

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>Category 1</p> <ul style="list-style-type: none">• 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
<p>Category 2</p> <ul style="list-style-type: none">• 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

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?

Blank page

Table 1: Number of adult offenders sentenced for specified intimidatory offences, 2006-2016¹

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
	Total	733	708	718	691	711	705	517	601	752	806	673
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
	Total	45	36	33	37	38	46	30	29	34	34	41
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
	Total	3,420	3,408	3,594	4,057	4,486	4,126	4,012	4,387	5,049	5,428	5,249
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
	Total	86	76	87	76	115	92	102	96	126	143	98
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
	Total	449	388	375	352	421	415	401	406	488	509	478
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
	Total	0	0	0	0	0	0	0	2	192	349	241
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
	Total	0	0	0	0	0	0	0	0	41	139	173
Disclosing private sexual photographs and films with intent to cause distress, Criminal Justice and Courts Act 2015, S33	MC										57	190
	CC										5	36
	Total	0	0	0	0	0	0	0	0	0	62	226
Controlling or Coercive Behaviour in an Intimate or Family Relationship, Serious Crime Act 2015, S76	MC											25
	CC											33
	Total	0	0	0	0	0	0	0	0	0	0	58

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 ¹	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 ¹	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 ²	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 ¹

Offence	Post guilty plea			Pre guilty plea (estimated)		
	Mean sentence length (in months) ^{2,4}	Median sentence length (in months) ^{3,4}	Maximum sentence length (in months)	Mean sentence length (in months) ^{2,4}	Median sentence length (in months) ^{3,5}	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 ⁴	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 ^{4,5}	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 ⁶	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 ⁴	1 year 5 months	1 year 4 months	3 years	1 year 11 months	1 year 8 months	4 years 6 months

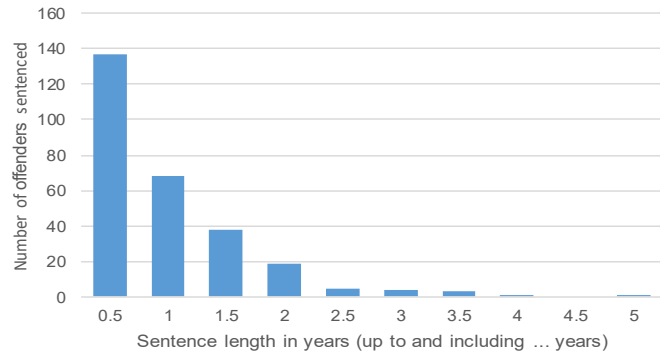
Source: Court Proceedings Database, Ministry of Justice

Notes

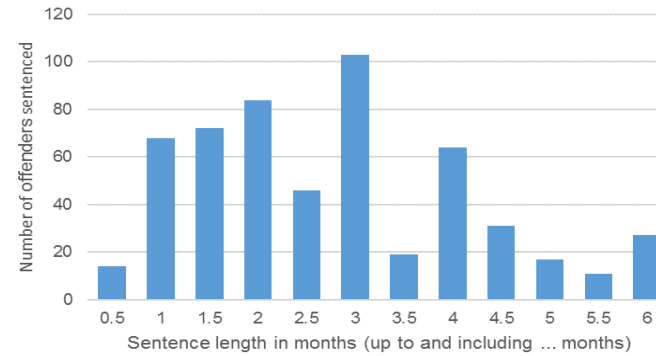
- 1) To estimate the pre guilty plea sentence lengths for most offences in this table, it has been assumed that around 90% of offenders sentenced pleaded guilty, and that those who pleaded guilty received a reduction in line with the reductions observed in the CCSS data (for example, 65% of offenders 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

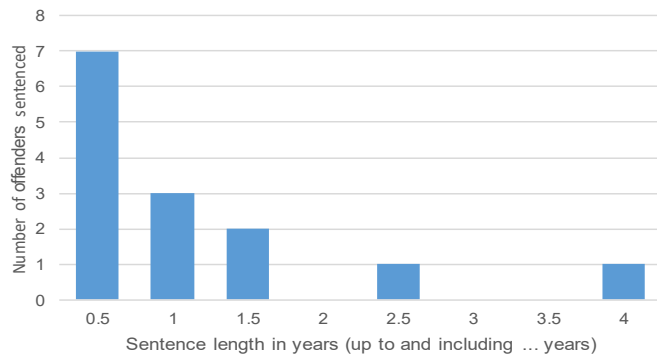
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



