

28 March 2019

Dear Members

Meeting of the Sentencing Council – 5 April 2019

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 5 April 2019 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(19)APR00 |
| ▪ Minutes of meeting held on 1 March | SC(19)MAR01 |
| ▪ Action Log | SC(19)APR02 |
| ▪ Arson/Criminal Damage | SC(19)APR03 |
| ▪ Public Order | SC(19)APR04 |
| ▪ Firearms | SC(19)APR05 |
| ▪ Drugs – Race and gender analysis | No paper |
| ▪ Drugs | SC(19)APR06 |
| ▪ Assault | SC(19)APR07 |

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.

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

5 April 2019
Royal Courts of Justice
Queen's Building

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|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 11:00 | Arson and Criminal Damage - presented by Mandy Banks (paper 3) |
| 11:00 – 12:00 | Firearms - presented by Sophie Klinger (paper 4) |
| 12:00 – 13:00 | Public Order - presented by Lisa Frost (paper 5) |
| 13:00 – 13:30 | Lunch |
| 13:30 – 14:15 | Drugs - race and gender analysis - Amber Isaac (no paper) |
| 14:15 – 15:15 | Drugs - presented by Eleanor Nicholls (paper 6) |
| 15:15 – 16:15 | Assault - presented by Lisa Frost (paper 7) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

1 MARCH 2019

MINUTES

Members present:

Tim Holroyde (Chairman)
Rob Butler
Mark Castle
Rosina Cottage
Rebecca Crane
Rosa Dean
Julian Goose
Heather Hallett
Max Hill
Maura McGowan
Sarah Munro
Alpa Parmar
Beverley Thompson

Representatives:

Assistant Commission Nick Ephgrave for the police,
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:

Steve Wade (Head of Office)
Lisa Frost
Phil Hodgson
Sophie Klinger
Mandy Banks
Ruth Pope

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 25 January 2019 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman informed the Council that he had recently given evidence to the Joint Committee on Human Rights' inquiry into the human rights of children whose mothers are in prison.

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

- 3.1 The Council considered consultation responses and research findings into the draft guideline for Affray. The phrasing of a number of culpability factors was discussed and the Council decided to retain the wording used in the draft guideline.
- 3.2 The Council agreed a minor amendment to the wording for the lowest harm category to reflect more appropriately the threshold of harm required for the offence. Based on research findings, a mitigating factor of 'significant degree of provocation' was added and an additional aggravating factor of 'injury to animal carrying out public duty' was included, following a suggestion by a consultation respondent.
- 3.3 No revisions were made to sentence levels, which received broad approval from consultation respondents.

4. DISCUSSION ON ARSON/CRIMINAL DAMAGE – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered the sentence ranges across the offences. The Council reviewed the consultation responses on this area and noted that generally most consultation respondents agreed with the proposed sentence ranges.
- 4.2 The Council also considered updated sentencing data and the results of the testing of some of the draft guidelines with Crown Court judges. Following discussion, the Council agreed to make some minor changes to some of the sentence ranges.

5. DISCUSSION ON FIREARMS 1 – PRESENTED BY SOPHIE KLINGER, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered three guidelines on possession with intent offences. The Firearms Working Group had developed a revised approach to the type of weapon for each guideline in February; the Council considered and approved these approaches. The Council also

agreed the changes to culpability and harm recommended by the working group.

- 5.2 The Council also examined aggravating and mitigating factors at step two of these guidelines. Revisions to some factors were agreed. Sentencing tables were considered, including separate tables for the guidelines covering firearms and imitation firearms.
- 5.3 Finally, it was agreed to include wording relating to the minimum term above the sentence table, stating that where the minimum term applies, and the sentence reached by applying the guideline would be lower than the minimum term, it should be increased to five years, unless there are exceptional circumstances. There will also be more detailed guidance on the minimum term at step three.
- 5.4 It was agreed that the Firearms Working Group should work on the wording of certain factors which would come back to the next Council meeting for consideration.

6. DISCUSSION ON 10 YEAR ANNIVERSARY – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council were updated on the plans for principal activities for the Council's anniversary year in 2020. Plans for consideration included an event, a sentencing competition, and the potential for a publishing opportunity. Members agreed the plans in principle and suggested an additional potential activity for engagement with schools should be explored.

7. DISCUSSION ON PUBLIC ATTITUDES WORK AND COMMUNICATIONS STRATEGY – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL AND EMMA MCVEY, COMRES

- 7.1 The Council was given a presentation of the key findings and recommendations from *Public Understanding of Sentencing and the Criminal Justice System*, a draft report on research conducted for the Sentencing Council by independent agency ComRes. Members agreed that the research has important implications for the Council and should be given further consideration.

8. DISCUSSION ON FIREARMS 2 – PRESENTED BY SOPHIE KLINGER, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council considered a draft guideline covering transfer and manufacture of prohibited weapons and ammunition, which draws on the guideline judgment of Attorney General's References (Nos 128-141 of 2015 and 8-10 of 2016) [2016] EWCA Crim 54 (R v Stephenson). The Council agreed to group all four offences under section 5(2A) Firearms Act 1968 in the one guideline.

- 8.2 The Council agreed the model of culpability focusing on the offender's role, planning, expectation of gain, and several other factors. It also agreed a model of harm focusing on the scale and sophistication of the criminal enterprise, and any actual harm caused.
- 8.4 Aggravating and mitigating factors were also examined. These were largely agreed with some minor amendments to wording to be made.
- 8.5 Consideration was given to the relative sentence levels in the guideline on possession with intent to endanger life and the manufacture/transfer guideline. It was agreed that the top end of the transfer/manufacture guideline would reflect the indications given in the Stephenson judgment which would make it higher than the possession with intent to endanger life guideline.
- 8.6 It was agreed not to develop a guideline for the offence of possession of articles for conversion offence (section 4A), due to low volumes and the expectation that this offence will be infrequently charged.

**9. DISCUSSION ON BLADED ARTICLE/OFFENSIVE WEAPON –
PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING
COUNCIL**

- 9.1 The Council had been asked by the Justices' Clerks' Society for a view on when it was permissible to suspend a minimum sentence for certain possession and threats offences.
- 9.2 The Council agreed to respond stating that it was unable to advise on this matter and that the Registrar of Criminal Appeals was looking out for a suitable case for the Court of Appeal (Criminal Division) to hear full argument and rule on the issue.

ACTION AND ACTIVITY LOG – as at 28 March 2019

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 27 July 2018					
1	Mental Health	Claire agreed to check the data held in relation to probation reports, specifically, what percentage of reports (oral and written) suggested that psychiatric reports were ordered.	Pamela Jooman	ACTION ONGOING- It has been determined that any information available in the reports is likely to be limited (in terms of both coverage and detail), and would require a large amount of resource to extract. SC A&R are instead investigating other sources of data and working with MoJ colleagues to determine what information may be available.	
SENTENCING COUNCIL MEETING 01 March 2019					
2	Firearms	Firearms Working Group to consider various issues in possession with intent and transfer/manufacture guidelines.	Sophie Klinger LJ Holroyde Mrs Justice McGowan HHJ Sarah Munro Kate Anderson (for DPP Max Hill)		ACTION CLOSED: Group met on 12 March. The group will continue to meet as necessary.

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Sentencing Council

Sentencing Council meeting: 5 April 2019
Paper number: SC(19)APR03 – Arson & Criminal Damage
Lead Council member: Rebecca Crane and Sarah Munro
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the final meeting to discuss and agree the guideline ahead of publication. The definitive guideline will be published in July and come into force in October.

