and the Failure to Disclose Information About Acts of Terrorism guideline.

## **2 RECOMMENDATION**

2.1 It is recommended that the Council consider the following proposals:

### Preparation

- Amendments to the culpability factors to address the concerns raised by the Assistant Commissioner
- Removal of the factors relating to travelling or attempting to travel abroad for terrorist purposes
- Amendments to the harm factors which now separate out multiple deaths to ensure those cases reach the highest harm category
- Removal of the words intention/ reckless from the harm model
- Return to a traditional harm model but still including consideration of 'likelihood'

### Explosive Substances

- Amendments to replicate the changes to the Preparation guideline (where appropriate)

### Failing to Disclose

- A revision of the step 1 culpability factors to relate more closely to the importance of the information withheld.

### 3 CONSIDERATION

#### Preparation of Terrorist Acts

3.1 At the January Council meeting a number of issues were discussed regarding proposed additional culpability factors; whether the guideline should include reference to those offenders who travel or attempt to travel abroad to engage in terrorist activity; and proposed changes to the harm model. After lengthy discussion it was agreed that in order to make progress these issues should be discussed by a separately convened working group. This group met on 12 February and the issues were discussed, resulting in a new proposed draft which can be seen at **Annex A**.

#### *Culpability Factors*

3.2 In January the Council decided to add an additional culpability A factor to help ensure that 'unsophisticated' terrorist offences, similar to that seen at London Bridge, would receive the highest sentences.

Acting alone, or a leading role, in terrorist activity where preparations, although not complete or almost complete, are well advanced and very likely to succeed but for apprehension

3.3 This factor was added as a result of comments from Mark Rowley's office, expressing concern that the current draft might lead to the police risking public safety by waiting for the offender to be closer to completion of his preparations in order to receive the highest sentence.

3.4 At the working group meeting the members agreed to a rewording of this culpability A factor so that only one culpability A factor is now required (see Annex A). In addition, the working group discussed and agreed amendments to the other culpability factors to introduce the consideration of 'but for apprehension...' to all levels of culpability. The old factors can be seen below: -

A	<ul style="list-style-type: none"><li>• Acting alone, or a leading role in terrorist activity where preparations are complete or almost complete</li><li>• Acting alone, or a leading role, in terrorist activity where preparations, although not complete or almost complete, are well advanced and very likely to succeed but for apprehension</li></ul>
B	<ul style="list-style-type: none"><li>• Acting alone, or a leading role, in terrorist activity where preparations are advanced but <b>not</b> complete or almost complete</li><li>• Significant role in terrorist activity where preparations are complete or almost complete</li><li>• Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)</li></ul>
C	<ul style="list-style-type: none"><li>• Lesser role in terrorist activity where preparations are advanced but <b>not</b> complete or almost complete</li></ul>

	<ul style="list-style-type: none"> <li>• Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B)</li> <li>• Offender travels or makes determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)</li> </ul>
D	<ul style="list-style-type: none"> <li>• Offender has engaged in very limited preparation of terrorist activity</li> <li>• Act(s) of lesser assistance or encouragement to other(s)</li> </ul>

**QUESTION 1: Does the Council agree with the proposed changes to the culpability factors (set out in Annex A), which now include ‘but for apprehension...’ at all levels of culpability?**

3.5 At the January Council meeting the Council was asked to decide whether the following factors should remain in the guideline:

- Offender travels abroad to engage in terrorist activity
- Offender makes determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)

3.6 Some respondents to the consultation had suggested their removal as they felt the factors were very clearly aimed at Islamic terrorism, specifically those travelling to Syria.

3.7 Some Council members proposed removing the factors and letting such cases be sentenced according to the actions taken by the offender. In other words, the court would consider why the offender was travelling or attempting to travel abroad and how far they had come in their preparations. The Council did not reach a firm conclusion about this issue and left it for the Working Group to consider.

3.8 The Working Group concluded that the main risk of leaving these factors in is that it restricts all such cases to a specific culpability level when the range of activity that an offender may be involved in could be huge. In some cases, an offender might have travelled abroad and actively engaged in armed combat risking the lives of many. If a person had done the same in the UK they would be expected to fall into a far higher category. Whereas another offender might simply have engaged in training, or not even made it abroad.

3.9 The Working Group instead felt it better to allow the cases to be sentenced according to the activity that the offender engaged in.

3.10 In addition, the Working Group discussed and agreed upon an additional factor for culpability C that might capture some of the less serious ‘travelling abroad’ cases, amongst others;

Offender acquires training or skills for the purpose of terrorist activity (where not falling into A or B)

**QUESTION 2: Does the Council agree to remove the ‘travelling abroad’ factors, and to include a new factor into culpability C about acquiring training or skills for the purpose of terrorist activity?**

*Harm*

3.11 At the January Council meeting a new harm model was proposed to take into account a number of different factors including the type of harm, whether the offender intended to cause the harm or was reckless as to whether the harm would be caused; and the likelihood of that harm being caused.

3.12 A number of Council members felt that the new draft model was too complex as it involved two steps. The Working Group felt that the model need only cover the type of harm and the likelihood of that harm being caused, thus the traditional model would work. Other Council members felt that issues such as intention or recklessness are relevant only to culpability and should not form a part of the harm assessment.

3.13 In changing the model to include just the type of harm, and the likelihood of harm being caused, the heading to the harm model has also been changed so that it says;

Harm is assessed based on the type of harm risked & the likelihood of causing that harm. When considering the likelihood of harm, the court should consider the viability of the plan.

**QUESTION 3: Does the Council agree that the harm model should only include consideration of the type of harm caused/ risked and the likelihood of that harm being caused?**

3.14 In addition, the Working Group discussed whether an offender who risks many deaths should be in a higher harm category than those offenders who intend or risk one or a small number of deaths. This is an issue that the Council had discussed before we went to consultation and it was previously agreed that any death should result in the highest harm category. The consultation draft, therefore, included the following harm factors: -

<b>Category 1</b>	<ul style="list-style-type: none"><li>• Endangerment of life</li></ul>
<b>Category 2</b>	<ul style="list-style-type: none"><li>• Widespread and serious damage to property or economic interests</li><li>• Substantial impact upon civic infrastructure</li></ul>
<b>Category 3</b>	<ul style="list-style-type: none"><li>• Other cases where characteristics for categories 1 or 2 are not present</li></ul>

3.15 The Working Group reflected on this issue and concluded that multiple deaths should result in the highest possible sentence, and such a case should be differentiated from others. To that end the harm model in **Annex A** is now being proposed. The Working Group felt that in cases where a particularly prominent person (such as the Prime Minister, an MP or a member of the armed forces) is targeted there are likely to be sufficient aggravating features that the court could go to the top of the range of harm 2 or even outside of the range to reach an appropriate sentence.

3.16 In addition, when roadtesting the guideline with a number of terrorist Judges, several queried the fact that when assessing harm at step 1 the draft guideline treats the endangerment of life as the same, regardless of the scale of intended casualties and it is only at step 2, (where we had included a factor 'many lives endangered') that the difference was reflected. The Judges felt that the difference was more significant and should be dealt with in the initial assessment of seriousness.

**QUESTION 4: Does the Council agree that the harm model should separate those intending to cause multiple deaths from those intending to cause a single or small number of deaths?**

#### *Sentencing*

3.17 If the Council agree to the change proposed above, the sentencing table would also have to be changed so that those now falling into harm category 2 receive appropriate sentences. The original sentence table was drafted on the basis that only those falling into harm category 1 had endangered lives, and those falling into harm category 2 had either intended to cause widespread serious damage to property or economic interest, or had intended to cause substantial impact to civic infrastructure. Thus, the sentences for harm category 2 were significantly lower.

3.18 The proposed new sentences can be seen at **Annex A**. The old sentence table is replicated below: -

Ha rm	Culpability			
	A	B	C	D
1	<p><b>Starting point</b> Life imprisonment - minimum term of 35 years</p> <p><b>Category range</b> Life imprisonment - minimum term of 30 – 40 years</p>	<p><b>Starting point</b> Life imprisonment - minimum term of 20 years</p> <p><b>Category range</b> Life imprisonment with a minimum term 15 - 25 yrs.</p>	<p><b>Starting point</b> Life imprisonment - minimum term of 15 years</p> <p><b>Category range</b> Life imprisonment - minimum term 10 – 20 yrs.</p>	<p><b>Starting point</b> 15 years' custody</p> <p><b>Category range</b> 10-20 years</p>
2	<p><b>Starting point</b> 25 years custody</p> <p><b>Category range</b> 20 - 30 years custody</p>	<p><b>Starting point</b> 20 years</p> <p><b>Category range</b> 15- 25 years custody</p>	<p><b>Starting point</b> 15 years' custody</p> <p><b>Category range</b> 10- 20 years' custody</p>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 6-10 years' custody</p>
3	<p><b>Starting point</b> 16 years' custody</p> <p><b>Category range</b> 12 – 20 years'</p>	<p><b>Starting point</b> 12 years' custody</p> <p><b>Category range</b> 8- 16 years' custody</p>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 6 - 10 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 3 years – 6 years' custody</p>

**QUESTION 5: Does the Council agree to the changes to the sentencing table (as can be seen at Annex A)?**

Explosive Substances

3.19 The Explosive Substances guideline (**Annex B**) has been amended to reflect the changes made to the Preparation guideline.

Failure to Disclose Information

3.20 **Annex C** shows the proposed new culpability factors as tracked changes to the consultation draft.

3.21 In January the Council discussed the consultation version of the guideline and decided that the culpability factors were not right as they simply reflected the offence rather than indicating a level of culpability. The Council was keen to capture other factors at culpability and harm so that offenders are sentenced according to the extent of the offender's knowledge; how significant the material was; and the nature and seriousness of the connected terrorist activity.

3.22 Section 38B provides that where a person has information which he knows or believes might be of material assistance in either preventing the commission by another person of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person,



*in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism* he commits an offence if he does not disclose the information as soon as reasonably practicable.

3.23 The Working Group therefore agreed that the extent of the offender's knowledge will already have been considered as a relevant factor in the conviction, given that the offender must have had knowledge that the information was useful, or of material assistance in order to be convicted. The Working Group concluded that the significance of the information withheld should be the main consideration when deciding the appropriate level of culpability.

3.24 The harm factors already refer to the nature and seriousness of the connected terrorist act so that if the act is likely to endanger life or impact on economic interests or civic infrastructure then the case falls into category 1.

3.25 As the new culpability model includes three levels rather than two, the sentencing table has had to be changed.

**QUESTION 6: Does the Council agree with the proposed culpability factors?**

**QUESTION 7: Does the Council agree with the proposed sentence levels?**

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## **Preparation of Terrorist Acts**

Terrorism Act 2006 (section 5)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

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Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older
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**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 court should weigh all the factors set out below in determining the offender's culpability.

**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	<ul style="list-style-type: none"> <li>• <b>Acting alone</b>, or in a <b>leading</b> role, in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> </ul>
B	<ul style="list-style-type: none"> <li>• <b>Acting alone</b>, or in a <b>leading</b> role, in terrorist activity where preparations were <del>well</del> advanced and, but for apprehension, the activity was likely to have been carried out</li> <li>• <b>Significant</b> role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> <li>• Offender has coordinated others to take part in terrorist activity, whether in the UK or abroad (where not falling within A)</li> </ul>
C	<ul style="list-style-type: none"> <li>• <b>Leading</b> role in terrorist activity where preparations were not far advanced</li> <li>• <b>Significant</b> role in terrorist activity where preparations were <del>well</del> advanced and, but for apprehension, the activity was likely to have been carried out</li> <li>• <b>Lesser</b> role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> <li>• Offender acquires training or skills for purpose of terrorist activity (where not falling within A or B)</li> <li>• Acts of significant assistance or encouragement of other(s) (where not falling within A or B)</li> </ul>
D	<ul style="list-style-type: none"> <li>• Offender has engaged in very limited preparation for terrorist activity</li> <li>• Act(s) of lesser assistance or encouragement of other(s)</li> <li>• Other cases not falling within A, B or C</li> </ul>

**Harm**

Harm is assessed based on the type of harm risked & the likelihood of that harm being caused.