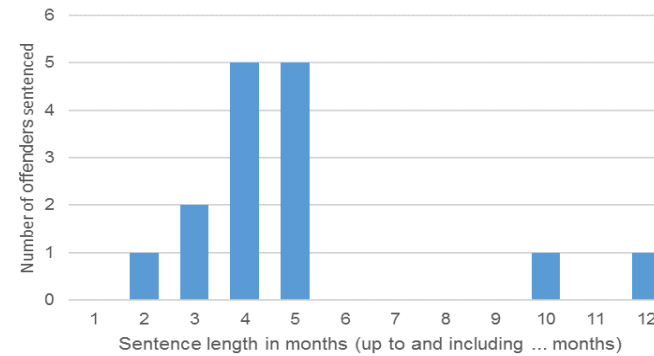
Harassment (without violence), Protection from Harassment Act 1997, S2



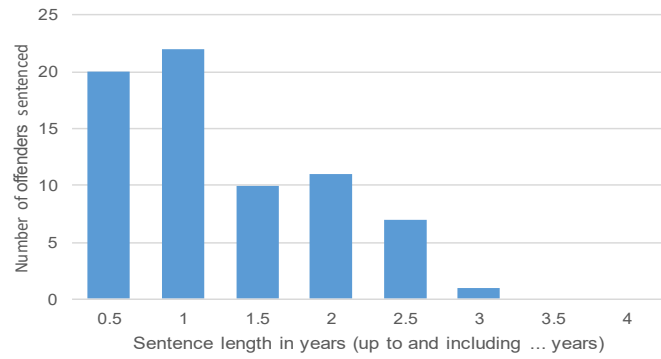
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32



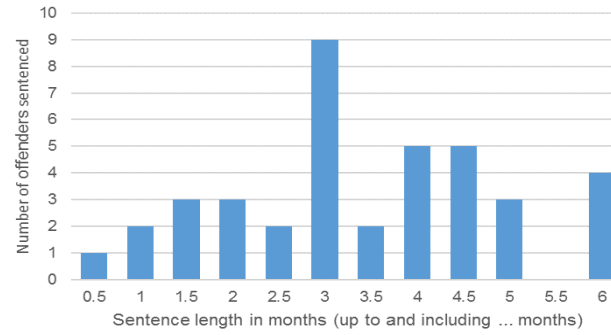
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32



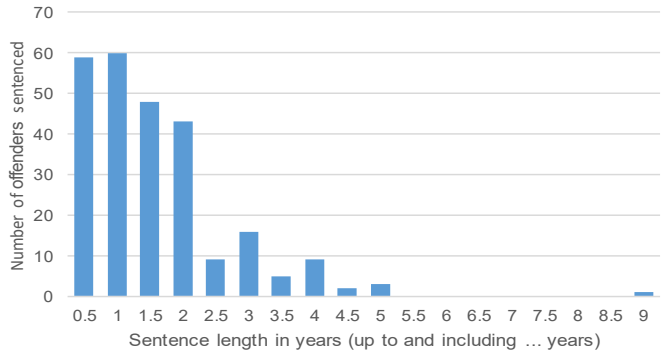
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



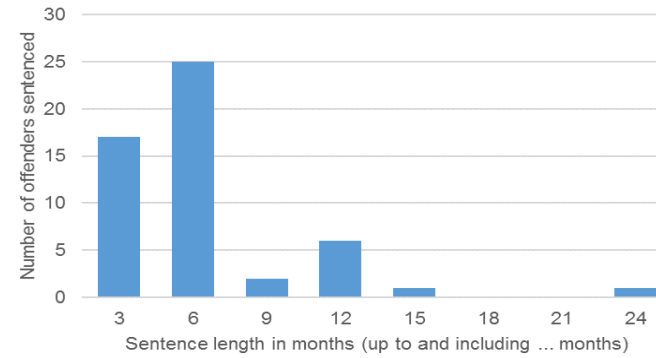
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