2 RECOMMENDATION

That the Council:

- Considers the proposed changes to sentence levels within the threat to destroy/damage property and criminal damage over £5000 offences
- Reviews and confirms that it is content with the guidance for these offences ahead of publication of the definitive guideline

3 CONSIDERATION

Sentence levels

3.1 At the last meeting the sentence levels across the offences were discussed. Following the discussion, only one change was made, to increase the top of the range in A3 in the arson to endanger life sentence range, from 3 to 4 years (**Annex A**).

3.2 The Council discussed comparisons between the criminal damage over £5000 offence (**Annex B**) and the threat to destroy or damage property offence (**Annex C**), given that they both have a statutory maximum of 10 years, but as currently drafted, have some differences in the sentence ranges and starting points.

A number of the ranges are the same between the two offences, but in places, the ranges within the threat offence are higher. However, the top of the range in C1, B2 and A3 in the threats offence, is slightly lower than the range in the criminal damage offence.

3.3 The discussion last month both considered whether the individual ranges within the two guidelines were correct, and, whether they were correct in comparison between one another, for example, should the top of the range in the criminal damage offence in A1, four years, match the top of the range in A1 in the threats offences, which is five years. The Council discussed how serious the threat to destroy or damage property is, particularly at the most serious end, an offender threatening to burn or bomb a victim's house for example. However, an equally serious offence could be a criminal damage case in which extensive damage was intended, carefully planned and *actually* (as opposed to threatened) caused.

3.4 On balance, the Council decided not to make any changes to the sentence ranges but asked that officials check the ranges again, given the anomaly of the lower ranges in one place described above. Accordingly, the ranges in both guidelines have been reconsidered. Looking at current sentencing data, attached at **Annex D** this shows that when comparing the two offences, sentencing is actually slightly more severe for the criminal damage offence, than it is for the threats offence, as shown below. This contrasts with the way the ranges are currently drafted, in which they are either the same, or more severe with the threats offence.

Threats to destroy/damage property, 2017		Criminal Damage over £5000, 2017	
Magistrates Court	401 (86%)	Magistrates Court	205 (72%)
Crown Court	66 (14%)	Crown Court	81 (28%)
Total	467 (100%)	Total	286 (100%)
Conditional Discharge	21%	Conditional Discharge	14%
Fine	16%	Fine	11%
Community order	24%	Community order	27%
Custody (immediate and suspended combined)	34%	Custody (immediate and suspended combined)	43%
Mean sentence (estimated pre guilty plea)	8 months	Mean sentence (estimated pre guilty plea)	1 year
Median sentence (estimated pre guilty plea)	3 months	Median sentence (estimated pre guilty plea)	6 months
Percentage of offenders receiving a pre guilty plea sentence 9 months or less	80%	Percentage of offenders receiving a pre guilty plea sentence 9 months or less	63%

3.5 In addition, as discussed in last month's paper, the resentencing of threat to destroy/damage cases using Crown Court transcripts did show that for some, the draft guideline may give slightly higher sentences than were given in the actual case. This is for some cases falling into A1, which tends to be due to the presence of the high culpability factor '*threat to burn or bomb property*' which, combined with serious distress caused to the victim, leads to cases falling into A1. It is suggested that the culpability factor is right, it captures the most serious offending behaviour by offenders, but that there is an argument for lowering the bottom of the range, currently at one year, to 6 months. It should be noted however that the sample of cases studied was small, as the majority of cases are sentenced in the magistrates' court.

3.6 Taking all of this evidence into account, it is recommended that there are some adjustments to the ranges. Sentencing data shows that between the two offences, criminal damage over £5000 offences are sentenced more severely than the threat offences, and the resentencing of cases showed that the ranges in the threat offence could give rise to slightly higher sentencing. Firstly, to deal with the risk of higher sentences under the guideline discussed in the preceding paragraph, it is recommended that the starting point and range in A1 for the threat offence are reduced so that they are the same as in criminal damage, as shown in track changes on page three of **Annex C**.

Question 1: Does the Council agree to reduce the sentence levels within A1 in the threat offence?

3.7 Secondly, it is recommended that the anomaly of the ranges in C1, B2 and A3 is fixed by bringing the top of the range in criminal damage down from one year to nine months, so that it is the same as that in the threat offence. It is not recommended that the anomaly is fixed by doing things the other way around, i.e. bringing the range up in the threats guideline to match the one in criminal damage, as there is already a slight risk of sentence inflation with the threats guideline.

Question 2: Does the Council agree to reduce the top of the ranges in C1, B2 and A3 in criminal damage from one year to 9 months?

3.8 This will still leave a number of starting points and ranges within the threat offence as slightly more severe than within criminal damage, in B1, A2, C2, B3 and C3. Given what current sentencing data shows, there is no evidence to support the ranges in the threats offence being higher than in criminal damage, so the recommendation is to reduce the ranges in the threats offence to match those in

criminal damage. These are quite small reductions, e.g reducing from a medium to a low level community order in C3, C2 and B3, from nine months to six months custody, and from six months custody to a high level community order in B1 and A2.

3.9 If the Council feels that, notwithstanding the sentencing data, the threat offence is more serious than the criminal damage one, then the ranges in threats could be left unaltered, so that the ranges are either the same within both guidelines, or slightly more severe in the threats offence. If the Council decided to do this however, there would need to be explicit stated rationale to justify the decision to change sentencing practice, as current sentencing practice does not show that sentencing is more severe for threats compared to criminal damage.

Question 3: Does the Council agree to reduce the ranges in the threats guideline to match those in the criminal damage guideline, so that both guidelines are the same?

Question 4: If the Council does not agree with the recommendation, what is the rationale for changing sentencing practice?

Changes to the guidelines post consultation

3.10 There have been relatively few changes to the guidelines post consultation. As previous papers have noted, the response to the draft guidelines was generally very positive. A summary of the changes is set out below.

3.11 In the 'simple', aggravated arson and threat to destroy/damage guideline, the wording regarding consideration of reports has been amended and moved above step one of the guidelines. It can be seen on page two of **Annexes A, C and E**, and is shown below. It was previously underneath the sentence table.

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

3.12 New wording has also been included across the guidelines above the sentence table, regarding consideration of drug, alcohol or mental health treatment requirements as alternatives to a short or moderate custodial sentence. This can be seen on page three across the guidelines, and is shown below:

Where the offender is dependent on or has a propensity to misuse drugs or alcohol, which is linked to the offending, a community order with a drug

rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence. Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.'

'Also, the qualifying wording that was included for the lesser culpability factor of mental disorder or learning disability, which read '*reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*' has been removed across all the guidelines.

3.13 In the two criminal damage offences (**Annexes B and F**) there has been additional wording on the front of the guidelines, to provide guidance on the point raised by the Criminal Bar Association. This regarded cases where there has been no sending for trial on a charge of criminal damage, and the indictment is amended to add a count of criminal damage, in which case the maximum is 10 years custody even if the amount is less than £5000. The wording on the front of the over £5000 guideline says that in this scenario, regard should also be had to the under £5000 guideline. The wording on the front of the under £5000 guideline says that in this scenario the over £5000 guideline should be used, but that regard should also be had to the under £5000 guideline.

3.14 Minor changes to the guidance for the racially or religiously aggravated version of these offences was also made, a note to remind sentencers not to double count factors already considered at harm at step one, and emboldening of the words relating to distress '*over and above the distress already considered at step one*'. This can be seen on page five of both guidelines.

Question 5: Is the Council content with the summary of changes noted so far?