When considering the likelihood of harm, the court should consider the viability of the plan

Category 1	<ul style="list-style-type: none"> <li>• Multiple deaths risked and highly likely to be caused</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Multiple deaths risked but not highly likely to be caused</li> <li>• Any death risked and highly likely to be caused</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Any death risked but not highly likely to be caused</li> <li>• Risk of widespread or serious damage to property or economic interests</li> <li>• Risk of a substantial impact upon civic infrastructure</li> <li>• Any other cases</li> </ul>

**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.

**Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).**

**The court must also consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).**

Harm	Culpability			
	A	B	C	D
<b>1</b>	<b>Starting point</b> Life imprisonment - minimum term of 35 years <b>Category range</b> Life imprisonment - minimum term of 30 – 40 years	<b>Starting point</b> Life imprisonment - minimum term of 25 years <b>Category range</b> Life imprisonment with a minimum term 20 - 30 yrs.	<b>Starting point</b> Life imprisonment - minimum term of 15 years <b>Category range</b> Life imprisonment - minimum term 10 – 20 yrs.	<b>Starting point</b> 15 years' custody <b>Category range</b> 10-20 years
<b>2</b>	<b>Starting point</b> Life imprisonment - minimum term of 25 years <b>Category range</b> Life imprisonment with a minimum term 20 - 30 yrs.	<b>Starting point</b> Life imprisonment - minimum term of 15 years <b>Category range</b> Life imprisonment - minimum term 10 – 20 yrs.	<b>Starting point</b> 15 years' custody <b>Category range</b> 10- 20 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6-10 years' custody
<b>3</b>	<b>Starting point</b> 16 years' custody <b>Category range</b> 12 – 20 years'	<b>Starting point</b> 12 years' custody <b>Category range</b> 8- 16 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6 - 10 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 years – 6 years' custody

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failed to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

### STEP THREE

**Consider any factors which indicate a reduction for 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 a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

**STEP SEVEN****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 EIGHT****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP NINE****Reasons**

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

**STEP TEN****Consideration for time spent on bail (tagged curfew)**

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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## **Explosive Substances (Terrorism only)**

**Causing explosion likely to endanger life or property - Explosive Substances Act 1883 (section 2)**

**Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property - Explosive Substances Act 1883 (section 3)**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

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Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older
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<b>STEP ONE</b>	
<b>Determining the offence category</b>	
<p>The court should determine the offence category with reference <b>only</b> to the factors listed in the tables below. In order to determine the category, the court should assess <b>culpability</b> and <b>harm</b>.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p><b>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.</b></p>	
<b>Culpability demonstrated by one or more of the following:</b>	
A	<ul style="list-style-type: none"> <li>• Offender caused an explosion or used, developed or was in possession of a viable explosive device</li> <li>• <b>Acting alone</b>, or in a <b>leading</b> role, in terrorist activity involving explosives, where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> </ul>
B	<ul style="list-style-type: none"> <li>• Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device</li> <li>• <b>Acting alone</b>, or in a <b>leading</b> role, in terrorist activity involving explosives where preparations were <del>well</del> advanced and, but for apprehension, the activity was likely to have been carried out</li> <li>• <b>Significant</b> role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> </ul>
C	<ul style="list-style-type: none"> <li>• <b>Leading</b> role in terrorist activity involving explosives where preparations were not far advanced</li> <li>• <b>Significant</b> role in terrorist activity involving explosives where preparations were <del>well</del> advanced and, but for apprehension, the activity was likely to have been carried out</li> <li>• <b>Lesser</b> role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out</li> <li>• Act(s) of significant assistance or encouragement of other(s) involved in causing, developing or possessing an explosive device (where not falling within A or B)</li> </ul>
D	<ul style="list-style-type: none"> <li>• Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device</li> <li>• Offender has engaged in very limited preparation of terrorist activity involving explosives</li> <li>• Act(s) of lesser assistance or encouragement of other(s)</li> <li>• Other cases not falling within A,B or C</li> </ul>

**Harm**

Harm is assessed based on the type of harm risked & the likelihood of that harm being caused.

When considering the likelihood of harm, the court should consider the viability of the plan

Category 1	<ul style="list-style-type: none"> <li>• Multiple deaths risked and highly likely to be caused</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Multiple deaths risked but not highly likely to be caused</li> <li>• Any death risked and highly likely to be caused</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Any death risked but not highly likely to be caused</li> <li>• Risk of widespread or serious damage to property or economic interests</li> <li>• Risk of a substantial impact upon civic infrastructure</li> <li>• Any other cases</li> </ul>

**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.

**Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).**

**The court must also consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).**

Harm	Culpability			
	A	B	C	D
<b>1</b>	<b>Starting point</b> Life imprisonment - minimum term of 35 years <b>Category range</b> Life imprisonment - minimum term of 30 – 40 years	<b>Starting point</b> Life imprisonment - minimum term of 25 years <b>Category range</b> Life imprisonment - minimum term 20 – 30 years	<b>Starting point</b> Life imprisonment - minimum term of 15 years <b>Category range</b> Life imprisonment - minimum term 10 – 20 years	<b>Starting point</b> 15 years' custody <b>Category range</b> 10-20 years custody
<b>2</b>	<b>Starting point</b> Life imprisonment - minimum term of 25 years <b>Category range</b> Life imprisonment with a minimum term 20 – 30 years	<b>Starting point</b> Life imprisonment - minimum term of 15 years <b>Category range</b> Life imprisonment - minimum term 10 – 20 years	<b>Starting point</b> 15 years' custody <b>Category range</b> 10- 20 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6-10 years' custody
<b>3</b>	<b>Starting point</b> 16 years' custody <b>Category range</b> 12 – 20 years' custody	<b>Starting point</b> 12 years' custody <b>Category range</b> 8- 16 years' custody	<b>Starting point</b> 8 years' custody <b>Category range</b> 6 - 10 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 years – 6 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
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Failed to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE****Consider any factors which indicate a reduction for 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 a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

**STEP SEVEN****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 EIGHT****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP NINE****Reasons**

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

**STEP TEN****Consideration for time spent on bail (tagged curfew)**

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

# Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

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Triable either way  
Maximum: 5 years' custody

Offence range: 6 months' – 5 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Failed to pass on information which could have prevented an act of terrorism</li> </ul>
B	<ul style="list-style-type: none"> <li>Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism</li> </ul>

New culpability factors:

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Information was highly significant</li> </ul>
B	<ul style="list-style-type: none"> <li>Cases whose characteristics fall between A and C</li> </ul>
C	<ul style="list-style-type: none"> <li>Information was of low significance</li> </ul>

**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.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Information related to terrorist activity endangering life</li> <li>Information related to terrorist activity intended to cause widespread or serious damage to property, economic interest or substantial impact upon civic infrastructure</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

**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
<b>Category 1</b>	<b>Starting point</b> 4 years' custody  <b>Category range</b> 3-5 years' custody	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2-4 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2-4 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> High Community Order-3 years' custody

New sentence table:

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 4 years' custody  <b>Category range</b> 3 - 5 years' custody	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2 - 4 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 6 months - 3 years' custody
<b>Category 2</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2 - 4 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 6 months - 3 years' custody	<b>Starting point</b> 18 months' custody  <b>Category range</b> High Community Order - 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
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

**Other aggravating factors:**

- Many lives endangered
- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Good character
- Offender involved through coercion, intimidation or exploitation
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE**

**Consider any factors which indicate a reduction for 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**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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 (tagged curfew)**

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

**2 March 2018**  
**SC(18)MAR04 - Manslaughter**  
**Tim Holroyde**  
**Ruth Pope**  
**0207 071 5781**

## **1 ISSUE**

1.1 This is the first consideration of the loss of control manslaughter guideline post consultation; diminished responsibility will be considered at the April Council meeting and there will be a final consideration of all four guidelines including checking the sentence levels at the May meeting.

1.2 Council members have provided suggestions by email for the gross negligence manslaughter guideline and the agreed version is currently being tested with judges who took part in research during consultation.

1.3 The aim is to publish the guidelines early in September 2018 in time for training to be delivered at the Serious Crime Seminar in September which Sarah Munro has kindly offered to deliver.

## **2 RECOMMENDATION**

2.1 The Council is asked to consider the amendments to the loss of control guideline as shown at Annex A (additions are underlined and deletions are struck through)

## **3 CONSIDERATION**

### *General*

3.1 Only eight of the 44 respondents to the consultation addressed the loss of control guideline. Responses were received from the CPS, the Law Society, the Criminal Law Solicitors Association (CLSA), the London Criminal Courts Solicitors Association (LCCSA), the Criminal Bar Association (CBA), Council of HM Circuit Judges (CHMCJ) and two academics. The majority were broadly positive, although there were some concerns around how weapons are dealt with in the guidelines and some suggestions for additional aggravating and mitigating factors.

3.2 The draft loss of control guideline was 'road tested' with 11 judges, four of whom re-sentenced their own cases and seven of whom sentenced a scenario based on a 2014 case. This research revealed some inconsistency in the application of culpability, aggravating and mitigating factors. A summary of the research is at **Annex C**.

## *Culpability*

3.3 One respondent (an academic) was concerned that the high culpability factor ‘planning of criminal activity (including the carrying of a weapon) **before** the loss of control’ could be applied to victims of domestic abuse who kill their abusers. Similarly, she was concerned that the high culpability factor ‘Loss of self-control in circumstances which only just met the criteria for a qualifying trigger’ would be unfairly applied in ‘final straw’ cases. Another academic queried whether carrying a weapon would be high culpability if there were legitimate fears for personal safety.

3.4 In the development of the guideline the Council had considered the scenario of the domestic abuse victim who uses a weapon to kill her physically stronger abuser. The guideline was drawn up on the basis that in such a case the loss of control could be deemed to have occurred before the decision to obtain a weapon (each case will turn on its own facts). The legislation (see annex B) recognises that the loss of control need not be sudden and therefore it is to be assumed that courts will take into account all of the surrounding circumstances in assessing the severity of the qualifying trigger that led to the loss of control.

### **Question 1: Is the Council content that the guideline would work fairly in the case of an abuse victim who loses control over a period of time and kills using a weapon?**

3.5 The CHMCJ considered whether the factor ‘use of a firearm (whether or not taken to the scene)’ should be extended to include a knife or other lethal weapon, but concluded that the sentence ranges provided sufficient flexibility for sentencers in such cases. The Law Society thought that it would be helpful to have definition of a weapon for this guideline.

3.6 In road testing several judges felt that use of a weapon (particularly a knife) should be a step one factor, making the point that but for the weapon there would not have been a death. There was a suggestion that if not a step one factor, use of a weapon should justify increasing the starting point before going on to consider other aggravating and mitigating factors.

3.7 In the context of manslaughter by reason of loss of control, the Council took the view that the main significance of the use of a weapon at step one was the degree to which it indicated prior planning. Firearms were singled out as their use would be likely to represent both planning and a disproportionate response to the qualifying trigger as well as putting others at risk. Any more rigid reference to the use of a weapon at step one would cause difficulty with the situation discussed at 3.3 above. ‘Offence involved the use of a weapon’ is an aggravating factor at step two (with the usual proviso to avoid double counting).

### **Question 2: Is the Council content with the treatment of weapons in the guideline?**

3.8 The Law Society foresaw that that it may be difficult for courts to decide whether the loss of self-control was in ‘circumstances which only just met the criteria for a qualifying

trigger'. In road testing there was inconsistency in the assessment of the level of provocation in the scenario used. It was anticipated that judges would find that the high culpability factor applied (and in the actual case the sentence of 10 years before plea indicates that the level of provocation was found to be low), but only two of the seven judges did so. The other five found that it fell between just meeting the qualifying trigger and 'exceptionally high degree of provocation'.

3.9 The limited details that the judges were given in the scenario may have contributed to the inconsistency. These factors will inevitably require the sentencer to make a judgement on the facts of the individual case. This will be no different from the SGC Manslaughter by Reason of Provocation Guideline which required the sentencer to distinguish between a low, substantial and high degree of provocation. The Council considered whether there was any additional guidance that would assist sentencers with this evaluation, but concluded that there was nothing useful that could be added.

**Question 3: Is the Council content that courts will be able to make an assessment of the level of 'provocation' based on the facts of individual cases?**

3.10 It is possible that the starting point of 14 years for high culpability may have deterred judges from placing cases in that category. Where judges (either resentencing their own cases or sentencing the scenario) made a finding of high culpability the final sentence was noticeably higher than the actual sentence passed. Sentence levels will be looked at in the round at the May Council meeting.

3.11 Judges in road testing frequently assessed culpability as medium which suggests that they were balancing factors in high and lower. One judge suggested that more factors in lower culpability would assist in identifying cases that should fall into lower and medium. As currently drafted there is only one lower culpability factor compared to five factors in high (although most of the factors in high are unlikely to apply in the majority of cases). The Council did consider other low culpability factors prior to consultation but was unable to identify any appropriate ones. In the absence of any suggestions no change is proposed.

3.12 The same judge suggested that more guidance on qualifying triggers would be useful. One judge asked why references to the nature and duration of the provocation (in the SGC guideline) have not been retained in the loss of control guideline. Another judge suggested that it would be helpful if the guideline were to include a definition of loss of control, and suggested:

*a conviction of manslaughter by reason of Loss of Control necessarily means that the killings resulted from the defendant's 'loss of control', which had a qualifying trigger, and a person of the defendant's sex and age, with a normal degree of tolerance and*

*self-restraint and in the circumstances of the defendant might have reacted in a similar way to the defendant”.*

3.13 A summary of the legislation is provided at **Annex B**. If the Council thought that this idea had merit, it might be preferable to include a little more information, for example:

*A conviction for manslaughter by reason of loss of control necessarily means that the killing resulted from the offender’s loss of self-control, which had a qualifying trigger, and a person of the offender’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the offender might have reacted in a similar way to the offender. The qualifying trigger will have been:*

- *a fear of serious violence from the victim against the offender or another **or***
- *thing(s) said or done which constituted circumstances of an extremely grave character and caused the offender to have a justifiable sense of being wronged **or***
- *a combination of both*

3.14 If it was felt that more guidance on qualifying triggers would be helpful, this could perhaps be framed in terms of the nature and duration of the thing(s) said or done. For example, ‘Loss of self-control in circumstances which only just met the criteria for a qualifying trigger – taking into account the nature and duration of the qualifying trigger’. One judge queried the use of the word ‘exceptional’ in the lower culpability factor stating that as currently worded it would be rarely used. The reason for setting such a high bar for this factor is that in all cases the ‘provocation’ has to be at the minimum either a fear of serious violence or something extremely grave said or done, so to something greatly in excess of that will be exceptional.

**Question 4: Does the Council wish to adopt either of the suggestions to include information about the offence?**

**Question 5: Does the Council wish to make any amendments to the factors relating to the assessment of the level of ‘provocation’?**

#### *Aggravating factors*

3.15 The CLSA queried whether ‘dishonesty or pursuit of financial gain’ is a valid factor:

We question the value of the aggravating feature relating to dishonesty and pursuit of financial gain. In homicide offences it is the level of violence that is most relevant. An underlying intent to dishonesty is less relevant. It is an aggravating feature that a homicide is committed in the course of a robbery but it is the use or threat of violence that is the relevant factor not the dishonesty. In the case of a burglary it is the invasion into the victim’s home.



