

Disclosing Private Sexual Images

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

Criminal Justice and Courts Act 2015, s.33

Triable either way

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

Maximum when tried on indictment: 2 years.

Offence range: Discharge to 1 year 6 months

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

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A- High Culpability

- Conduct intended to maximise distress and/or humiliation
- Images circulated widely/publically
- Significant planning and/or sophisticated offence
- 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 |
| Category 1 | <p>Starting point 1 years' custody</p> <p>Category range 26 weeks- 24 years' 6-months custody</p> | <p>Starting point 26 weeks custody</p> <p>Category range 12 weeks custody- 1 years' custody</p> | <p>Starting point 12 weeks custody</p> <p>Category range High level community order- 26 weeks custody</p> |
| Category 2 | <p>Starting point 26 weeks custody</p> <p>Category range 12 weeks – 1 year's custody</p> | <p>Starting point 12 weeks custody</p> <p>Category range High Level community order- 26 weeks custody</p> | <p>Starting point Medium-High Level community order</p> <p>Category range Low level community order - 12 weeks custody High level community order</p> |
| Category 3 | <p>Starting point 12 weeks custody</p> <p>Category range High Level community order- 26 weeks custody</p> | <p>Starting point High Medium Level community order</p> <p>Category range Low level community order- 12 weeks custodyHigh Level community order.</p> | <p>Starting point Band B fine Low level community order</p> <p>Category range Discharge-High Low Level community order</p> |

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

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

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

4

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.

Blank page