Changes to culpability

3.15 In arson and both criminal damage offences, references to recklessness have been removed from high culpability, and moved to medium culpability, there are only now references to 'intent' in high culpability. There are now additional factors/guidance in medium culpability, as shown below, and a new lesser culpability factor of '*recklessness as to whether some damage to property caused*.' These changes can be seen on page one of **Annexes B, E and F**.

B - Medium culpability:

- Some planning
- Recklessness as to whether very serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C

3.16 In the threats to destroy/damage property offence (page one of **Annex C**), there is an additional high culpability factor of '*Offence committed to intimidate, coerce or control*', an additional lesser culpability factor of '*involved through coercion, intimidation or exploitation*' and some additional guidance in medium culpability, as shown below.

B - Medium culpability:

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

Changes to harm

3.17 In both criminal damage offences, (page two of **Annexes B and F**), one of the factors in category one harm has been amended to remove the reference to great sentimental value, so the factor just reads '*high value of damage*'. There is now instead an aggravating factor (A4) of '*damaged items of great value to the victim (whether economic, commercial, sentimental or personal value*', on page four of both guidelines. There is also an additional category one harm factor in the threats to destroy/damage offence, of '*high level of consequential financial harm and inconvenience caused to the victim*', page two of **Annex C**.

Question 6: Is the Council content with the summary of changes to harm and culpability?

Sentence levels

3.18 Subject to the Council's decisions on the sentence ranges in the criminal damage and threats offence discussed earlier in the paper, there has been only one change to the sentence ranges post consultation, to increase the top of the category in A3, in the sentence range for arson with intent. The Council did decide at the last meeting to add some additional wording in the arson guideline, stating that there could be an upward or downward adjustment from the starting point, including

outside the category range, for aggravating and mitigating factors. This wording in guidelines does not usually specify going outside the category range. This can be seen on page four of **Annex E**. This does mean that the guidance for upward or downwards adjustment for aggravating/mitigating factors will be different for this offence, compared to the other four offences.

Question 7: Is the Council content that the wording regarding going outside the category range is different in the arson guideline, compared to within the other four?

Aggravating and mitigating factors

3.19 Across all the guidelines, the aggravating factor that refers to damage to heritage assets, has been reworded to read '*damage caused to heritage and/or cultural assets*'. In arson, two new aggravating factors of '*offence committed for financial gain*' and '*offence committed to conceal other offences*' have been added.

3.20 Across all guidelines, the mitigating factor that refers to age and lack of maturity has been amended to remove the words '*where it affects the responsibility of the offender*', so it just now reads '*age and/or lack of maturity*'. This is done so that the consideration is not solely limited to responsibility for the offence.

3.21 In the aggravated arson offence, **Annex A**, a new mitigating factor of '*lack of premeditation*' was added, and a reference warning against double counting has been added above aggravating/mitigating factors. This was a suggestion that came out of road testing, and thought necessary due to the possibility of sentencers considering a factor both in the assessment of harm and at step two. The consultation version also contained a 'step three', which gave information on mental health disposals. This has been removed as it has been superseded by the development of the new mental health guideline, which all guidelines will link to in due course.

Question 8: Is the Council content with the summary of changes to aggravating and mitigating factors?

Question 9: Is the Council content to sign the guidelines off ahead of the publication of the definitive guideline?

4 IMPACT/RISK

4.1 A final resource impact assessment will be prepared and circulated amongst the Council for comment in due course. The team will look at each of the offences in

turn and attempt to quantify any potential impacts, but this cannot be done until after today's meeting, as the decisions made today could have an impact on the assessments. It may be helpful to note that the resource assessment at consultation stage did not anticipate any significant impacts due to the draft guidelines.

4.2 For the final resource assessment the A&R team will have additional data sources available to help identify any potential impacts, the findings from the road testing, data from the Magistrates' Court data collection, and so on. It would be helpful for the final resource assessment if the Council could (further to any decision regarding sentence levels in the threats and criminal damage offence) confirm that overall their intention is to broadly reflect and maintain current sentence levels.

Question 10: Can the Council confirm that overall their intention with this guideline is to broadly reflect and maintain current sentence levels?

Question 11: Does the Council think that there any specific risks or impacts that should be considered at this stage?

Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

Criminal Damage Act 1971, s.1(2)

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment
Maximum: Life imprisonment

Offence range: High level Community order- 12 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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**.

Within this offence, culpability is fixed: culpability A is for intent, culpability B is for recklessness.

Culpability A:

- Offender intended to endanger life

Culpability B:

- Offender was reckless as to whether life was endangered

Harm

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

Category 1

- Very serious physical and/or psychological harm caused
- High risk of very serious physical and/or psychological harm
- Serious consequential economic or social impact of offence caused
- Very high value of damage caused

Category 2

- Significant physical and/or psychological harm caused
- Significant risk of serious physical and/or psychological harm
- Significant value of damage caused
- All other harm that falls between categories 1 and 3

Category 3

- No or minimal physical and/or psychological harm caused
- Low risk of serious physical and/or psychological harm
- Low value of damage caused

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 the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	Starting point 8 years' custody Category range 5 years to 12 years' custody	Starting point 6 years' custody Category range 4 years to 10 years' custody
Category 2	Starting point 6 years' custody Category range 4 to 8 years' custody	Starting point 4 years' custody Category range 2 to 6 years' custody
Category 3	Starting point 2 years' custody Category range 6 months custody to 4 years' custody	Starting point 1 years' custody Category range High level Community order- 2 years 6 months' custody

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.

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

Factors increasing seriousness

Statutory aggravating factors:

- A1.** 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
- A2.** Offence committed whilst on bail
- A3.** 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:

- A4.** Commission of offence whilst under the influence of alcohol or drugs.
- A5.** Revenge attack
- A6.** Significant degree of planning or premeditation
- A7.** Use of accelerant
- A8.** Fire set in or near a public amenity
- A9.** Victim is particularly vulnerable
- A10.** Offence committed within a domestic abuse context
- A11.** Damage caused to heritage and/or cultural assets
- A12.** Multiple people endangered
- A13.** Significant impact on emergency services or resources
- A14.** Established evidence of community/wider impact
- A15.** Failure to comply with current court orders
- A16.** Offence committed on licence or post sentence supervision
- A17.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Offender's responsibility substantially reduced by mental disorder or learning disability
- M3.** Lack of premeditation
- M4.** Involved through coercion, intimidation or exploitation
- M5.** Remorse

- M6.** Good character and/or exemplary conduct
- M7.** Serious medical condition requiring urgent, intensive or long-term treatment
- M8.** Age and/or lack of maturity
- M9.** Sole or primary carer for dependent relatives
- M10.** Determination and/or demonstration of steps having been taken to address addiction or 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (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 *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.

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 (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.