3.16 In the context of manslaughter by reason of loss of control, it is difficult to envisage a situation where this factor would apply. There is a high culpability factor of ‘offence committed in the context of other serious criminal activity’ which would capture situations such as where rival drug dealers are fighting over territory; there are no other examples of cases where financial gain seems to play a part. As aggravating factors are non-exhaustive, it may be preferable to remove this factor.

3.17 The CLSA also suggest adding group attack and timing and location as aggravating factors. Loss of control cases nearly always involve just the offender and the victim; a group attack is unlikely to apply. The Council is well aware of the downside of including nonspecific references to timing and location. It is not proposed to adopt these suggestions.

3.18 The Law Society made the following suggestions:

- Any previous history of any abuse or violence towards the victim, not necessarily significant
- Commission of offence when judgement *significantly impaired* through alcohol or drugs
- The vulnerability of victim;
- Offender responsible for the violent circumstances occurring;
- Need for clarification of ‘weapon’;
- Previous history of losing control;
- Previous threats to victim.

3.19 The removal of ‘significant’ from the first aggravating factor has been agreed for other guidelines. The Council has not changed the factor ‘commission of offence whilst under the influence of alcohol or drugs’ as suggested by the Law Society for other guidelines, but it will be possible to include additional information available for this factor in the digital version of the guideline. Prior to consultation the Council decided that ‘vulnerability of victim’ was unlikely to be a relevant factor for this guideline. There are situations such as a carer looking after a vulnerable but difficult dependent, where this factor might conceivably apply, but there is a danger that referring to vulnerability as an aggravating factor might increase sentences in cases where the vulnerability is already taken into account by other factors (such as the fact that the offender has a weapon).

3.20 It is not clear how it is envisaged how the proposed factor ‘Offender responsible for the violent circumstances occurring’ would be applied in the context of this offence except in ways already taken into account by high culpability factors at step one particularly as the partial defence would not be made out where the offender incited the qualifying trigger as an excuse to use violence. ‘Previous history of losing control’ is problematic because the partial defence is only made out if the offender reacted in a way that a person of same age with a normal degree of tolerance might have done. Therefore, it could be argued that the fact that the

offender has demonstrated 'short fuse' in other circumstances is not by itself relevant. Previous threats to victim is perhaps already covered by 'history of previous violence or abuse towards victim by offender'.

3.21 In road testing judges did not report any difficulty with the aggravating factors, but there was little consistency with how they applied them to the scenario (see Annex C). It seems likely that this was more to do with the different interpretation that the judges put on the facts of the case than any inherent difficulty with the factors.

**Question 6: Does the Council wish to make any changes to the aggravating factors?**

*Mitigating factors*

3.22 Several respondents criticised the caveat that had been placed on the mitigating factor relating to mental health. The Council has already decided to remove this for the other guidelines.

3.23 The Law Society suggested the following mitigating factors

- Victim contributed substantially to events;
- Large discrepancy in age or size between victim and offender, that may have led offender to having been more fearful;
- Previous history of exercising control;
- History of any violence or abuse by the victim to offender, not necessarily significant, or a single incident of significant violence or abuse;
- Persistent threats or serious provocative behaviour by the victim.

3.24 There are two mitigating factors in the guideline that are relevant to these suggestions:

- History of significant violence of abuse towards the offender by the victim
- Violence initiated by the victim

3.25 It is submitted that the suggestions from the Law Society are either adequately covered by the existing factors or are already taken into account in the finding of loss of control.

3.26 Again in road testing there was inconsistency in the application of the mitigating factors, but this did not seem to be due to any difficulty with the factors.

**Question 7: Does the Council wish to make any changes to the mitigating factors?**

**4 IMPACT AND RISKS**

4.1 There is a suggestion from the road testing findings that the draft guideline may lead to higher sentences in cases of high culpability. A review of cases sentenced in 2016 is being carried out to enable an accurate assessment of current sentencing practice and the Council will be asked to consider sentence levels at the May Council meeting.

# **MANSLAUGHTER BY REASON OF LOSS OF CONTROL**

**Triable only on indictment  
Maximum: Life imprisonment**

**Offence range: 3 – 20 years' custody**

**This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.**

**This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence) and section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**

**The type of manslaughter (and thereby the appropriate guideline) should have been identified prior to sentence. If there is any dispute or uncertainty about the type of manslaughter that applies the judge should give clear reasons for the basis of sentence.**

**STEP ONE - Determining the offence category**

A conviction for manslaughter by reason of loss of control necessarily means that the killing resulted from the offender’s loss of self-control, which had a qualifying trigger, and a person of the offender’s sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of the offender might have reacted in a similar way to the offender. The qualifying trigger will have been:

- a fear of serious violence from the victim against the offender or another **or**
- thing(s) said or done which constituted circumstances of an extremely grave character and caused the offender to have a justifiable sense of being wronged **or**
- a combination of both

**CULPABILITY** demonstrated by one or more of the following:

- **The characteristics set out below are indications of the level of culpability that may attach to the offender’s conduct; the court should balance these characteristics to reach a fair assessment of the offender’s overall culpability in the context of the circumstances of the offence.**
- **The court should avoid an overly mechanistic application of these factors.**

**A - High Culpability**

- Planning of criminal activity (including the carrying of a weapon) **before** the loss of control
- Offence committed in the context of other serious criminal activity
- Use of a firearm (whether or not taken to the scene)
- Loss of self-control in circumstances which only just met the criteria for a qualifying trigger – taking into account the nature and duration of the qualifying trigger
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

**B - Medium Culpability:**

Cases falling between high and lower because:

- factors are present in high and lower which balance each other out **and/or**
- The offender’s culpability falls between the factors as described in high and lower

**C - Lower Culpability**

- Qualifying trigger represented an exceptionally high degree of provocation = taking into account the nature and duration of the qualifying trigger

**HARM**

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two

## 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.

- **Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Culpability		
A	B	C
<p><b>Starting Point</b> 14 years' custody</p> <p><b>Category Range</b> 10 - 20 years' custody</p>	<p><b>Starting Point</b> 8 years' custody</p> <p><b>Category Range</b> 5 – 12 years' custody</p>	<p><b>Starting Point</b> 5 years' custody</p> <p><b>Category Range</b> 3 - 6 years' custody</p>

Note: The table is for a single offence of manslaughter resulting in a single fatality. Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

**Care should be taken to avoid double counting factors already taken into account in assessing culpability or in the finding of a qualifying trigger**

### Aggravating factors

#### *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  
(See step five for a consideration of dangerousness)
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

#### *Other aggravating factors:*

- History of ~~significant~~ violence or abuse towards victim by offender
- Significant mental or physical suffering caused to the deceased
- Commission of offence whilst under the influence of alcohol or drugs

- Offence involved use of a weapon
- Persistence of violence
- Other(s) put at risk of harm by the offending
- ~~Death occurred in the context of dishonesty or the pursuit of financial gain~~
- Actions after the event (including but not limited to attempts to cover up/ conceal evidence)
- Blame wrongly placed on other(s)
- Involvement of others through coercion, intimidation or exploitation
- Victim was providing a public service or performing a public duty
- Offence committed on licence or post sentence supervision or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Intention to cause serious bodily harm rather than to kill
- History of significant violence or abuse towards the offender by the victim
- Violence initiated by the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Mental disorder or learning disability

**STEP THREE**

**Consider any factors which indicate a reduction for 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 a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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 should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention 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.

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## Summary from the Coroners and Justice Act 2009

### 54 Partial defence to murder: loss of control

- (1) Where a person (“D”) kills or is a party to the killing of another (“V”), D is not to be convicted of murder if—
- (a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
  - (b) the loss of self-control had a qualifying trigger, and
  - (c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.
- (2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.
- (3) In subsection (1)(c) the reference to “*the circumstances of D*” is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.
- (4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

### 55 Meaning of “*qualifying trigger*”

- (2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.
- (3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.
- (4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which—
- (a) constituted circumstances of an extremely grave character, and
  - (b) caused D to have a justifiable sense of being seriously wronged.
- (5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).
- (6) In determining whether a loss of self-control had a qualifying trigger—
- (a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;
  - (b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;
  - (c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

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## Loss of Control Manslaughter

A series of 28 phone and face to face semi structured interviews took place with 23 Crown Court judges and five High Court judges. Eleven of those judges re-sentenced their own manslaughter case or sentenced a scenario (which can be found at the bottom of this page) using the Loss of Control guideline. The research will provide valuable information to support development of the manslaughter guideline. However, there are limitations to the work, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

### Key Findings

- The road testing found that in cases (own and scenario) where the offender was placed in high culpability (A), this tended to lead to an increased sentence from the actual sentence given in the original case, suggesting a potential risk of increased sentences for high culpability cases. This applied in cases which were found to be high culpability originally, indicating that the increase in sentence is due to a higher starting point in the draft guideline as opposed to the draft guideline raising the culpability.
- Most judges were generally able to easily place offenders in a culpability category. However, the scenario identified an issue with consistency when judges were deciding factors based on provocation, judges were more likely to consider the degree of provocation to be at a medium level as opposed to a very low level of provocation which was anticipated by the team. This may lead to a potential deflation of sentences for these types of cases. Some judges also strongly felt that 'use of a weapon' should be considered at an earlier section of the guideline.
- All judges that expressed a view were happy with the one level of harm in the guideline and felt that this was the right approach.
- Generally, judges were content with the starting points and ranges, and in all but one (own case) of the sentencing exercises, judges used the starting points as described in the guideline.
- The road testing found little consistency between judges for the mitigating and aggravating stage of the guideline. Judges were inconsistent in their application of the factors which led to a varied range of final sentences for the scenario. Generally, when sentencing the scenario all judges had (at least) included 'offence involved use of a weapon' as an aggravating factor and all but a couple of judges had included some degree of mitigation. However, this is where the similarities finished. Other aggravating factors considered by the judges were persistence of violence, history of significant violence or abuse towards victim by offender and significant mental or physical suffering caused to the deceased. Consideration of mitigating factors varied even more: no previous convictions, history of significant violence or abuse towards the offender by the victim was included, good character, remorse and sole or primary carer for dependent relatives were considered by judges.

## Scenario

B pleaded guilty to the manslaughter of his estranged wife on the basis of lack of intent. He was tried for murder but convicted of manslaughter and sentenced on the basis of loss of control. He killed her with a kitchen knife in her home. The victim had recently moved out of the family home and B was unable to accept that she wished to be without him. He continued to seek her out and to try to think of reasons why he should be with her, sometimes using her relationships with other members of the family to persuade her spend time with him. Over many years the victim had come to despise B who she considered to be a weak father and a drunk, and she said frequently that she deserved better than him. With a degree of cruelty, she frequently said that he was not a good father, especially when dealing with the grave problems created by the behaviour of their son. On three occasions when they still lived together the victim had confronted B with a knife – but she had not actually used violence towards him. It was after the third of these incidents that she had decided to move out.

On the day before her death, there had been a terrible row in the family home between their sons which B could not cope with, and so he rang the victim in the middle of the night. She came to the house in a very angry state and said some terrible things to B and their son. She made it quite clear to everyone that she had gone for good and wanted nothing more to do with B. B arrived unannounced at her flat the next morning. She was angry with him for failing to warn her that he was coming, but she let him in. B lost his control because of a mixture of factors: the strong and contemptuous language which she used, her statement that he would no longer be able to go out with her and their granddaughter in the future, and the fact that she had, on previous occasions, made as if to harm him with a knife. There was a knife at the scene. It is not clear how the knife ended up in B's hand. He used the knife to inflict ten wounds to her head, chest and neck. Five of those wounds showed the clear determination to cut into or towards the throat. He also plunged the knife into her chest, causing a deep wound. This wound travelled upwards and backwards in the body so that the point of the knife emerged through her shoulder. The judge found that there was intent to kill. He pulled out the knife, washed it and left locking the door behind him. When he got home said to their son "I have killed your mother" and told him to call the Police.

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

**2 March 2018**  
**SC(18)MAR05 – Child Cruelty**  
**Maura McGowan**  
**Eleanor Nicholls**  
**020 7071 5799**

**1 ISSUE**

1.1 This is the second consideration of the child cruelty guidelines following consultation. Further to the discussion of culpability factors at the Council’s January meeting, revised version of the guidelines for the Cruelty to a Child and Causing or Allowing offences are attached at Annexes A and B.

1.2 This paper considers the approach to harm for each of these offences, and aggravating and mitigating factors. Sentence levels and the FGM offence guideline will be considered at the meeting in April.

**2 RECOMMENDATION**

2.1 That the Council considers and agrees the amendments proposed to harm factors and aggravating and mitigating factors set out at **Annex A** (Cruelty to a Child) and **Annex B** (Causing or Allowing).

**3 CONSIDERATION**

*Assessing long term and psychological/developmental/emotional harm*

3.1 Consultation respondents to questions 3 and 4 (on Cruelty to a Child) and 14 and 15 (on Causing or Allowing) were broadly supportive of the approach to the assessment of harm. However, respondents asked questions about how to assess harm, what constitutes “serious” harm and, particularly, how to assess the likelihood of long-term psychological impact on the victim. Respondents also asked related questions about what constituted developmental or emotional harm. The current wording on Category 1 psychological harm in the draft guidelines is:

Cruelty to a Child: “Serious psychological and/or developmental harm”
Causing or Allowing: “Serious psychological harm”

3.2 As this will be a digital guideline, there can be links to additional information on how to assess harm. At the January meeting, you agreed to make some changes to guidance on

assessment of harm in the Seriousness guideline, including that relating to harm in cases of s18/s20 GBH or ABH, and in rape cases. Parts of that wording could be relevant to the child cruelty offences, in particular, the wording relating to “severe psychological harm” in rape cases could be amended slightly as follows:

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

***Question One: Is the Council content to link to the proposed additional wording in the digital guideline to give further guidance on determining serious psychological harm?***

3.3 Some respondents suggested that it would be helpful for the guideline to add the term “emotional harm” or to refer to the specific definitions of these terms as used by the family courts. As these terms are used for a different purpose in the civil context, with a different standard of proof, giving the specific definitions may not be helpful and some respondents suggested keeping the definitions separate. However, transcripts suggest that in family court proceedings the term “emotional harm” is commonly used in sentencing these offences, with judges often distinguishing between their uses in family and criminal proceedings. We therefore suggest that the term “emotional harm is added to the Category 1 factor as follows:

Serious psychological ~~and/or~~ developmental and/or emotional harm

3.4 Given the differing views on this we will discuss this factor further with district judges sitting in both the family and criminal courts to determine how information on emotional harm in family cases is used in criminal cases. Council may wish to postpone a decision on this factor until we have further information.