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

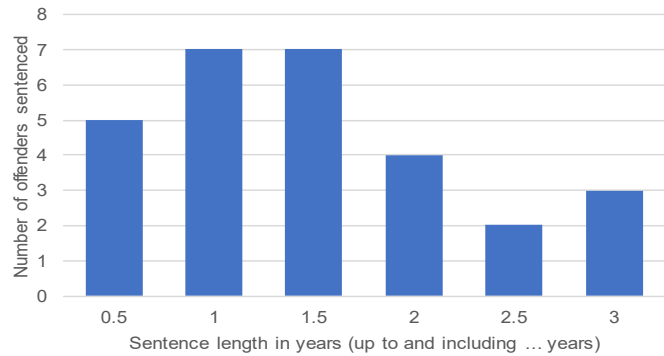
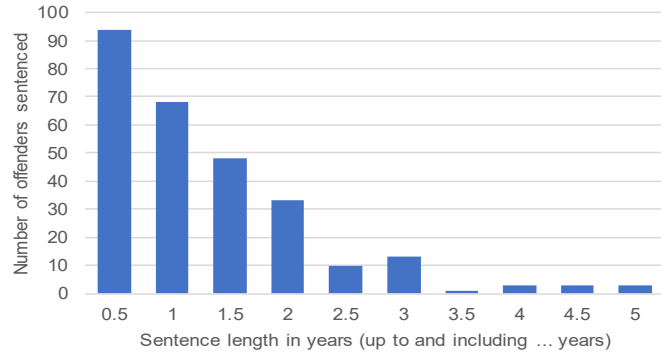
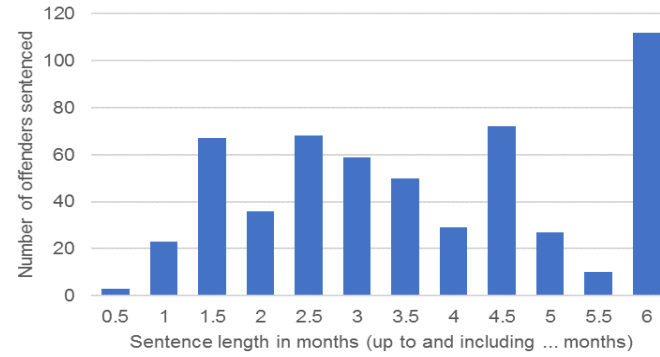


Figure 2: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for specified intimidatory offences, before any reduction for guilty plea, 2016

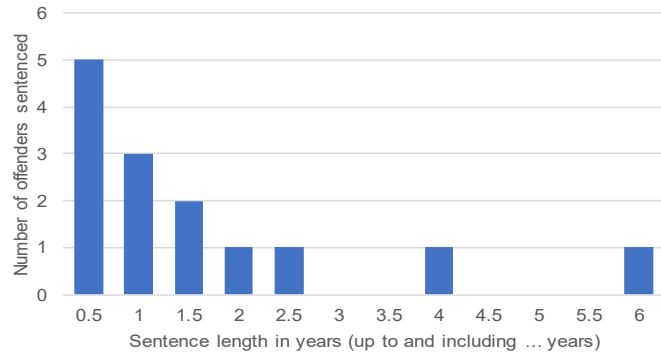
Harassment (putting people in fear of violence), Protection from Harassment Act 1997, S4



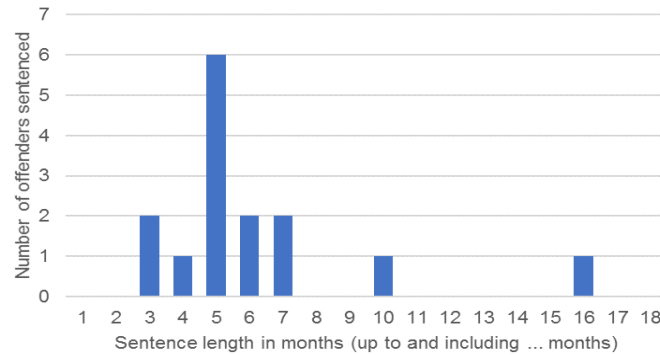
Harassment (without violence), Protection from Harassment Act 1997, S2



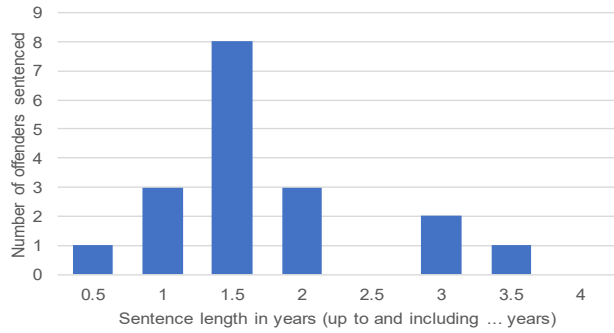
Racially or religiously aggravated harassment (putting people in fear of violence), Crime and Disorder Act 1998, S32