Criminal damage (other than by fire) value over £5,000

Criminal Damage Act 1971, s.1 (1)

Triable either way

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

Maximum when tried on indictment: 10 years

Offence range: Discharge – 4 years' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30

Triable either way

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

Maximum when tried on indictment: 14 years

Note:

Where an offence of criminal damage is added to the indictment at the Crown Court the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value is under £5,000 regard should also be had to the under £5,000 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:

- High degree of planning or premeditation
- Revenge attack
- Intention to cause very serious damage to property
- Intention to create a high risk of injury to persons

B - Medium culpability:

- Some planning
- Recklessness as to whether very serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- 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:

- Little or no planning; offence committed on impulse
- Recklessness as to whether some damage to property caused
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Involved through coercion, intimidation or exploitation

Harm

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

Category 1

- Serious distress caused
- Serious consequential economic or social impact of offence
- High value of damage

Category 2

- Harm that falls between categories 1 and 3

Category 3

- No or minimal distress caused
- Low value damage

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 the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Maximum when tried on indictment: 10 years' custody (basic offence)

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 1 year 6 months' custody</p> <p>Category range 6 months to 4 years' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range High level Community order to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium Level community order – <u>9 months</u> 1 years' custody</p>
Category 2	<p>Starting point 6 months' custody</p> <p>Category range High level Community order- 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order- <u>9 months</u> 1 year's custody</p>	<p>Starting point Low level Community order</p> <p>Category range Band C fine -High level Community order</p>
Category 3	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- <u>9 months</u> 1 year's custody</p>	<p>Starting point Low level Community order</p> <p>Category range Band C fine- High level Community order</p>	<p>Starting point Band B fine</p> <p>Category range Discharge- Low level Community order</p>

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

- A1.** 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
- A2.** Offence committed whilst on bail
- A3.** Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4.** Damaged items of great value to the victim (whether economic, commercial, sentimental or personal value)
- A5.** Commission of offence whilst under the influence of alcohol or drugs
- A6.** Victim is particularly vulnerable
- A7.** Offence committed in a domestic abuse context
- A8.** Damage caused to heritage and/or cultural assets
- A9.** Significant impact on emergency services or resources
- A10.** Established evidence of community/wider impact
- A11.** Failure to comply with current court orders
- A12.** Offence committed on licence or post sentence supervision
- A13.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Remorse
- M3.** Good character and/or exemplary conduct
- M4.** Serious medical condition requiring urgent, intensive or long-term treatment
- M5.** Age and/or lack of maturity
- M6.** Mental disorder or learning disability (where not taken into account at step one)
- M7.** Sole or primary carer for dependent relatives

M8. Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE 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 when tried summarily is a level 5 fine and/or 6 months)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

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. ▪ 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 <u>or consider</u> 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**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 *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.

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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Threats to destroy or damage property

Criminal Damage Act 1971, s.2

Triable either way

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

Maximum when tried on indictment: 10 years custody

Offence range: Discharge to 5 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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 or premeditation
- Offence motivated by revenge
- Offence committed to intimidate, coerce or control
- Threat to burn or bomb property

B - Medium culpability:

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:

- Little or no planning; offence committed on impulse
- Offender’s responsibility substantially reduced by mental disorder or learning disability
- Involved through coercion, intimidation or exploitation

Harm

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

Category 1

- Serious distress caused to the victim
- Serious disruption/inconvenience caused to others
- High level of consequential financial harm and inconvenience caused to the victim

Category 2

- Harm that falls between categories 1 and 3

Where the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Category 3

- No or minimal distress 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.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 12 years 6 months' custody</p> <p>Category range 6 months 1 year to 45 years' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- 9 months' custody</p>
Category 2	<p>Starting point 9 months' custody</p> <p>Category range 6 months to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- 9 months' custody</p>	<p>Starting point Medium level Community order</p> <p>Category range Band C fine -High level Community order</p>
Category 3	<p>Starting point High level Community order</p> <p>Category range</p>	<p>Starting point Medium level Community order</p> <p>Category range</p>	<p>Starting point Band B fine</p> <p>Category range</p>

	Medium level Community order- 9 months' custody	Band C fine- High level Community order	Discharge- Medium level Community order
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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:

A1. 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

A2. Offence committed whilst on bail

A3. 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:

A4. Commission of offence whilst under the influence of alcohol or drugs

A5. Victim is particularly vulnerable

A6. Offence committed in a domestic abuse context

A7. Threats made in the presence of children

A8. Considerable damage threatened

A9. Established evidence of community/wider impact

A10. Failure to comply with current court orders

A11. Offence committed on licence or post sentence supervision

A12. Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

M1. No previous convictions **or** no relevant/recent convictions

M2. Remorse

M3. Good character and/or exemplary conduct

M4. Serious medical condition requiring urgent, intensive or long-term treatment

M5. Age and/or lack of maturity

M6. Mental disorder or learning disability (where not taken into account at step one)

M6. Sole or primary carer for dependent relatives

M7. Determination and/or demonstration of steps having been taken to address addiction or 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (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 *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.

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 (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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Table 1: Number of adult offenders sentenced for arson and criminal damage offences, 2007-2017¹

Offence	Court type	Number of adult offenders sentenced										
		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Arson, Criminal Damage Act 1971, S1(3)	MC	233	249	259	292	286	241	223	215	214	219	208
	CC	326	343	313	331	347	324	279	225	264	260	198
	Total	559	592	572	623	633	565	502	440	478	479	406
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ²	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	72	71	66	46	34	14	2
	Total	-	-	-	-	72	71	66	46	34	14	2
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ³	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	378	391	340	293	276	132	11
	Total	-	-	-	-	378	391	340	293	276	132	11
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	MC	-	-	-	-	246	234	199	230	208	252	205
	CC	-	-	-	-	36	44	40	48	71	82	81
	Total	-	-	-	-	282	278	239	278	279	334	286
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	MC	22,667	24,239	25,553	25,594	24,729	22,641	21,742	21,932	22,055	20,339	18,462
	CC	160	217	312	438	527	557	512	582	591	584	558
	Total	22,827	24,456	25,865	26,032	25,256	23,198	22,254	22,514	22,646	20,923	19,020
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)	MC	-	-	-	-	0	0	0	0	0	*	*
	CC	-	-	-	-	5	21	28	26	26	*	*
	Total	-	-	-	-	5	21	28	26	26	*	*
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	MC	335	314	298	355	367	369	369	438	436	422	401
	CC	73	75	79	83	91	66	66	84	113	84	66
	Total	408	389	377	438	458	435	435	522	549	506	467
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	MC	187	172	159	161	167	180	148	139	127	119	123
	CC	38	33	23	40	32	18	15	12	14	13	11
	Total	225	205	182	201	199	198	163	151	141	132	134

Source: Court Proceedings Database, Ministry of Justice

Notes

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

2) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

3) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

- Data for this offence not available prior to 2011

* Figures have not been shown due to a data issue

Table 2: Sentence outcomes for adult offenders sentenced for arson and criminal damage offences, 2017

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Arson, Criminal Damage Act 1971, S1(3)	0	24	7	75	90	174	36	406
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{2,3}	0	0	0	0	2	9	3	14
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{3,4}	0	0	0	5	16	91	20	132
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	0	40	32	76	52	70	16	286
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	87	5,412	4,780	4,931	764	1,090	1,956	19,020
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ⁵	0	0	1	0	7	16	2	26
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	1	99	76	113	58	100	20	467
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	0	6	26	55	26	17	4	134

Source: Court Proceedings Database, Ministry of Justice

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Arson, Criminal Damage Act 1971, S1(3)	0%	6%	2%	18%	22%	43%	9%	100%
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{2,3,6}	0%	0%	0%	0%	14%	64%	21%	100%
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{3,4}	0%	0%	0%	4%	12%	69%	15%	100%
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	0%	14%	11%	27%	18%	24%	6%	100%
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	0%	28%	25%	26%	4%	6%	10%	100%
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ⁵	0%	0%	4%	0%	27%	62%	8%	100%
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	0%	21%	16%	24%	12%	21%	4%	100%
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	0%	4%	19%	41%	19%	13%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

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

2) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

3) Data shown for this offence relates to 2016, due to the lack of data available for 2017

4) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

5) Data shown for this offence relates to 2015, due to data issues in 2016 and 2017

6) Proportions should be treated with caution, due to the low volumes for this offence in the data available

Table 3: Average and maximum custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, 2017