***Question Two: Does the Council wish to add reference to “emotional harm” in the wording of the factor and additional wording?***

3.5 On the Causing or Allowing offence, a number of respondents felt that Category 3 harm was too vague and there was a risk of sentencers being reluctant to use this category since all harm must be serious in order for the offender to have been convicted. To make this Category clearer, including making it clear that the harm caused in this category still needs to be serious, we propose the following wording change for Category 3 harm for this offence. This change also includes removing the word “caused” from the factor, as the offence covers “allowing”.

Current: "All other harm caused"

Proposed: "Serious physical harm that does not fall into Category 2"

**Question Three: Is the Council content to use the above revised wording for Category 3 harm in the Causing or Allowing offence?**

*Risk of harm – Cruelty to a Child offence*

Current wording for Category 2:

"A serious risk of category 1 harm being caused that any reasonable person should have foreseen"

3.6 It appeared that several respondents to consultation were not taking the word "serious" into account, and so were putting into this category cases where the risk of Category 1 harm was only very slight. "Serious" is not a word ordinarily used in relation to risk, and I propose using "high likelihood", to make it clear that sentencers should consider the likelihood of the situation as well as its impact. Revised wording would therefore be:

"A ~~serious~~ high likelihood risk of category 1 harm being caused that any reasonable person would have foreseen"

**Question Four: Does the Council wish to amend the wording on risk in Category 2 harm?**

*Neglect*

3.7 A few consultation responses suggested changes in the way in which the guidelines deal with harm caused by neglect, particularly in relation to the category 1 factor in the Cruelty to a Child offence: "Serious physical harm (including illnesses contracted due to unsanitary surroundings)". Comments included suggestions that other aspects of neglect be covered, and that the current wording could potentially catch cases where illness was contracted due to unsanitary surroundings but those unsanitary surroundings were not the fault of the offender, for example, where poor housing conditions had led to children developing respiratory illnesses. I therefore propose amending this harm factor to cover illnesses contracted as a result of all types of neglect:

Serious physical harm (including illnesses contracted due to neglect ~~unsanitary surroundings~~)

**Question Five: Is Council content to amend the wording of this Category 1 factor to cover all types of neglect?**

### *Causing or Allowing offence – scope of Category 1*

3.8 Three respondents suggested that Category 1 of the Causing or Allowing offence should not be restricted to death, but should also cover the most serious harm. However, given that the maximum sentence for the offence causing or allowing death is 14 years compared to 10 years for the serious injury offence, and that the harm must always be serious for the offence to be made out, I do not propose to change the categories in the draft guideline with Category 1 as death and serious physical harm split between the two other categories.

***Question Six: Is the Council content to restrict Category 1 harm to circumstances where the child has died?***

### *Causing or Allowing offence – harm factors in Category 2*

3.9 There were several comments on the approach to serious physical harm in which long-term harm is separated from short term harm. Some of these were similar comments to those in relation to assessing psychological harm under the Cruelty to a Child offence, particularly where respondents asked how to deal with the fact that psychological harm may not be evident until some time, perhaps years, after the offence. There were no comments disagreeing with the overall approach of distinguishing between long and short-term harm, however, and the additional text suggested above at paragraph 3.2 should give some additional guidance on assessing psychological harm. I therefore do not propose making any changes beyond a digital link linking this additional material to the harm factors section of this guideline as well as that of the Cruelty to a Child guideline.

***Question Seven: Is the Council content to include the above additional material at 3.2 in the Causing or Allowing guideline?***

### *Aggravating Factors*

3.10 With one exception, the aggravating and mitigating factors in the draft guidelines were the same for the Cruelty to a Child and Causing or Allowing offences. Respondents to consultation gave a wide range of comments on the factors, and suggested several new ones. Many comments included requests for additional information on a factor, which would go beyond the information which is usually given in guidelines. Some requests for additional guidance would be counter-productive as any additional information or examples would narrow the scope of the factor unnecessarily. For example, giving details or examples of the type of interventions covered by the “Failure to respond to interventions or warnings about behaviour” factor would risk narrowing the scope of the factor, which we intend to be capable of covering interventions of all types from all sources depending on the facts of the case. I am



therefore not proposing changes to any of the aggravating or mitigating factors other than those discussed below.

3.11 On the factor “Failure to comply with current court orders”, two respondents mentioned the need to include family court orders as well as criminal orders. Other respondents referred to family court proceedings at other places in their consultation responses, and reference to these proceedings, and compliance with orders, was frequently cited in transcripts. Whilst this may be unnecessary, I propose adding this to the current factor as follows:

Failure to comply with current court orders, <u>including those made by the Family Court</u>
--

***Question Eight: Does the Council agree to including this reference to orders made by the Family Court?***

3.12 Six respondents to consultation mentioned the factor “Offence committed in the presence of other children” which is in the current SGC guideline but was omitted from the revised draft guideline. Some of these suggested the need to make clear that this would only apply where that was short of being a separate offence, since it is intended to capture the impact on other children who were not themselves victims but who saw another child, often a sibling, being abused. Two respondents suggested the inclusion of another factor from the SGC guidelines, “Targeting one child”. These two factors seem designed to separate the impact on the other children from the impact on the child who is the targeted victim. Transcripts suggest that it is the targeting, and the impact on the victim, which is more commonly taken into account in these cases, but this finding should be treated with caution as this was only taken from a small number of cases.

***Question Nine: Does the Council wish to bring back into the revised guideline either or both of the above factors from the SGC guideline relating to “offences committed in the presence of other children” or “targeting one child”?***

3.13 Many of the new factors suggested (such as “Repeated or prolonged acts of cruelty”) are already covered at step one, so I do not propose to include them. One suggested factor which is not covered at step one, however, is reference to planning of the offence and/or involving more than one other in the commission of the offence. This is not a common occurrence, but these were factors in a handful of serious cases seen in transcripts. Information about planning and involving others in these cases was more used as evidence of overall culpability, so they would not seem to fit as separate aggravating factors at step two. As they only occurred in a very small number of cases I do not propose to include them either here at step two or as factors within culpability.

**Question Ten: Is the Council content not to include reference to additional aggravating factors on planning and involvement of others?**

*Mitigating Factors*

3.14 Some respondents suggested removal of several mitigating factors, such as “Good character” and “Remorse” which they felt should never be used for offences as serious as these. However, the argument was more against the idea of mitigation in general than against the factors themselves, and sentencers are familiar with how and when these factors are relevant.

3.15 There were some more significant comments on the following factors (as currently drafted):

- Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities.
- Cooperation with the investigation

3.16 Several respondents suggested a separate mitigating factor relating to steps taken by the offender (following the discovery of the offence) to address their behaviour by, for example, cooperating with social services and attending drug/alcohol addiction programmes. Many case transcripts showed that this was a very important mitigating factor; in many cases the fact that the offender was now working with social services and addressing problems which had contributed to offending, often with a view to regaining contact with their child, was the most important factor which led to the sentencer suspending the sentence or deciding on a community rather than custodial sentence. This is a somewhat separate factor from either cooperation with the investigation or taking steps address behaviour or to protect the victim before the offence came to light. Steps taken to protect the victim (before discovery of the offence) are covered by the revised lower culpability factor agreed at the January meeting:

Steps taken to protect victim but fell just short of what could reasonably be expected

3.17 As this culpability factor does not cover the circumstances above, where the offender has taken action after the offence was discovered, I propose adding a new mitigating factor, based on a similar factor in the Theft guideline. In addition, since the first mitigating factor at 3.15 above (which appears to relate to action taken before the discovery of the offence) is to a large extent covered by the above culpability factor, I propose a simpler mitigating factor covering steps taken to protect the victim where this has not already been taken into account, so the mitigating factors would be:

~~Attempts to address or rectify the situation behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities~~

Steps taken to protect the victim (where not taken into account at Step 1)

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim

Cooperation with the investigation

***Question Eleven: Is the Council content with these proposed changes to mitigating factors?***

*Step Five and mitigating factor on “sole carers”*

3.18 Respondents to consultation, apart from those who misunderstood how the step was to work, also were in general strongly supportive of the new step five. This was clear from both the questions on this step, and its use in the scenarios. Reference was also made to this step in responses relation to the mitigating factor “Sole or primary carer for dependent relatives”. Whilst there was some misunderstanding of this factor, respondents also suggested that this factor duplicated the new step five and could therefore be removed. However, given that the mitigating factor is wider than step five in that it includes all dependents and not just children, I propose retaining both step five and the mitigating factor as currently worded.

***Question Twelve: Is the Council content to retain both Step 5 and the mitigating factor as currently worded?***

#### **4 RISKS AND IMPACT**

4.1 Prior to consideration of sentencing levels (scheduled for the April Council meeting) we are not in a position to consider the impact of the guidelines in detail. We will consider any potential for inflationary impacts as we consider sentence levels, and have ordered some additional transcripts for 2016 to supplement our analysis.

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**Annex A: revised draft guideline**

**Child Cruelty – Assault and ill treatment, abandonment, neglect and failure to protect.**

**Cruelty to a child**

Children and Young Persons Act 1933 (S1(1))

Triable either way

Maximum: 10 years' custody

Offence range: Low level community order – 9 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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:**

- Prolonged and/or multiple incidents of serious cruelty, *including serious neglect*
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of significant force
- Use of a weapon
- Blatant and deliberate disregard to the welfare of the victim
- Failure to *take any steps* to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

**B - Medium culpability:**

- Limited steps taken to protect victim in cases with Category A factors present
- Other cases falling between A and C because:
  - Factors in both high and lesser categories are present which balance each other out and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C - Lesser culpability:**

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Victim of domestic abuse, *including coercion and/or intimidation* (when linked to the commission of the offence)
- *Steps taken to protect victim but fell just short of what could reasonably be expected*
- Momentary or brief lapse in judgement, *including in cases of neglect*
- Minimal force or failure to protect the victim from an incident involving minimal force
- Low level of neglect

**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.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious psychological, <del>and/or</del> developmental, <u>and/or</u> emotional harm</li> <li>• Serious physical harm (including illnesses contracted due to <u>neglect</u> <del>unsanitary surroundings</del>)</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Cases falling between category 1 and 3</li> <li>• A <del>serious risk</del> <u>high likelihood</u> of category 1 harm being caused that any reasonable person should have foreseen</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Little or no psychological, <del>and/or</del> developmental, <u>and/or</u> emotional harm</li> <li>• Little or no physical harm</li> </ul>

**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.

<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<p><b>Starting point</b> 6 years' custody</p> <p><b>Category range</b> 5 – 9 years' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 6 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 2 years 6 months' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 6 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 2 years 6 months' custody</p>	<p><b>Starting point</b> 6 months' custody</p> <p><b>Category range</b> Medium level community order – 1 year 6 months' custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 2 years 6 months' custody</p>	<p><b>Starting point</b> 6 months' custody</p> <p><b>Category range</b> Medium level community order -1 year 6 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Low level community order – 6 months' custody</p>

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:**

- Failure to seek medical help (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blamed others for the offence
- Victim particularly vulnerable
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders, including those made by the family court
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of other children

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- ~~Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities~~
- Steps taken to protect the victim (where not taken into account at step one)
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim



- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (the more serious the offence, the less the weight which should normally be attributed to this factor)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step one)
- Co-operation with the investigation

### **STEP THREE**

#### **Consider any factors which indicate a reduction for 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**

#### **Parental responsibilities for sole or primary carers**

In the majority of cruelty to a child cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lesser culpability/harm cases involving a momentary lapse in judgement where the offender has otherwise been a loving and capable parent/carer.

### **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**

#### **Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

### **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.

## **Annex B: Revised draft guideline**

# **Causing or allowing a child to suffer serious physical harm**

### **Domestic Violence, Crime and Victims Act 2004 (section 5)**

Indictable only

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

# **Causing or allowing a child to die**

### **Domestic Violence, Crime and Victims Act 2004 (section 5)**

Indictable only

Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

This guideline applies only to offenders aged 18 and older and when the victim of the offence is aged 17 or under.

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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:**

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

**B - Medium culpability:**

- Limited steps taken to protect victim in cases with Category A factors present
- Other cases falling between A and C because:
  - Factors in both high and lesser categories are present which balance each other out and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C - Lesser culpability:**

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Victim of domestic abuse, *including coercion and/or intimidation* (when linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement
- Minimal force or failure to protect *the victim* from an incident involving minimal force
- Low level of neglect

**Harm**

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Death</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Physical harm which has a substantial and/or long term effect</li> <li>• Serious psychological, <u>developmental or emotional</u> harm</li> <li>• Significantly reduced life expectancy</li> <li>• A progressive, permanent or irreversible condition</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• <u>Serious physical harm that does not fall into Category 2</u> All other harm caused</li> </ul>

**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.

<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 9 years' custody  <b>Category range</b> 7 – 14 years' custody	<b>Starting point</b> 5 years' custody  <b>Category range</b> 3 – 8 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 year– 4 years' custody
<b>Category 2</b>	<b>Starting point</b> 7 years' custody  <b>Category range</b> 5 – 9 years' custody	<b>Starting point</b> 4 years' custody  <b>Category range</b> 2 – 6 years' custody	<b>Starting point</b> 1 year 6 months' custody  <b>Category range</b> 6 months – 3 years' custody
<b>Category 3</b>	<b>Starting point</b> 4 years' custody  <b>Category range</b> 2 – 6 years' custody	<b>Starting point</b> 1 year 6 months' custody  <b>Category range</b> 6 months – 3 years' custody	<b>Starting point</b> 9 months' custody  <b>Category range</b> High level community order– 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:**

- Failure to seek medical help (where not taken into account at step one)
- Prolonged suffering prior to death
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blamed others for the offence
- Victim particularly vulnerable
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders, including those made by the family court
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of other children

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- ~~Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities~~
- Steps taken to protect the victim (where not taken into account at Step 1)

- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (the more serious the offence, the less the weight which should normally be attributed to this factor).
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step one)
- Co-operation with the investigation

### **STEP THREE**

#### **Consider any factors which indicate a reduction for 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**

#### **Parental responsibilities for sole or primary carers**

In the majority of cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lesser culpability/harm cases, particularly “failure to protect” offences, where the offender has otherwise been a loving and capable parent/carer.