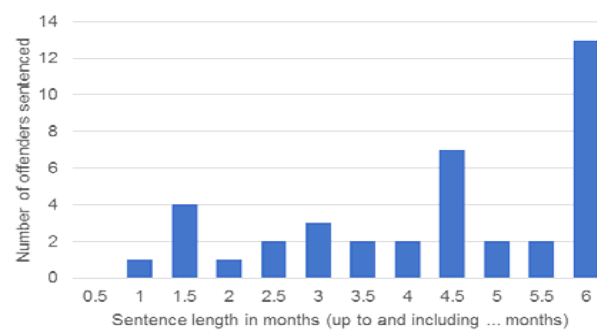
Racially or religiously aggravated harassment (non violent), Crime and Disorder Act 1998, S32



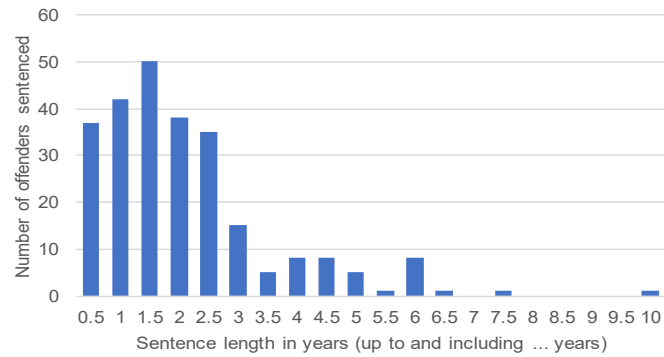
Stalking (involving fear of violence or serious alarm or distress), Protection from Harassment Act 1997, S4A



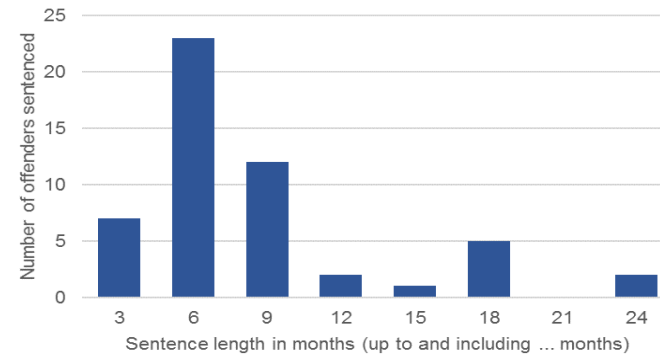
Stalking (harassment which involves a course of conduct that amounts to stalking), Protection from Harassment Act 1997, S2A



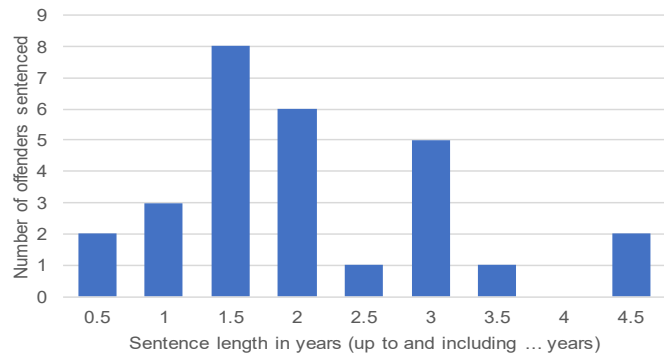
Threats to kill, Offences Against the Person Act 1861, S16



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



Blank page

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

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.