Offence	Post guilty plea			Pre guilty plea (estimated)		
	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length
Arson, Criminal Damage Act 1971, S1(3)	1 year 8 months	1 year 4 months	8 years (and Life)	2 years 4 months	2 years	12 years (and Life)
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{4,5,6}	3 years 9 months	3 years 5 months	5 years 4 months (and Life)	5 years 6 months	5 years 2 months	8 years (and Life)
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{5,7}	3 years 1 month	3 years	7 years 6 months	4 years 4 months	4 years	10 years 6 months
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	9 months	6 months	9 years	1 year	6 months	9 years
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	1 month	1 month	3 months	2 months	1 month	3 months
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ^{8,9}	2 years 7 months	2 years 7 months	4 years	3 years 8 months	3 years 10 months	5 years 3 months
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	6 months	3 months	4 years	8 months	3 months	6 years
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30 ⁹	2 months	3 months	4 months	3 months	4 months	6 months

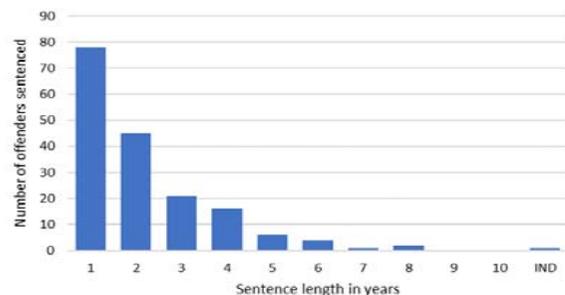
Source: Court Proceedings Database, Ministry of Justice

Notes

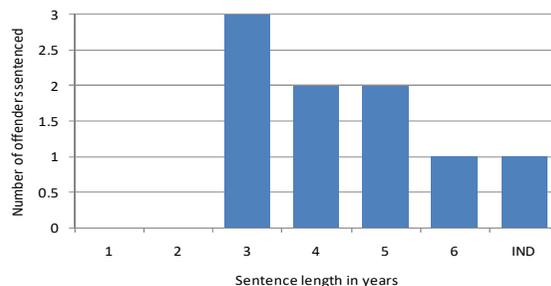
- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order
- 3) Excludes life and indeterminate sentences
- 4) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 5) Sentence length information for this offence relates to 2016, due to a lack of data available for this offence in 2017
- 6) Mean and median should be treated with caution, due to the low volumes for this offence in the data available
- 7) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 8) Data shown for this offence relates to 2015, due to data issues in 2016 and 2017
- 9) Mean and median should be treated with caution, due to the relatively low number of offenders sentenced to immediate custody for this offence

Figure 1: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, after any reduction for guilty plea, 2017

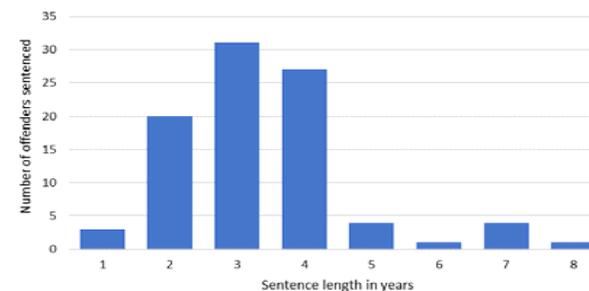
Arson, Criminal Damage Act 1971, S1(3)



Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)



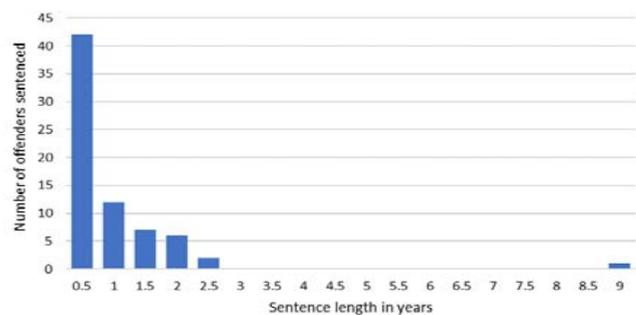
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



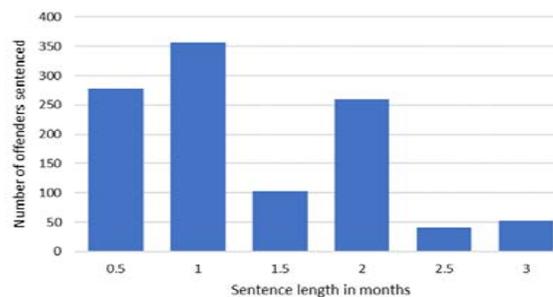
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

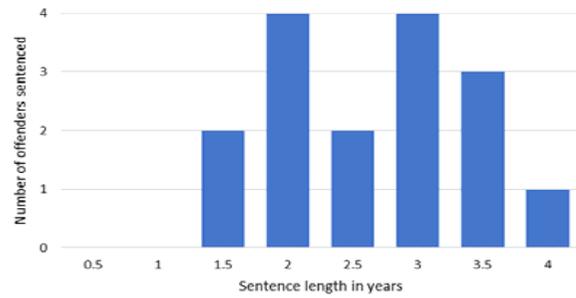
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)



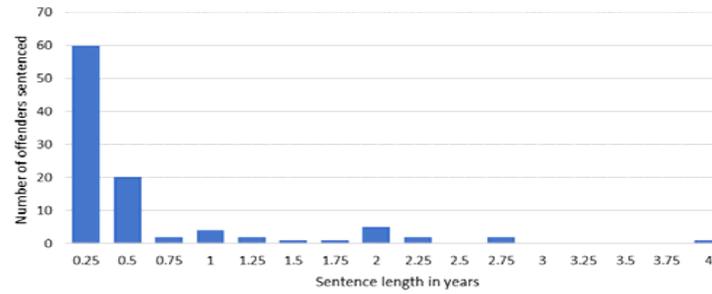
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)



Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

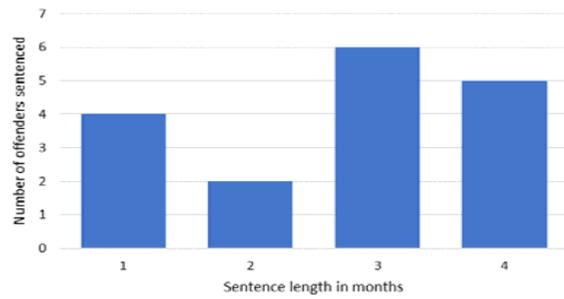


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

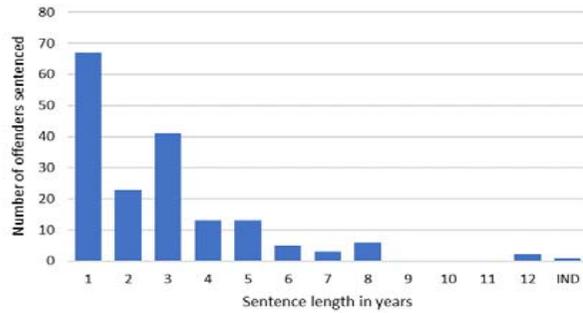


Source: Court Proceedings Database, Ministry of Justice

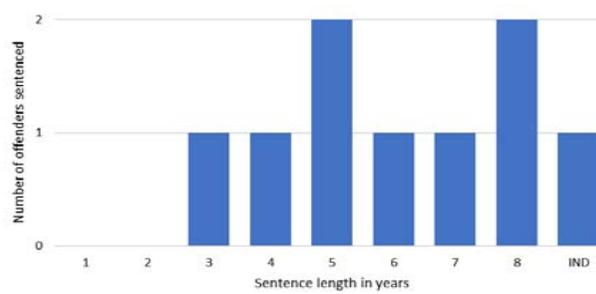
Note
Sentence length intervals include the upper bound sentence length (i.e. that shown on the chart). For example, the category '1' includes sentence lengths less than and equal to 1 year, and '2' includes sentence lengths over 1 year, and up to and including 2 years.