### **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**

#### **Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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.



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

**2 March 2018**  
**SC(18)MAR06 – Intimidatory Offences**  
**Julian Goose**  
**Mandy Banks**  
**0207 071 5785**

## **1 ISSUE**

1.1 This is the third consideration of the Intimidatory Offences Guideline following consultation earlier this year. There is one further meeting scheduled, to sign off the guideline at the April Council meeting, with publication of the definitive guideline in July 2018. This meeting will concentrate on sentence levels across the offences.

1.2 Across all five offences, two thirds of consultation respondents (69%) agreed with the proposed sentence levels, with 31% disagreeing. Of those that disagreed, most wanted to see an increase to the sentence levels. Current (2016) sentencing data can be seen at **Annex A**, this now includes estimated pre-guilty plea data for the offences, which wasn't used previously to set the ranges prior to consultation. Using the pre-guilty plea data to review the ranges post consultation has suggested that some small increases to some of the starting points and ranges are appropriate, in order to maintain current sentencing levels.

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

## **2 RECOMMENDATION**

2.1 That the Council:

- Considers the proposed changes to the sentence ranges across all the offences
- Notes the changes made to the coercive and controlling behaviour, disclosing private sexual images and threats to kill guidelines, following the last meeting

## **3 CONSIDERATION**

*S.4 Harassment/S.4A stalking guideline-Annex B*

3.1 A small number of respondents (Council of Circuit Judges, two magistrates, and Women's Aid) thought that the top of the range in category 1A should be closer to the stat max. Several sentencers at road testing of the guidelines also commented that the starting point in A1 should be increased to be closer to the new increased stat max. The Suzy

Lamplugh Trust recommended that all the sentence levels are increased to allow time for psychological treatment to be carried out in order to reduce reoffending. Similarly the National Stalking helpline suggested that short term custodial sentences are ineffective for stalkers, and that they seldom respond to custodial sentences alone. At the lower end of the table, a small number suggested that the starting point of a band C fine in 3D was inappropriate, and that the inclusion of fines in general was inappropriate, given how serious these offences are.

3.2 The sentence table can be seen at page three of Annex B. The increase to the statutory maximum from five to ten years came into effect in April 2017, so sentencing data for any cases sentenced after that date is not yet available. New data that will become available before the guideline is due to be published in July is also unlikely to include any cases sentenced post April 17. The Council may recall from earlier discussions that sentence levels were not pushing up against the previous maximum of five years, and that in introducing the increase, Parliament stated that the increase was only intended to apply to the most serious cases. In the absence of any official sentencing data for cases post April 2017 a study of media reports of sentenced cases has been conducted, which did not reveal large increases in sentence levels, although of course this only provided a limited snapshot of sentencing post the increase.

3.3 Current sentencing data can be seen at Annex A. Page three shows an estimated median sentence length of nine months for harassment, one year four months for stalking (pre-guilty plea), a longest sentence length of five years for harassment, three years six months for stalking. Given these figures, and the sentence length distribution for both offences, (pages six and seven) it is not suggested that there are any substantial increases to the ranges, and that the top of 1A remains at eight years, allowing headroom up to the stat max of ten years. The Council will recall from recent previous meetings the changes that have been made to try and limit the amount of offenders that will fall into category 1A (more factors in the medium categories, and so on). It is anticipated that if the guideline has any inflationary aspect at the very top end of sentencing-this would be due to the increase to the statutory maximum, and not the guideline itself.

3.4 It is proposed that there should be some slight increases at the lower end of the table, to bring the sentence ranges in line with existing practice. In 3D, to increase the starting point from a band C fine to a low level community order, increase the bottom of the range from a discharge to a Band C fine, and increase the top of the range from a low level to a high level community order. In 2D and 3C, increase the starting point from a medium level to a high level community order, and increase the top of the range from a high level community order to 12 weeks custody. Looking at the sentence outcomes on page two, only 17 offenders for both stalking and harassment received a discharge in 2016, and only 7 offenders received a fine

for both offences. Sentencers could go outside the guideline to give a discharge, in exceptional cases. Around 76% of offenders for both offences received custody, with under 20% receiving community orders, so a slight shift in the distribution of disposals to include more custodial options throughout the ranges is justified.

***Question 1: Does the Council agree to the proposed changes to the sentence levels for this offence?***

*S.2 Harassment/S.2A Stalking- Annex C*

3.5 Only a small number of respondents disagreed with the proposed sentence levels for this offence. Women's Aid were concerned with what they saw as the low level of starting points throughout the table, and felt that sentences must reflect the serious and damaging impact on victims. Two people questioned the ranges in 3C, and commented that these levels were lower than in the existing s.2 MCSG harassment guideline.

3.6 It is proposed that there are some small increases across the ranges, particularly across the lower levels. Looking at the updated pre-guilty plea sentencing data for this offence, (page three of Annex A) the estimated median sentence length for both offences is four months, and the maximum sentence six months, (the stat max). It is proposed that in 3C, the starting point is increased from a band A fine to a band B fine, and the top of the range is increased to a low level Community order. In 2C and 3B it is proposed that the starting point is increased from a band C fine to a low level Community order, and the top of the range from a low to a medium level Community order.

3.7 In 2B, 3A and 1C it is suggested that the top of the range is increased from a high level Community order to 12 weeks custody, to allow for a greater spread of custodial disposals, given that for the 2A stalking offence nearly 50% of offenders receive a custodial sentence. Following that change, the top of the category range in 2A and 1B would increase from 12 to 16 weeks custody. These changes will also bring the sentence ranges into line with existing practice, based on the new the pre-guilty plea sentencing data.

***Question 2: Does the Council agree with the proposed changes to the sentence levels for this offence?***

*Coercive and controlling behaviour- Annex D*

3.8 A small number of respondents thought that the sentence levels should be increased. Women's Aid thought that there should be more severe sentencing for this offence to improve victims' confidence in the criminal justice system, and send a clear message that this form of crime will be taken seriously. A Crown Court Judge thought that 1A should have a starting point of 2 years 6 months, to reflect the gravity of the worst examples, and that the top of the

category range for 1B and 2A should be increased also to 2 years six months. This was also reflected in the road testing of these offences with sentencers.

3.9 As this is such a new offence, with only 58 offenders sentenced in 2016, there is only limited data on current sentencing practice for this offence. In finalising the sentence ranges there is a slight risk with this level of limited data, that it will not be representative of sentencing practice going forward. The estimated median sentence length (pre-guilty plea) for this offence is one year eight months, and the longest sentence four years six months (page three of Annex A). In 2016 only two offenders received a discharge, and none received a fine. The bottom of the sentence range could therefore start at community orders, as sentencers could go outside the guideline in exceptional cases for a discharge or fine.

3.10 The sentence table can be seen on page three of Annex D. This now has only six boxes within the table, following the discussion at Council in January to remove a layer of harm (discussed further at paragraph 3.16). This necessitates rather broad ranges within the 6 boxes, within a stat max of five years, (in comparison with the nine box sentence table structure for the offence at Annex E which has a stat max of two years). It is proposed that the bottom of the range in the new 2C box is increased to a low level community order from a discharge, (which was in the old 3C box), and the starting point is increased from a low to a medium level community order. It is also proposed that the top of the ranges in 1B and 2A are increased from two years to two years six months, and the starting point in 1A increased from two years to two years six months.

***Question 3: Does the Council agree with the proposed changes to the sentence levels for this offence?***

*Disclosing private sexual images - Annex E*

3.11 A fairly sizeable proportion of consultation respondents who answered questions on proposed sentence levels for this offence, disagreed with the sentence levels, and felt that at least some of them were too lenient. A magistrate, Women's Aid, the Queen Mary Legal Advice Centre and a magistrate's bench collective response felt that the offence was too serious for a discharge, and that the starting point in 3C should be a low level community order. Respondents also commented that the proposed sentences, such as a fine in 3C, will provide insufficient rehabilitation, and that the sentence ranges must capture the 'extensive harm that is caused by this offence'. The type of harm mentioned that is unique to this offence is that it can cause immense feelings of violation, possibly equal to that of a listed sexual offence, and that a victim can remain an active victim for a long time if the images remain indefinitely in the public domain.

3.12 At the top end of the range, Women's Aid, the Council of Circuit Judges, a Magistrate's bench collective response and Crown Court Judge felt that the top of the range in 1A should go to the statutory maximum of two years, and that the top of the ranges in 2A/1B should be increased.

3.13 Current sentencing practice (for what is still a relatively new offence, from April 2015 onwards), shows that the estimated median sentence length (pre-guilty plea) is 6 months, with a longest sentence of two years, (page three of Annex A), although very few offenders currently receive custodial sentences greater than one year (page seven of Annex A). In 2016 4% of offenders received a discharge, and 7% a fine. The sentence table can be seen on page three of Annex E.

3.14 Some small increases across the ranges are proposed, to recognise the strength of feeling expressed by consultation respondents, and in recognition of the fact that over 60% of offenders received a custodial sentence in 2016. The bottom of the range in 3C could remain a discharge, but the starting point could increase from a band B fine to a low level Community order, and the top of the range could increase from a low level to a high level community order. The starting point in 2C and 3B could increase from a medium to a high level community order, with the top of the range increasing from a high level community order to 12 weeks custody. The top of the range in 1A is one year six months, so given that a small proportion of offenders did receive custodial sentences up to two years, and that it is a fairly prescribed sentence range with a statutory maximum of two years, it is proposed that the top of the range is increased to two years.

***Question 4: Does the Council agree with the proposed changes to the sentence ranges for this offence?***

*Threats to kill- Annex F*

3.15 The majority of those who answered questions on sentence levels for this offence agreed with the proposed levels. A small proportion of offenders felt that the top of the category range in 1A should be closer to the statutory maximum. As can be seen on pages three and seven of Annex A, the estimated median sentence length (pre-guilty plea) for this offence is one year six months, and the estimated maximum sentence was ten years, although only a small amount of offenders received sentences over six years. The top of the range arguably could increase from seven years to eight, in recognition that there are custodial sentences in 2016 above seven years. There are no other suggested changes to the sentence levels for this offence.

***Question 5: Does the Council wish to increase the top of the range in 1A from seven years to eight?***

*Changes made to the guidelines since the last meeting*

3.16 As referenced in paragraph 3.10 above, changes have been made to the controlling and coercive behaviour guideline (Annex D), primarily to harm, which can be seen on page two. The Council felt that there should only be two levels of harm for the offence, and asked for the factors to be reconsidered. Rebecca has very helpfully suggested some new harm factors, having looked again at the definition of the offence (definitions of offences at Annex G). Her proposals are shown below:

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

**Question 6: Does the Council agree with the reworded harm factors for this offence?**

3.17 The changes that the Council requested for the disclosing private sexual images guideline have been made, and can be seen on page two of Annex E. At the last meeting the Council discussed the high culpability factor of *'images disclosed over a lengthy period'*, and it was also agreed that there should be a new aggravating factor of *'repeated efforts by offender to keep images available for viewing'*. However, as these two factors both relate to the length of time the images are available, and what the offender has done to facilitate this, it is proposed that the aggravating factor is moved to high culpability, as can be seen on page two, and it replaces the similar existing high culpability factor, otherwise there is the risk of double counting. It is proposed that the mitigating factor of *'offender took steps to limit circulation of images'* remains as a step two factor, as this relates to something the offender has done after committing the initial offence at step one.

3.18 The medium culpability factors have been re-ordered, so that the specific factors appear first in the list, with the *'all other cases that fall between categories A and C'* factor appearing last in the list. The factor that was previously in medium culpability, *'conduct intended to cause some distress and/or humiliation'* has been moved to become a lesser culpability factor.

**Question 7: Is the Council content with the guideline following the changes made at the last meeting?**

3.19 The minor changes that the Council requested for the threats to kill guideline have been made and can be seen on page two of Annex F. The last two high culpability factors have been reworded, and the last factor in the list within lesser culpability has been reworded. The factor within category three harm has also been reworded.

**Question 8: Is the Council content with the guideline following the changes made at the last meeting?**

#### **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. During the consultation the Suzy Lamplugh Trust had commented on the amount of sentencing data used to inform the proposed sentence ranges for stalking, they commented that it was a '*worryingly small number of cases to create informed guidelines*'. Three years of sentencing data was used for the stalking ranges proposed in consultation, and with the 2016 data now available it will be four years of data which have been used to finalise the ranges for the definitive guideline.

4.2 The aim of the guideline is to promote consistency of sentencing for the five offences. It is hoped that producing sentencing guidelines for the newer offences of controlling and coercive behaviour and disclosing private sexual images, where no guidance previously existed, in particular will promote consistency of sentencing.