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
Category 1	Starting point 5 years custody Category range 3 years 6 months-8 years custody	Starting point 2 years 6 months custody Category range 1 year to 4 years custody	Starting point 36 weeks custody Category range 12 weeks – 1 year 6 months custody	Starting point 12 weeks custody Category range High level Community order-36 weeks custody
Category 2	Starting point 2 years 6 months custody Category range 1 year to 4 years custody	Starting point 36 weeks custody Category range 12 weeks to 1 year 6 months custody	Starting point 12 weeks custody Category range High level Community order-36 weeks custody	Starting point Medium-High level Community order Category range Low Level Community order- High level Community order 12 weeks custody
Category 3	Starting point 36 weeks custody Category range 12 weeks to 1 year 6 months custody	Starting point 12 weeks custody Category range High level Community order-36 weeks custody	Starting point Medium-High level Community order Category range Low Level Community order- High level Community order 12 weeks custody	Starting point Band C fine Low level Community order Category range Discharge Band C fine - Low-High 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

RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING OFFENCES ONLY

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

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

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

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

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

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

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

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

Compensation order

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

Other ancillary orders available include:

Restraining order

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

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Blank page

Harassment

Protection from Harassment Act 1997, s.2

Stalking

Protection from Harassment Act 1997, s.2A

Triable only summarily

Maximum: Level 5 fine and/or 6 months

Offence range: Discharge to 26 weeks custody

Racially or religiously aggravated harassment

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

Racially or religiously aggravated stalking-

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

Triable either way

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

Maximum when tried on indictment: 2 years.

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

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- Conduct intended to maximise **fear or** distress
- **High degree of** planning and/or sophisticated offence
- Persistent action over sustained period
- **Threat of serious violence**
- Offence motivated by, or demonstrating hostility based on any of the following characteristics 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
Category 1	<p>Starting point 12 weeks custody</p> <p>Category range High level community order- 26 weeks custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order- 162 weeks custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order- <u>12 weeks custody</u> High level community order</p>
Category 2	<p>Starting point High level community order</p> <p>Category range Medium level community order- 162 weeks custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order- <u>12 weeks custody</u> High level community order</p>	<p>Starting point <u>Low level</u> <u>Community order</u> <u>Band C fine</u></p> <p>Category range Band B fine - <u>Medium</u> Low level community order</p>
Category 3	<p>Starting point Medium level community order</p> <p>Category range Low level community order- <u>12 weeks</u> custodyHigh level community order</p>	<p>Starting point <u>Low level</u> <u>community order</u> <u>Band C fine</u></p> <p>Category range Band B fine- <u>Medium</u> Low level community order</p>	<p>Starting point Band A-<u>B</u> fine</p> <p>Category range Discharge-<u>Low</u> <u>level</u> <u>Community</u> <u>order</u> <u>Band C fine</u></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:

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

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

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

Controlling or Coercive Behaviour in an Intimate or Family Relationship

Serious Crime Act 2015, s.76

Triable either way

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

Maximum when tried on indictment: Five years' custody

Offence range: Discharge to 4 years' custody

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- Conduct intended to maximise fear or distress
- 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
Category 1	<p>Starting point 2 years <u>6 months</u>' custody</p> <p>Category range 1 year- 4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 6 months- 2 years <u>6 months</u>' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order-1 years' custody</p>
Category 2	<p>Starting point 1 years' custody</p> <p>Category range 6 months- 2 years <u>6 months</u>' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order- 1 years' custody</p>	<p>Starting point <u>Medium</u> level community order</p> <p>Category range <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.

Blank page

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	Starting point 1 years' custody Category range 26 weeks- 24 years' 6-months custody	Starting point 26 weeks custody Category range 12 weeks custody- 1 years' custody	Starting point 12 weeks custody Category range High level community order- 26 weeks custody
Category 2	Starting point 26 weeks custody Category range 12 weeks – 1 year's custody	Starting point 12 weeks custody Category range High Level community order- 26 weeks custody	Starting point Medium-High Level community order Category range Low level community order - 12 weeks custody High level community order
Category 3	Starting point 12 weeks custody Category range High Level community order- 26 weeks custody	Starting point High Medium Level community order Category range Low level community order- 12 weeks custody High Level community order.	Starting point Band B fine Low level community order Category range Discharge- High Low 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

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

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

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
Category 1	<p>Starting point 4 years' custody</p> <p>Category range 2 years to 87 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 year -4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 6 months-2 years 6 months' custody</p>
Category 2	<p>Starting point 2 years' custody</p> <p>Category range 1 year – 4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 6 months-2 years 6 months' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order- 1 years' custody</p>
Category 3	<p>Starting point 1 years' custody</p> <p>Category range 6 months-2 years 6 months' custody</p>	<p>Starting point 6 months custody</p> <p>Category range High level community order- 1 years' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community-High level community order</p>

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Offence committed against those working in the public sector or providing a service to the public
- Impact of offence on others, particularly children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- 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

Blank page

**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.

Blank page