Figure 2: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, before any reduction for guilty plea, 2017

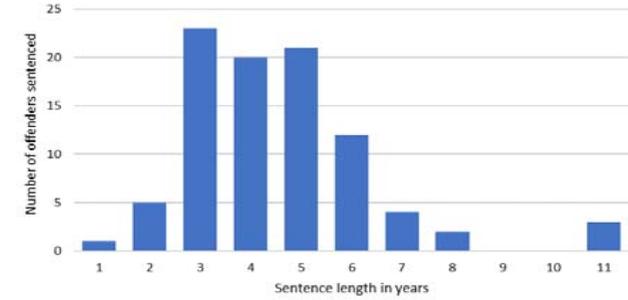
Arson, Criminal Damage Act 1971, S1(3)



Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)



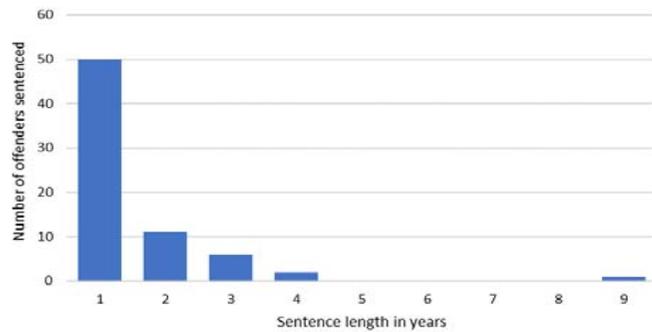
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



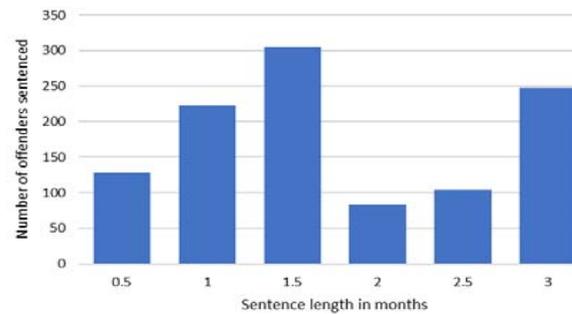
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

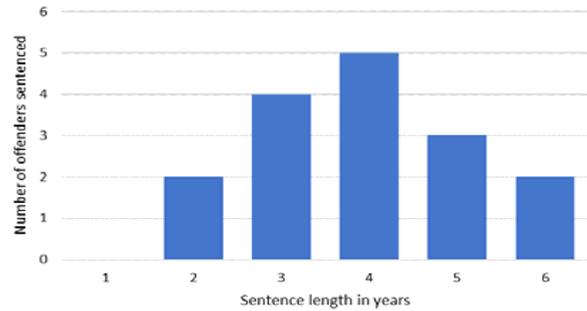
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)



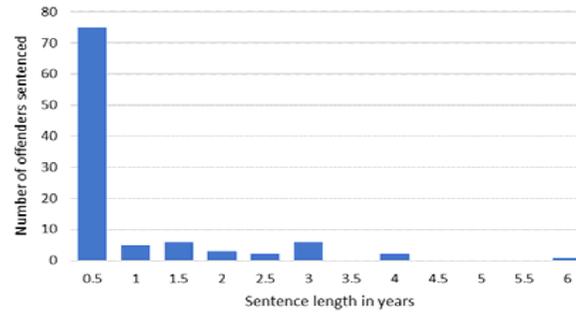
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)



Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

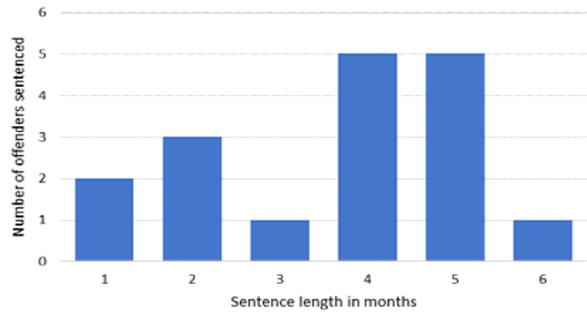


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30



Source: Court Proceedings Database, Ministry of Justice

Note
Sentence length intervals include the upper bound sentence length (i.e. that shown on the chart). For example, the category '1' includes sentence lengths less than and equal to 1 year, and '2' includes sentence lengths over 1 year, and up to and including 2 years.

Table 4: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, after any reduction for guilty plea, 2017

Arson, Criminal Damage Act 1971, S1(3)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	78	45%
1-2	45	26%
2-3	21	12%
3-4	16	9%
4-5	6	3%
5-6	4	2%
6-7	1	1%
7-8	2	1%
8-9	0	0%
9-10	0	0%
Indeterminate	1	1%
Total	174	100%

Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	0	0%
2-3	3	33%
3-4	2	22%
4-5	2	22%
5-6	1	11%
6-7	0	0%
7-8	0	0%
Indeterminate	1	11%
Total	9	100%

Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	3	3%
1-2	20	22%
2-3	31	34%
3-4	27	30%
4-5	4	4%
5-6	1	1%
6-7	4	4%
7-8	1	1%
Total	91	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	54	77%
1-2	13	19%
2-3	2	3%
3-4	0	0%
4-5	0	0%
5-6	0	0%
6-7	0	0%
7-8	0	0%
8-9	1	1%
Total	70	100%

Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	278	26%
0.5-1	356	33%
1-1.5	103	9%
1.5-2	259	24%
2-2.5	41	4%
2.5-3	53	5%
Total	1,090	100%

Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	0	0%
0.5-1	0	0%
1-1.5	2	13%
1.5-2	4	25%
2-2.5	2	13%
2.5-3	4	25%
3-3.5	3	19%
3.5-4	1	6%
Total	16	100%

Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	4	24%
1-2	2	12%
2-3	6	35%
3-4	5	29%
Total	17	100%

Source: Court Proceedings Database, Ministry of Justice

Note

Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '<=1' includes sentence lengths less than and equal to 1 year, and '1-2' includes sentence lengths over 1 year, and up to and including 2 years.

Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	80	80%
0.5-1	6	6%
1-1.5	3	3%
1.5-2	6	6%
2-2.5	2	2%
2.5-3	2	2%
3-3.5	0	0%
3.5-4	1	1%
Total	100	100%

Table 5: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, before any reduction for guilty plea, 2017

Arson, Criminal Damage Act 1971, S1(3)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	67	39%
1-2	23	13%
2-3	41	24%
3-4	13	7%
4-5	13	7%
5-6	5	3%
6-7	3	2%
7-8	6	3%
8-9	0	0%
9-10	0	0%
10-11	0	0%
11-12	2	1%
Indeterminate	1	1%
Total	174	100%

Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	0	0%
2-3	1	11%
3-4	1	11%
4-5	2	22%
5-6	1	11%
6-7	1	11%
7-8	2	22%
Indeterminate	1	11%
Total	9	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	1	1%
1-2	5	5%
2-3	23	25%
3-4	20	22%
4-5	21	23%
5-6	12	13%
6-7	4	4%
7-8	2	2%
8-9	0	0%
9-10	0	0%
10-11	3	3%
Total	91	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	50	71%
1-2	11	16%
2-3	6	9%
3-4	2	3%
4-5	0	0%
5-6	0	0%
6-7	0	0%
7-8	0	0%
8-9	1	1%
Total	70	100%

Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	128	12%
0.5-1	222	20%
1-1.5	305	28%
1.5-2	83	8%
2-2.5	104	10%
2.5-3	248	23%
Total	1,090	100%

Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	2	13%
2-3	4	25%
3-4	5	31%
4-5	3	19%
5-6	2	13%
Total	16	100%

Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	75	75%
0.5-1	5	5%
1-1.5	6	6%
1.5-2	3	3%
2-2.5	2	2%
2.5-3	6	6%
3-3.5	0	0%
3.5-4	2	2%
4-4.5	0	0%
4.5-5	0	0%
5-5.5	0	0%
5.5-6	1	1%
Total	100	100%

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	2	12%
1-2	3	18%
2-3	1	6%
3-4	5	29%
4-5	5	29%
5-6	1	6%
Total	17	100%

Source: Court Proceedings Database, Ministry of Justice

Note

Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '<=1' includes sentence lengths less than and equal to 1 year, and '1-2' includes sentence lengths over 1 year, and up to and including 2 years.