4.3 The data collection that is currently under way in a sample of magistrates' courts across England and Wales is collecting data on harassment (S2) and stalking (S2a) amongst other offences. A similar exercise is planned for 2019/20, to collect data once the guideline is in place. This will help the Council to monitor the impact of the guideline, compare sentencing practice before and after the guideline, and to ensure any divergence from its aims is identified and rectified. In due course, as with other guidelines, an evaluation of the impact of the guideline will be conducted and published, incorporating the data collected along with other sources.

**Question 9: Is the Council content that the impact and risks have been adequately considered at this stage?**

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

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

Source: Court Proceedings Database, Ministry of Justice

## Note

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

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

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

Source: Court Proceedings Database, Ministry of Justice

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

Source: Court Proceedings Database, Ministry of Justice

## Note

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

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

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

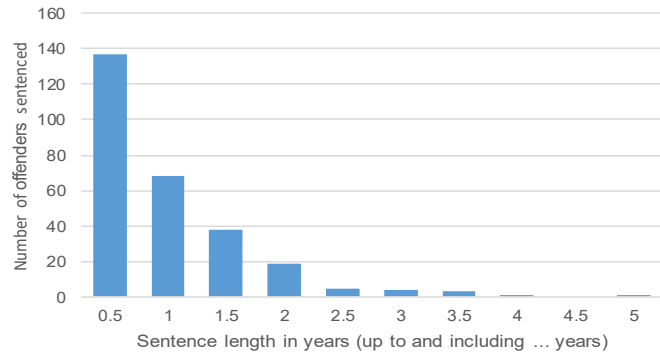
Source: Court Proceedings Database, Ministry of Justice

**Notes**

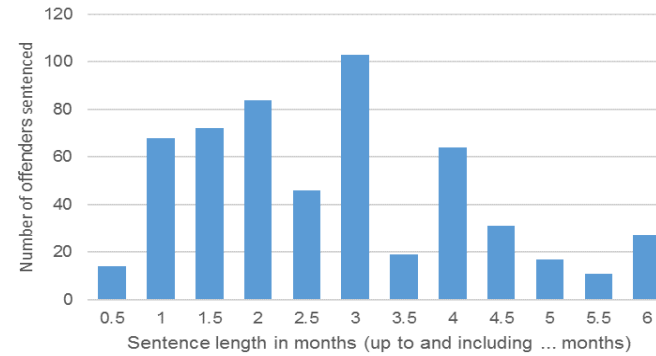
- 1) To estimate the pre guilty plea sentence lengths for most offences in this table, it has been assumed that around 90% of offenders sentenced pleaded guilty, and that those who pleaded guilty received a reduction in line with the reductions observed in the CCSS data (for example, 65% of offenders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

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

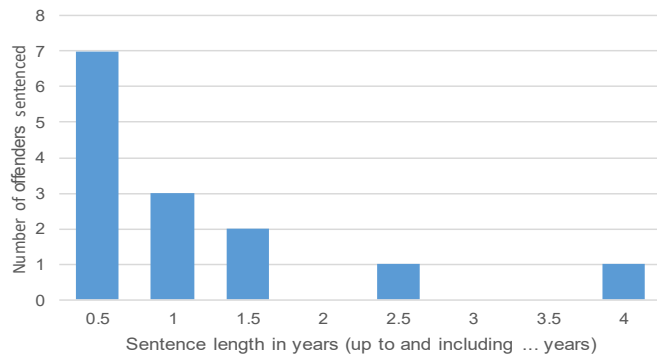
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



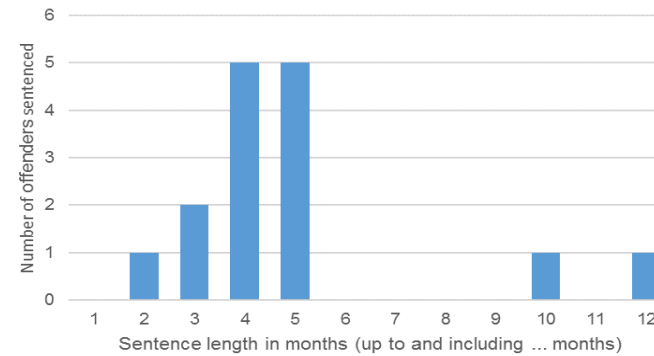
Harassment (without violence), Protection from Harassment Act 1997, S2



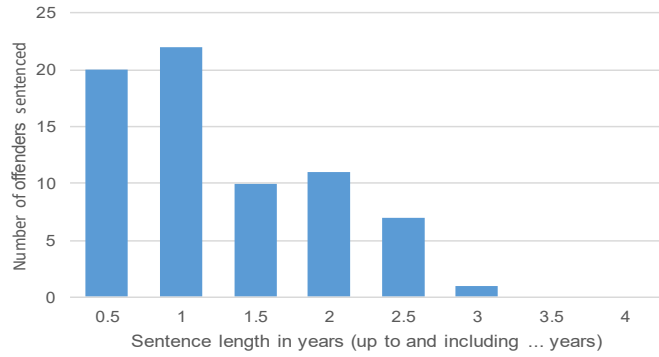
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32



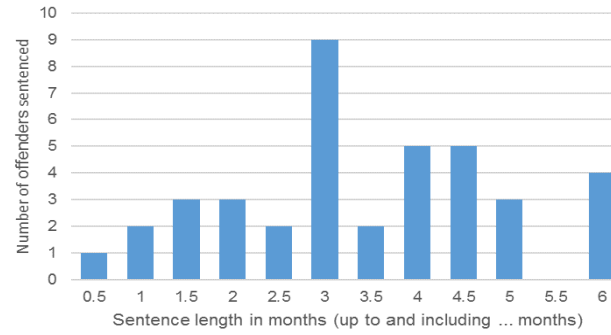
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32



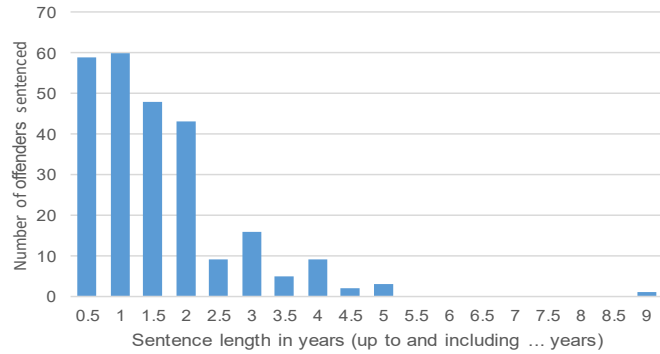
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



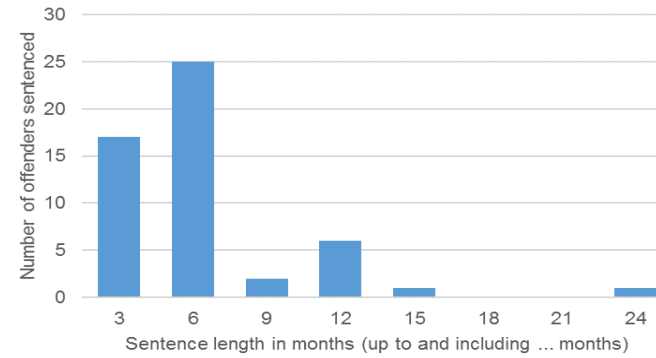
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



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



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



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

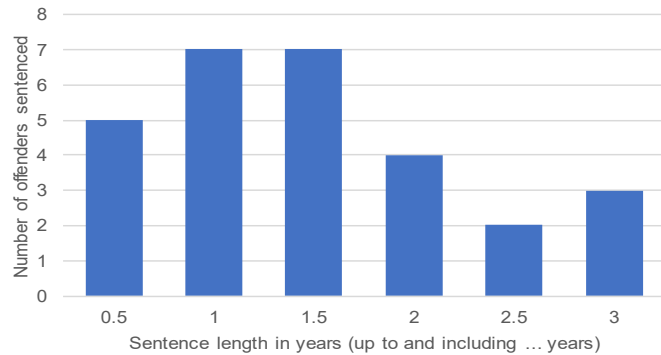
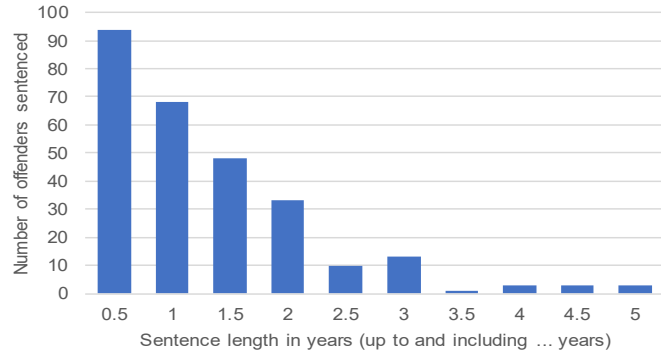
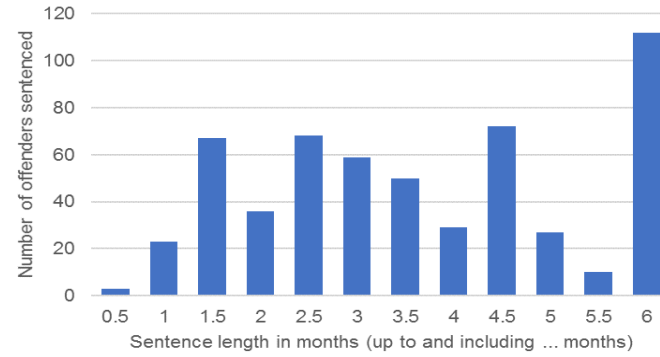


Figure 2: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for specified intimidatory offences, before any reduction for guilty plea, 2016

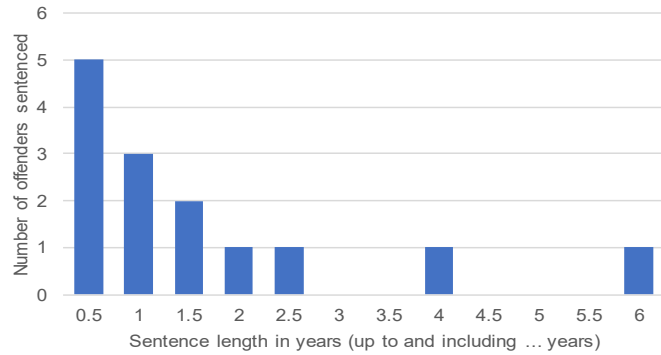
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



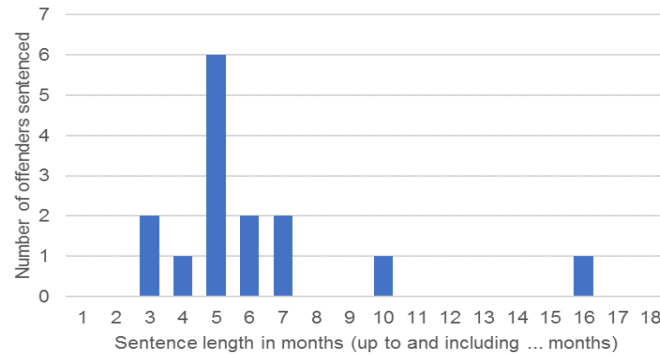
Harassment (without violence), Protection from Harassment Act 1997, S2



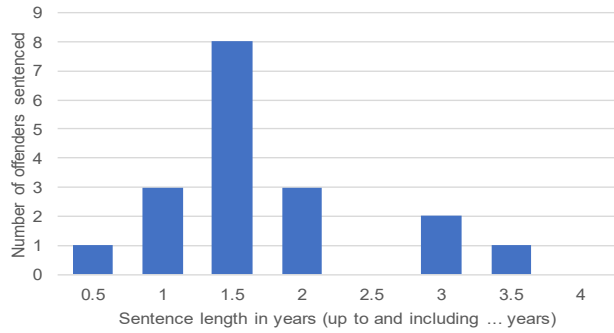
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32



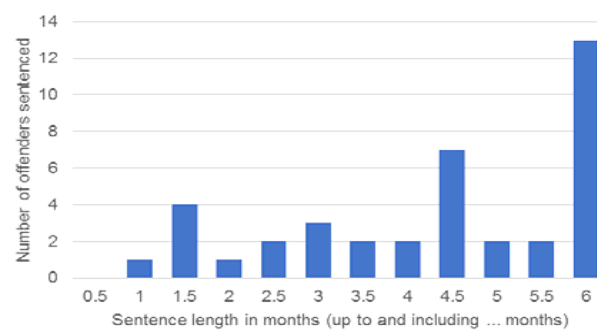
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32



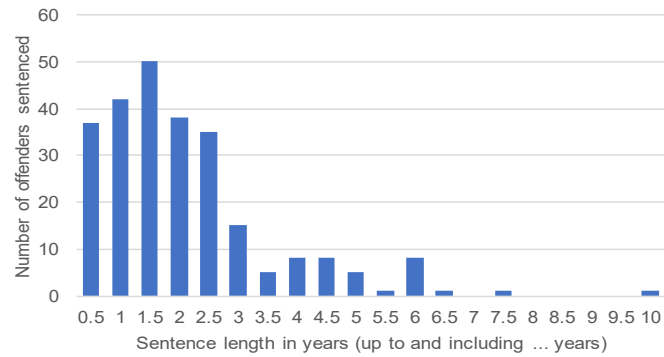
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



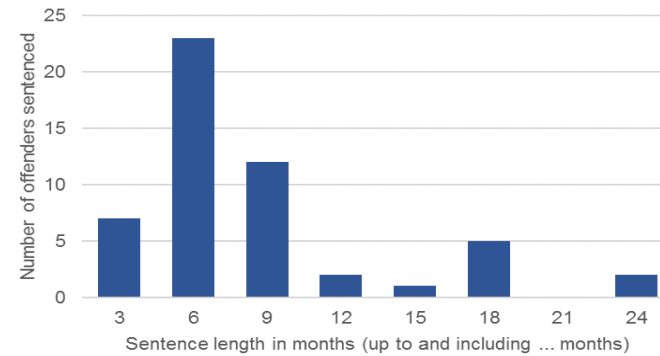
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



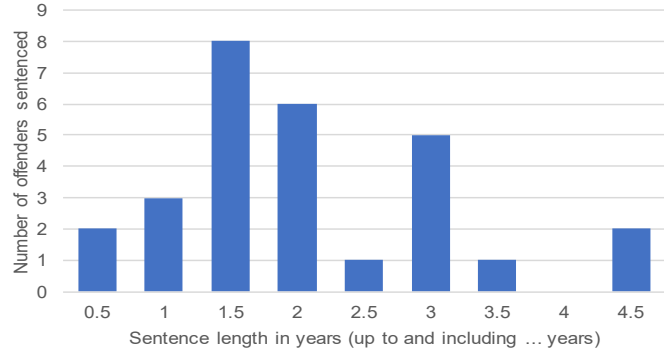
Threats to kill, Offences Against the Person Act 1861, S16



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



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



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## **Annex B**

### **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

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### **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.

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

## STEP ONE

### Determining the offence category

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

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

**Culpability** demonstrated by one or more of the following:

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

#### **B - High culpability:**

- Conduct **intended to maximise fear** or distress
- **High degree of 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.

**Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this consideration may be relevant.**

**Maximum 10 years (basic offence)**

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

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

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

### **Factors increasing seriousness**

#### **Statutory aggravating factors:**

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

#### **Other aggravating factors:**

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

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where **not** 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

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

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

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <b>or</b> consider a more severe type of sentence than for the basic offence.</p>
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

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

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **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.

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**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

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**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.

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

#### Category 2

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

#### Category 3

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

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

<p><b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence).</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
<p><b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <b>or</b> consider a more severe type of sentence than for the basic offence.</p>
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

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

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

#### **STEP THREE**

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

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

#### **STEP FOUR**

##### **Reduction for guilty pleas**

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

#### **STEP FIVE**

##### **Totality principle**

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

#### **STEP SIX**

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

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

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

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

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

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

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

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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 - High culpability:

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

#### B - Medium culpability:

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

#### C - Lesser culpability:

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

## Harm

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

#### Category 1

- Fear of violence on several occasions
- Very serious alarm or distress which has a very substantial adverse effect on the victim's usual day to day activities
- Significant psychological harm

#### Category 2

- Fear of violence on at least two occasions
- Serious alarm or distress which has a substantial adverse effect on the victim's usual day to day activities

**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
<b>Category 1</b>	<p><b>Starting point</b> 2 years <u>6 months</u>' custody</p> <p><b>Category range</b> 1 year- 4 years' custody</p>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months- 2 years <u>6 months</u>' custody</p>	<p><b>Starting point</b> 6 months custody</p> <p><b>Category range</b> High level community order-1 years' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months- 2 years <u>6 months</u>' custody</p>	<p><b>Starting point</b> 6 months custody</p> <p><b>Category range</b> High level community order- 1 years' custody</p>	<p><b>Starting point</b> <u>Medium</u> level community order</p> <p><b>Category range</b> <u>Low level</u> <u>community order</u>- 6 months custody</p>

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

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

**Factors increasing seriousness**

**Statutory aggravating factors:**

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

### **Other aggravating factors:**

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

### **Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to

the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

#### **STEP SIX**

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

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

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

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

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

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

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

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

## STEP ONE

### Determining the offence category

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

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

**Culpability** demonstrated by one or more of the following:

#### A- High Culpability

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

#### B – Medium Culpability

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

#### C – Lesser Culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability.
- Little or no planning
- Conduct intended to cause some distress and/or humiliation
- Offence was limited in scope and duration

## Harm

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

#### Category 1

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

#### Category 2

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

#### Category 3

- Limited distress or harm caused to the victim



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

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

**Maximum 2 years**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 1 years' custody  <b>Category range</b> 26 weeks- <del>24</del> years' <del>6-months</del> custody	<b>Starting point</b> 26 weeks custody  <b>Category range</b> 12 weeks custody- 1 years' custody	<b>Starting point</b> 12 weeks custody  <b>Category range</b> High level community order- 26 weeks custody
<b>Category 2</b>	<b>Starting point</b> 26 weeks custody  <b>Category range</b> 12 weeks – 1 year's custody	<b>Starting point</b> 12 weeks custody  <b>Category range</b> High Level community order- 26 weeks custody	<b>Starting point</b> <del>Medium-High</del> Level community order  <b>Category range</b> Low level community order - <del>12 weeks custody</del> <del>High level</del> <del>community order</del>
<b>Category 3</b>	<b>Starting point</b> 12 weeks custody  <b>Category range</b> High Level community order- 26 weeks custody	<b>Starting point</b> <del>High Medium</del> Level community order  <b>Category range</b> Low level community order- <del>12 weeks</del> <del>custody</del> <del>High Level</del> <del>community order.</del>	<b>Starting point</b> <del>Band B fine</del> <del>Low level</del> <del>community order</del>  <b>Category range</b> Discharge- <del>High</del> <del>Low</del> Level community order

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

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

### Factors increasing seriousness

#### Statutory aggravating factors:

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

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

**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.

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## Annex F

### 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

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**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 and/or campaign of violence towards the victim
- Threats with significant 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
- Offence was limited in scope and duration 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
- Offence has a considerable practical impact on the victim

**Category 2**

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

**Category 3**

- Little or no 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
<b>Category 1</b>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 2 years to <del>8</del>7 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 1 year -4 years' custody</p>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months-2 years 6 months' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 1 year – 4 years' custody</p>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months-2 years 6 months' custody</p>	<p><b>Starting point</b> 6 months custody</p> <p><b>Category range</b> High level community order- 1 years' custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 1 years' custody</p> <p><b>Category range</b> 6 months-2 years 6 months' custody</p>	<p><b>Starting point</b> 6 months custody</p> <p><b>Category range</b> High level community order- 1 years' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> 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)
- 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

**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**

##### **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***

## Annex G

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

**2 March 2018**  
**SC(18)MAR07 Terrorism Paper 2**  
**Julian Goose**  
**Vicky Hunt**  
**020 7071 5786**

## **1 ISSUE**

The Council is invited to consider changes to the remaining six terrorism guidelines in this package and to sign off all guidelines.

## **2 RECOMMENDATION**

It is recommended that the Council consider the following proposals:

- An additional harm factor in the Support guideline
- A reduction in sentence at the top of the range in the Funding guideline
- A change to the harm models for Possession and Collection
- A change to some of the language across the guidelines which is currently inconsistent
- An additional aggravating factor for the preparation guideline
- Additional guidance for sentencing children and young people

## **3 CONSIDERATION**

Encouragement of Terrorism s1 & 2 TACT 2006 (**Annex D**) and Support for a Proscribed Organisation s12 TACT 2000 (**Annex E**)

3.1 These two guidelines cover offences which, looking at the cases, can be very similar in nature. The offences themselves involve different elements, for example the legislation covering the encouragement offences focuses heavily on whether the offender intended to encourage terrorism or whether he was reckless in doing so, and whether the material published or disseminated directly encouraged terrorism or simply glorified terrorism. In contrast the legislation for the offence of support is concerned with whether an offender has invited support for an organisation, furthered the activities of an organisation or arranged a meeting in support of an organisation. The main cross over, therefore, seems to be where an offender 'furthers the activities of an organisation' as this could be charged as either offence.

3.2 With this in mind, the Council may consider that some of the factors in one guideline might also work in the other. I propose that the support guideline should include a harm factor similar to that in encouragement:

Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life

3.3 The recent Court of Appeal case of Alamgir (heard by both Colman and Maura), was concerned with offences of support but the Court considered the above issue:

*Before turning to the individual offenders, we indicate that our view is that because no immediate consequence was shown linking these speeches to some terrorist or violent act by a member of the audience, this case does not fall at the highest level. Nonetheless, given the nature of the audience addressed, we consider it likely that the speeches would have had the effect of increasing support for Isis and its aims within the audiences. This would place these cases at a mid-level in gravity before assessing individual culpability and personal circumstances.*

3.4 The encouragement guideline includes this factor in both categories 1 and 2 of harm. Category 1 concerns activities endangering life and category 2 activities not endangering life. If the Council want to do the same in the support guideline it will require a change to the harm structure to give 3 levels of harm. The Council may feel that this is appropriate given that the statutory maximum for this offence is 10 years, whereas the encouragement offences have a lesser maximum of 7 years. If the Council agree the harm model for the support guideline would look like this:

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life</li> <li>• Significant support for the organisation gained or likely to be gained</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**QUESTION 1: Does the Council want to include these factors in the harm model and move to 3 levels of harm?**

3.5 If the Council agrees to change the harm model the sentencing table would also need to be amended. A proposed version is set out below:



Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-9 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 4-6 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 - 4 years' custody
<b>Category 2</b>	<b>Starting point</b> 6 years' custody <b>Category range</b> 5 - 7 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 -5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1– 3 years' custody
<b>Category 3</b>	<b>Starting point</b> 5 years' custody <b>Category range</b> 4 - 6 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2-4 years' custody	<b>Starting point</b> 1 years' custody <b>Category range</b> 6 months' – 2 years' custody

**QUESTION 2: Does the Council agree to the amended sentencing table above?**

Funding Terrorism (Annex F)

3.6 The Justice Committee sent a letter of response to the terrorism consultation paper recently – this was forwarded to all members via email. The majority of the points raised were ones that the Council have already considered however they also queried why the sentences in two of the guidelines; Failure to Disclose Information and Funding, go up to the statutory maximum. As they point out, the Council usually leave an amount of headroom to enable a court to sentence exceptionally serious cases outside the range.

3.7 With regard to the Failure to Disclose Information guideline there is a clear reason in that the statutory maximum sentence is just 5 years and the conduct described by an A1 case is very serious justifying the maximum sentence. Leaving headroom in this guideline would mean that such cases would have to receive sentences lower than current sentencing practice.

3.8 However, the funding guideline does not share this justification as the statutory maximum is 14 years. If the Council wanted to amend the sentencing table in this guideline to give the court headroom for exceptional cases this could be achieved by amending the range in A1 to 10- 13 years.

**QUESTION 3: Does the Council want to reduce the sentencing range in A1 to go up to 13 years?**

### Collection of Terrorist Information s58 TACT 00 (Annex H)

3.9 At the January Council meeting I proposed a new harm model for the Collection guideline which included the likelihood of harm. The model was a new structure, like that initially proposed for Preparation. Whilst the Council did not like the model they did agree to include consideration of likelihood. The reason for its inclusion is that this offence does not require an offender to have terrorist motivations. Therefore, there will be cases where offenders have collected terrorist material for no purpose other than curiosity and, without likelihood being included such offenders could potentially receive very high and disproportionate sentences. There are no new proposals for change to this guideline.

### Harm Models across all guidelines

3.10 The harm models across the package of guidelines vary to reflect the differences between the offences. However, there are some differences that might appear inconsistent.

3.11 The Preparation (**Annex A**), Explosives (**Annex B**), Encouragement (**Annex D**), Support (**Annex E**) and Funding (**Annex F**) guidelines all treat endangerment of life as a more serious factor in terms of harm than widespread and serious damage to property, economic interests or substantial impact upon civic infrastructure.

3.12 The Failure to Disclose Information (**Annex C**), Possession (**Annex G**) and Collection (**Annex H**) guidelines all include widespread and serious damage to property etc as a harm 1 category alongside endangerment of life. For the Failure to Disclose guideline this is perhaps explained by the low statutory maximum. Any greater break down of the harm factors in this guideline could result in very low sentences for activity that is very serious. However, the Possession guideline has a statutory maximum of 15 years, the next highest after Preparation and Explosive Substances. The Collection guideline currently has a statutory maximum of 10 years (the same as Support). The Council might, therefore, want to consider amending the current harm models in the possession and collection guidelines.

### Proposed Harm Model - Collection (s58)

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused, intended or risked</b> .	
<b>Category 1</b>	<ul style="list-style-type: none"><li>Material provides instruction for specific terrorist activity endangering life <b>and the likelihood of harm is high</b></li></ul>
<b>Category 2</b>	<ul style="list-style-type: none"><li>Material provides instruction for specific terrorist activity endangering life <b>but the likelihood of harm is low</b></li><li>Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li></ul>
<b>Category 3</b>	<ul style="list-style-type: none"><li>All other cases</li></ul>

**QUESTION 4: Does the Council want to amend the harm model for Collection?**

Proposed Harm Model - Possession (s57):

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused, intended or risked</b> .	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Article(s) had potential to facilitate an offence endangering life</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

3.13 The Council could also consider amending the Possession guideline to include the likelihood of endangering life within the harm model, as we have in both the Preparation and Collection guidelines:

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused, intended or risked</b> .	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Article(s) had potential to facilitate an offence endangering life <b>and the likelihood of harm is high</b></li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Article(s) had potential to facilitate an offence endangering life <b>but the likelihood of harm is low</b></li> <li>Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

As these changes include the addition of a third harm level, the sentencing table would also have to change:

<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 10 years' custody <b>Category range</b> 9-14 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3-6 years' custody
<b>Category 2</b>	<b>Starting point</b> 8 years' custody <b>Category range</b> 7-9 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 5-7 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2-4 years' custody
<b>Category 3</b>	<b>Starting point</b> 6 years' custody <b>Category range</b> 4-7 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2-5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1-3years' custody

**QUESTION 5: Does the Council want to amend the harm model for the Possession guideline, and if so which model is preferred (with or without likelihood)?**

**QUESTION 6: If the model is changed does the Council agree to the proposed sentence table?**

Consistency of Language

3.14 There is currently some inconsistency of language across the package of guidelines when referring to loss of life within the harm factors:

<b>Preparation guideline</b>	Multiple deaths/ any deaths risked
<b>Explosive Substances guideline</b>	
<b>Encouragement guideline</b>	Activities endangering life
<b>Support guideline</b>	Activities endangering life Activities intended to cause endangerment to life
<b>Funding guideline</b>	Activity which involved risk to life

**QUESTION 7: Does the Council want to use consistent language throughout the package and if so which term above is preferred?**

Additional matters

3.15 One respondent to the consultation suggested that an additional aggravating factor could be 'offender targets children'. The consultee specifically had in mind the Manchester Arena terrorist incident where the offender must have been aware that the audience at the music concert were likely to be children.