Combined data for arson endangering life offences (intent and reckless)

Table 6: Number of adult offenders sentenced for arson endangering life offences, 2007-2017

Court type	Number of adult offenders sentenced										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
MC	0	0	0	0	0	0	0	0	0	0	0
CC	388	404	449	432	461	486	421	393	420	355	278
Total	388	404	449	432	461	486	421	393	420	355	278

Table 7: Sentence outcomes for adult offenders sentenced for arson endangering life offences, 2017

Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
1	0	0	3	46	200	28	278
<0.5%	0%	0%	1%	17%	72%	10%	100%

Note

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

Table 8: Average and maximum custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, 2017

Post guilty plea			Pre guilty plea (estimated)		
Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length
3 years 9 months	3 years 2 months	12 years	5 years	4 years	15 years

Notes

1) The mean is calculated by taking the sum of all values and then dividing by the number of values

2) 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

3) Excludes life and indeterminate sentences

Figure 3: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, after any reduction for guilty plea, 2017

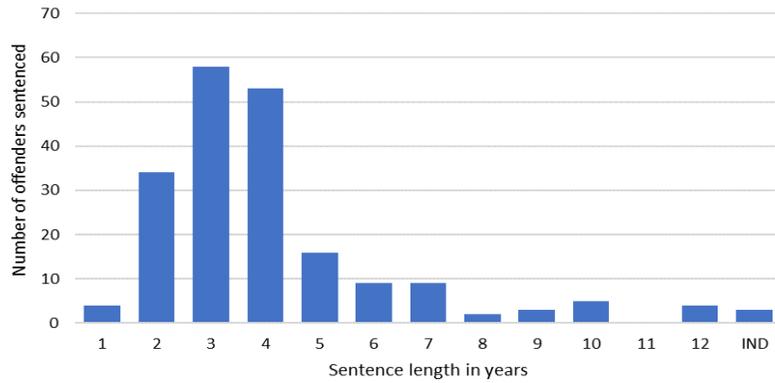


Figure 4: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, before any reduction for guilty plea, 2017

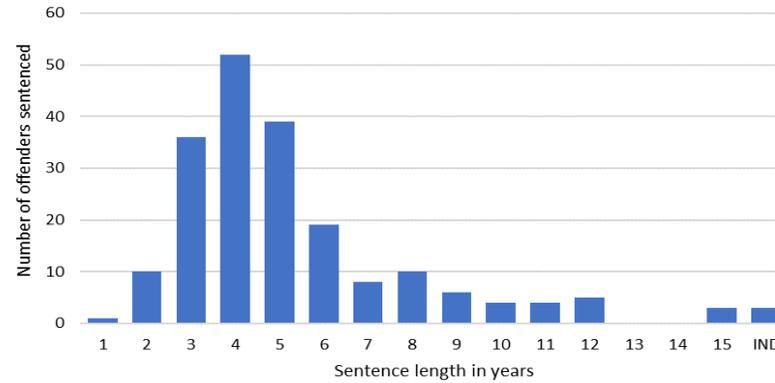


Table 9: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, after any reduction for guilty plea, 2017

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	4	2%
1-2	34	17%
2-3	58	29%
3-4	53	27%
4-5	16	8%
5-6	9	5%
6-7	9	5%
7-8	2	1%
8-9	3	2%
9-10	5	3%
10-11	0	0%
11-12	4	2%
Indeterminate	3	2%
Total	200	100%

Table 10: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, before any reduction for guilty plea, 2017

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	1	1%
1-2	10	5%
2-3	36	18%
3-4	52	26%
4-5	39	20%
5-6	19	10%
6-7	8	4%
7-8	10	5%
8-9	6	3%
9-10	4	2%
10-11	4	2%
11-12	5	3%
12-13	0	0%
13-14	0	0%
14-15	3	2%
Indeterminate	3	2%
Total	200	100%

Source: Court Proceedings Database, Ministry of Justice

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Arson (criminal damage by fire)

Criminal Damage Act 1971, s.1

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable either way

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

Maximum when tried on indictment: Life

Offence range: Discharge – 8 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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:

- High degree of planning or premeditation
- Revenge attack
- Use of accelerant
- Intention to cause very serious damage to property
- Intention to create a high risk of injury to persons

B - Medium culpability:

- Some planning
- Recklessness as to whether very serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- 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:

- Little or no planning; offence committed on impulse
- Recklessness as to whether some damage to property caused
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Involved through coercion, intimidation or exploitation

Harm

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

Category 1

- Serious physical and/or psychological harm caused
- Serious consequential economic or social impact of offence
- High value of damage caused

Category 2

- Harm that falls between categories 1 and 3

Category 3

- No or minimal physical and/or psychological harm caused
- Low value of damage caused

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 the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody Category range 2 to 8 years' custody	Starting point 1 year 6 months' custody Category range 9 months to 3 years' custody	Starting point 9 months' custody Category range 6 months – 1 year 6 months' custody
Category 2	Starting point 2 years' custody Category range 1 to 4 years' custody	Starting point 9 months' custody Category range 6 months- 1 year 6 months' custody	Starting point High level Community order Category range Medium level Community order-9 months' custody
Category 3	Starting point 1 year's custody Category range 6 months - 2 years' custody	Starting point High level Community order Category range Medium level Community order-9 months' custod	Starting point Low level Community order Category range Discharge- 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, including outside the category range.

Factors increasing seriousness

Statutory aggravating factors:

- A1.** 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
- A2.** Offence committed whilst on bail
- A3.** 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:

- A4.** Commission of offence whilst under the influence of alcohol or drugs
- A5.** Offence committed for financial gain
- A6.** Offence committed to conceal other offences
- A7.** Victim is particularly vulnerable
- A8.** Offence committed within a domestic abuse context
- A9.** Fire set in or near a public amenity
- A10.** Damage caused to heritage and /or cultural assets
- A11.** Significant impact on emergency services or resources
- A12.** Established evidence of community/wider impact
- A13.** Failure to comply with current court orders
- A14.** Offence committed on licence or post sentence supervision
- A15.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Steps taken to minimise the effect of the fire or summon assistance
- M3.** Remorse
- M4.** Good character and/or exemplary conduct
- M5.** Serious medical condition requiring urgent, intensive or long-term treatment
- M6.** Age and/or lack of maturity

- M7.** Mental disorder or learning disability (where not taken into account at step one)
- M8.** Sole or primary carer for dependent relatives
- M9.** Determination and/or demonstration of steps having been taken to address addiction or 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (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 *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.

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 (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.