**QUESTION 8: Does the Council want to add 'offender targets children' to the aggravating factors in the Preparation guideline?**

3.16 The Youth Justice Board suggest that there should be greater signposting to the youth guidelines to assist sentencers sentencing those under 18. Currently each draft includes the wording; 'This guideline applies only to offenders aged 18 and older'. In addition we could include this wording:

When sentencing children or young people under the age of 18 the court should refer to the *Overarching Principles for Sentencing Children and Young People* guideline. This guideline provides guidance on the individual approach to sentencing children and young people, the

relevance of a person's age and level of maturity and the relevant welfare considerations that should be taken into account.

**QUESTION 9: Does the Council want to add the additional wording to all of the terrorism guidelines?**

3.17 The membership guideline can be seen at **Annex I**, there are no proposed changes to this guideline.

**QUESTION 10: Is the Council content to sign off the full package of nine guidelines?**

Publication of the Guidelines

3.18 As the Council heard at the last meeting, there will be changes to the legislation upon which these guidelines are based. It seems likely that the Government will announce their proposals around Easter.

3.19 The Council had intended to publish these guidelines on 22 March to come into force on 27 April. It is impossible to say how quickly the Government could get a Bill through Parliament and how long after that before the changes would come into force, but it is likely to take some time.

3.20 If the Council goes ahead with their intended plans the courts would have the benefit of up to date guidelines that they could be using for many months before any changes come about. Whilst there may be reputational risks in publishing guidelines that will become out of date relatively soon after publication, there are also reputational risks in advertising the fact that we are working to produce guidelines in a short time period, with a reduced consultation period, only to then stall the publication of them.

3.21 The Council was very clear about the fact that we knew the Government was likely to legislate, indeed the Home Secretary announced the proposed change to one guideline just before we consulted, which gave us the opportunity to consult on a proposed alternative sentence table.

3.22 If we go ahead and publish as intended, our work will not go to waste and we could make clear in our communications, and our response document, that we recognise there will be changes to legislation but the Council consider it vital for the courts to have guidelines as soon as possible. In addition, we would endeavour to make any necessary amendments to the guidelines as soon as possible after any changes to legislation are made. Once the Government announce their plans work can begin to draft up amendments to these guidelines.

The Council may still have to consult as the changes are likely to be wider than those announced prior to our consultation, but it could be that a short, targeted consultation would suffice, and this could take place shortly after the changes become law. In which case amended guidelines could be published very soon after any legislative changes come into force.

**QUESTION 11: Is the Council in agreement that we should publish these guidelines and bring them into force according to our timetable?**

#### **4 IMPACT**

4.1 The Analysis and Research team will be completing work on a final resource assessment after this Council meeting and will circulate this to Council members within the next few weeks, before the guidelines are published.

#### **5 RISK**

5.1 As outlined above (paragraph 3.20), there are some risks with either going ahead or delaying the publication of this package of guidelines, but we are confident that we could manage those risks.

5.2 There are also risks associated with the assessment of the impact of these guidelines. Most terrorist offences are low volume which makes assessing current sentencing practice difficult, even the Preparation offence, which is one of the higher volume offences, is difficult as the cases vary hugely. An assessment of the impact of the guideline will be conducted once the guideline has been in place for a period of time, and if any issues are identified then the Council will have an opportunity to review the guideline.

# Encouragement of Terrorism

## Encouragement of terrorism

Terrorism Act 2006 (section 1)

## Dissemination of terrorist publications

Terrorism Act 2006 (section 2)

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Triable either way

Maximum: 7 years' custody

Offence range: 6 months' custody – 6 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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.**

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Offender in position of trust, authority or influence and abuses their position to encourage others</li> <li>Intended to encourage others to engage in any form of terrorist activity</li> <li>Intended to provide assistance to others to engage in terrorist activity</li> </ul>
B	<ul style="list-style-type: none"> <li>Reckless as to whether others would be encouraged or assisted to engage in terrorist activity <b>and</b> published statement/ disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)</li> </ul>
C	<ul style="list-style-type: none"> <li>Other cases where characteristics for categories A or B are not present</li> </ul>

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused or was intended</b> to be caused.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life</li> <li>Statement or publication provides instruction for specific terrorist activity endangering life</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life</li> <li>Statement or publication provides non-specific content encouraging support for terrorist activity endangering life</li> <li>Statement or publication provides instruction for specific terrorist activity not endangering life</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life</li> <li>Other cases where characteristics for categories 1 or 2 are not present</li> </ul>



<b>STEP TWO</b>			
<b>Starting point and category range</b>			
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.			
<b>Harm</b>	<b>Culpability</b>		
	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 4 -6 years' custody	<b>Category range</b> 3-5 years' custody	<b>Category range</b> 2-4 years' custody
<b>Category 2</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 3-5 years' custody	<b>Category range</b> 2-4 years' custody	<b>Category range</b> 1-3 years' custody
<b>Category 3</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 years' custody
	<b>Category range</b> 2-4 years' custody	<b>Category range</b> 1-3 years' custody	<b>Category range</b> 6 months' custody – 2 years

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 or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

**Other aggravating factors:**

- Specifically targeted audience (if not considered at step 1)
- Vulnerable/ impressionable audience (if not considered at step 1)
- Communication with known extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/ or avoid or impede detection
- Significant volume of terrorist publications published or disseminated
- Used multiple social media platforms to reach a wider audience
- Offender attempted to disguise their identity to prevent detection
- Failure to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE****Consider any factors which indicate a reduction for 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**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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 (tagged curfew)**

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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# Proscribed Organisations

## Support

Terrorism Act 2000 (section 12)

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Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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	<ul style="list-style-type: none"> <li>• Offender in position of trust, authority or influence and abuses their position</li> <li>• Persistent efforts to gain widespread or significant support for organisation</li> <li>• Encourages activities intended to cause endangerment to life</li> </ul>
B	<ul style="list-style-type: none"> <li>• Arranged or played a significant part in the arrangement of a meeting/ event aimed at gaining significant support for organisation</li> <li>• Intended to gain widespread or significant support for organisation</li> <li>• Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure</li> </ul>
C	<ul style="list-style-type: none"> <li>• Lesser cases where characteristics for categories A or B are not present</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Significant support for the organisation gained or likely to be gained</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 5-9 years' custody	<b>Category range</b> 3-6 years' custody	<b>Category range</b> 1-4 years' custody
Category 2	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 years' custody
	<b>Category range</b> 3 - 6 years' custody	<b>Category range</b> 2-5 years' custody	<b>Category range</b> 6 months – 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
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

##### **Other aggravating factors:**

- Vulnerable/ impressionable audience
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

#### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct

- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE**

**Consider any factors which indicate a reduction for 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**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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 (tagged curfew)**

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



# Funding Terrorism

## **Fundraising**

Terrorism Act 2000 (section 15)

## **Use and Possession**

Terrorism Act 2000 (section 16)

## **Funding Arrangements**

Terrorism Act 2000 (section 17)

## **Money Laundering**

Terrorism Act 2000 (section 18)

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Triable either way

Maximum: 14 years' custody

Offence range: 1 – 14 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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	<ul style="list-style-type: none"> <li>• A significant role where offending is part of a group activity</li> <li>• Involvement of others through pressure or influence</li> <li>• Abuse of position of power, trust or responsibility</li> <li>• Sophisticated nature of offence/ significant planning</li> <li>• Activities took place over a sustained period of time</li> </ul>
B	<ul style="list-style-type: none"> <li>• Cases whose characteristics fall between A and C</li> </ul>
C	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Very little or no planning</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Money or property made, or was likely to make, a significant contribution to furthering terrorism</li> <li>• Use or provision of money or property to fund or assist activity which involved risk to life</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Use or provision of money or property to fund or assist activity which involved risk of widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure</li> <li>• All other cases whose characteristics fall between 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Money or property made, or was likely to make, a minor contribution to furthering terrorism</li> </ul>

**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	<b>Starting point</b> 12 years' custody	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 7 years' custody
	<b>Category range</b> 10 - 14 years' custody	<b>Category range</b> 8 - 10 years' custody	<b>Category range</b> 6 - 8 years' custody
Category 2	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 8 - 10 years' custody	<b>Category range</b> 6 - 8 years' custody	<b>Category range</b> 2 - 5 years' custody
Category 3	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 6 - 8 years' custody	<b>Category range</b> 2 - 5 years' custody	<b>Category range</b> 1 - 3 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Indoctrinated or encouraged others
- Use or provision of false or fraudulent identification
- Misrepresenting nature of organisation

- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Good character and/ or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

#### **STEP THREE**

##### **Consider any factors which indicate a reduction for 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**

##### **Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

#### **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 (tagged curfew)**

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

## Possession for Terrorist Purposes

Terrorism Act 2000 (section 57)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

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Triable either way  
Maximum: 15 years' custody

Offence range: 1 – 14 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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	<ul style="list-style-type: none"> <li>• Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete</li> <li>• Offender is a significant participant in the commission, preparation or instigation of an act of terrorism</li> </ul>
B	<ul style="list-style-type: none"> <li>• Cases falling between A and C</li> </ul>
C	<ul style="list-style-type: none"> <li>• Possession of article(s) indicates that offender has engaged in <b>very</b> limited preparation toward terrorist activity</li> <li>• Offender is of limited assistance or encouragement to others who are preparing for terrorist activity</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been **caused, intended or risked**.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Article(s) had potential to facilitate an offence causing loss of life, serious injury or a substantial impact to the economy or civic infrastructure</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 4 years' custody
	<b>Category range</b> 8-14 years' custody	<b>Category range</b> 5-9 years' custody	<b>Category range</b> 2-6 years' custody
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 4-8 years' custody	<b>Category range</b> 2-6 years' custody	<b>Category range</b> 1-3 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
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

##### **Other aggravating factors:**

- Article has the potential to endanger many lives
- Length of time over which offending was committed
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

- Offence committed whilst in prison

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

#### **STEP THREE**

##### **Consider any factors which indicate a reduction for 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 a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

#### **STEP SIX**

##### **Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

#### **STEP SEVEN**

##### **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 EIGHT****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP NINE****Reasons**

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

**STEP TEN****Consideration for time spent on bail (tagged curfew)**

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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# Collection of Terrorist Information

Terrorism Act 2000 (section 58)

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Triable either way  
Maximum: 10 years' custody

Offence range: High Community Order – 9 years' custody

This guideline applies only to offenders aged 18 and older

<b>STEP ONE</b>	
<b>Determining the offence category</b>	
<p>The court should determine the offence category with reference <b>only</b> to the factors listed in the tables below. In order to determine the category, the court should assess <b>culpability</b> and <b>harm</b>.</p> <p>The court should weigh all the factors set out below in determining the offender's culpability.</p> <p><b>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.</b></p>	
<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Offender collected, made a record of, or was in possession of information for use in a specific terrorist act</li> </ul>
B	<ul style="list-style-type: none"> <li>Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</li> <li>Offender repeatedly accessed extremist material (where not falling within A)</li> </ul>
C	<ul style="list-style-type: none"> <li>Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations</li> </ul>
<b>Harm</b>	
<p>The court should consider the factors set out below to determine the level of harm that has been <b>caused, intended or risked</b>.</p>	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Material provides instruction for specific terrorist activity endangering life <b>and the likelihood of harm is high</b></li> <li>Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, economic interest or substantial impact upon civic infrastructure <b>and the likelihood of harm is high</b></li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Material provides instruction for specific terrorist activity endangering life <b>but the likelihood of harm is low</b></li> <li>Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure <b>but the likelihood of harm is low</b></li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

**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	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 5-9 years' custody	<b>Category range</b> 3-6 years' custody	<b>Category range</b> 1-4 years' custody
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4-8 years' custody	<b>Category range</b> 3-5 years' custody	<b>Category range</b> 6 months' - 3 years' custody
Category 3	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1-year custody
	<b>Category range</b> 3 - 6 years' custody	<b>Category range</b> 2-5 years' custody	<b>Category range</b> High Community Order – 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
- 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 (*When considering this factor,*

*sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting)*

**Other aggravating factors:**

- Significant volume of terrorist publications
- Length of time over which offending was committed
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/ or avoid or impede detection
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE**

**Consider any factors which indicate a reduction for 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**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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 (tagged curfew)**

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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# Proscribed Organisations

## **Membership**

Terrorism Act 2000 (section 11)

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Triable either way

Maximum: 10 years' custody

Offence range: 6 months' custody – 9 years' custody

This guideline applies only to offenders aged 18 and older

**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 court should weigh all the factors set out below in determining the offender's culpability.

**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	<ul style="list-style-type: none"> <li>Prominent member of organisation</li> </ul>
B	<ul style="list-style-type: none"> <li>Active (but not prominent) member of organisation</li> </ul>
C	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

**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.

There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.

**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
	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 5-9 years' custody	<b>Category range</b> 3-7 years' custody	<b>Category range</b> 6 months' custody -4 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
- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

### Factors reducing seriousness or reflecting personal mitigation

- Unaware that organisation was proscribed
- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/ or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

**STEP THREE**

**Consider any factors which indicate a reduction for 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**

**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**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 (tagged curfew)**

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