Criminal damage (other than by fire) value under £5,000

Criminal Damage Act 1971, s.1 (1)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge to 3 months' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30

Triable either way

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

Maximum when tried on indictment: 14 years

Note:

Where an offence of criminal damage is added to the indictment at the Crown Court the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value is under £5,000, the over £5,000 guideline should be used but regard should also be had to this guideline.

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

<p>STEP ONE Determining the offence category</p> <p>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.</p>
<p>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.</p>
<p>Culpability demonstrated by one or more of the following:</p>
<p>A - High culpability:</p> <ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Intention to create a high risk of injury to persons
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Some planning • Recklessness as to whether very serious damage caused to property • Recklessness as to whether serious injury caused to persons • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ 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
<p>C - Lesser culpability:</p> <ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Recklessness as to whether some damage to property caused • Offender’s responsibility substantially reduced by mental disorder or learning disability • Involved through coercion, intimidation or exploitation
<p>Harm The level of harm is assessed by weighing up all the factors of the case.</p>
<p>Category 1</p> <ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage
<p>Category 2</p> <ul style="list-style-type: none"> • All other cases

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 the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Maximum Level 4 fine and/or 3 months custody (basic offence)

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

- A1.** 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
- A2.** Offence committed whilst on bail
- A3.** Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4.** Damaged items of great value to the victim (whether economic, commercial, sentimental or personal value)
- A5.** Commission of offence whilst under the influence of alcohol or drugs
- A6.** Victim is particularly vulnerable
- A7.** Offence committed within a domestic abuse context
- A8.** Damage caused to heritage and/ or cultural assets
- A9.** Significant impact on emergency services or resources
- A10.** Established evidence of community/wider impact
- A11.** Failure to comply with current court orders
- A12.** Offence committed on licence or post sentence supervision
- A13.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Remorse
- M3.** Good character and/or exemplary conduct
- M4.** Serious medical condition requiring urgent, intensive or long-term treatment
- M5.** Age and/or lack of maturity
- M6.** Mental Disorder or learning disability (where not taken into account at step one)
- M7.** Sole or primary carer for dependent relatives
- M8.** Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

**RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE
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 when tried summarily is a level 5 fine and/or 6 months’ custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

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 <u>or consider</u> 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 *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.

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:

5 April 2019
SC(19)APR04 – Public Order
Sarah Munro & Rebecca Crane
Lisa Frost
0207 071 5784

1 ISSUE

1.1 This meeting requires consideration of consultation responses to the draft guidelines for S4, S4A and S5 Public Order Act offences.

2 RECOMMENDATION

2.1 The Council is asked to;

- consider points raised in consultation and in road testing for the draft guidelines for s4, s4A and s5 offences;
- agree revisions to the definitive versions of the guidelines.

3 CONSIDERATION

3.1 These are summary offences providing for a range of disorderly behaviour. There is existing guidance within the MCSG for sentencing these offences. There is significant overlap between the offences in relation to the type of conduct required to constitute an offence. The s4 offence of threatening behaviour is similar to the offence of affray in that it requires the threat or provocation of unlawful violence towards another person. The s4A and s5 offences relate to disorderly behaviour with intent to cause harassment alarm or distress (s4A), and disorderly behaviour likely to cause harassment alarm or distress (S5).

3.2 **Annex A** includes the draft guidelines which were subject to consultation. A summary of decisions made in the development of each guideline is included in this paper, and to further assist members not present during the development stage a copy of the consultation document which provided the rationale for the content of the guideline is provided at **Annex B**. Road testing of the guideline was undertaken during the consultation period. Road testing findings are included at **Annex C** and have informed or supported some of the changes proposed in this paper. **Annex D** includes the existing MCSG guidelines for these offences.

3.3 The legislative provisions for the offences to be discussed are as follows;

Section 4 – Threatening Behaviour – causing fear or provocation of violence

Section 4(1) of the Public Order Act provides that a person is guilty of this offence if he—

(a) uses towards another person threatening, abusive or insulting words or behaviour, or
(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,
with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

Section 4A – Disorderly behaviour with intent to cause harassment, alarm or distress

Section 4A(1) of the Public Order Act provides that a person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—

(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,
thereby causing that or another person harassment, alarm or distress.

Section 5 – Disorderly behaviour causing or likely to cause harassment, alarm or distress

(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or
(b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

Culpability factors

Rationale for factors agreed

3.4 To provide for the overlap between offences, the culpability factors are broadly similar across the three guidelines, save for one or two additional factors in more serious offences; these are ‘missiles thrown’ in s4 and ‘production of a weapon’ in s4 and s4A.

3.5 Given that a s4 offence can involve an intention to cause a person to believe that immediate unlawful violence will be used, and the potential for a s4 plea to be offered as an alternative plea to affray, it was also agreed that an additional culpability factor ‘intention to cause fear of serious violence’ be included as in the affray guideline.

3.6 All offences include ‘use of force’ as a culpability factor, although for the s4 and s4A offences this is qualified as ‘use of substantial force’. It was agreed that while use of any force would make a s5 offence more serious, a higher threshold would be required for the

more serious offences to avoid potentially inflating sentences in s4 and s4A offences where force may be a more common feature of the offence.

Responses: culpability factors

3.7 The CPS, HM Circuit Judges, DJ Legal Committee and CBA all approved of the proposed factors and suggested no changes.

Incidents of offences under section 4 of the POA (threatening behaviour offences) can vary greatly as the offence is capable of being committed in many ways. It is therefore helpful that the many ways that culpability can be raised is reflected in the categorisation suggested for high culpability. The proposed factors capable of placing a case within the category of high culpability have been recognised and included in the proposed guideline. The committee concurs with this approach.- DJ legal Cttee

3.8 At the road testing events held with magistrates, participants agreed that the factors included were appropriate and that the high culpability factors included would make an offence more serious.

3.9 The MA made the following points regarding factors which are included across the three guidelines;

Culpability A factors include 'targeting of individual(s) by a group'. We presume this means targeting of a 'specific' individual or group, ie not an individual chosen at random but a specifically targeted individual, so it might be clearer if 'specific' was added. We would also propose that this factor is divided into two separate culpability A factors, firstly, offender acting as part of a group, and secondly, targeting of specific individual(s).

This point was made by the MA in relation to other guidelines which include the factor, and the Council preferred to retain the factor as worded.

3.10 A further point noted by the MA was as follows;

A high culpability factor is 'sustained incident'. The consultation document states that this phrase is intended to encapsulate both 'substantial disturbance caused' and 'lengthy incident'. Although it does cover a lengthy incident, it does not necessarily cover a 'substantial disturbance' and therefore we would propose that the phrase 'sustained and/or substantial incident' is used.

The consultation specifically mentioned substantial disturbance in respect of s5 offences only, as the existing MCSG guideline for this offence includes 'substantial disturbance' as a high culpability factor. It is not proposed it be included for a s4 offence as the offence relates to the causing of fear or provocation of violence and sustained incident would capture a more serious incident of this type, while a substantial disturbance would not necessarily be a feature of the offence. For the disorderly behaviour offences of s4A and s5 it may be thought to be relevant and could be included. However, it is likely that a sustained incident in either

of those offences would amount to a substantial disturbance. The Council are asked to consider if rephrasing or expanding the factor is necessary.

Question 1: Does the Council wish to add 'substantial disturbance' as a high culpability factor in the S4A and S5 guidelines?

Harm

3.11 The harm factors reflect the statutory definitions of the offences. The s4A and s5 offences are made out if the offences cause or are likely to cause harassment, alarm or distress. The s4 offence involves causing fear or provocation of violence. The high harm factors for s4A and s5 capture serious distress or alarm, or distress or alarm to multiple persons. The s4 high harm factors agreed relate to the fear of violence caused and incidents which escalate into violence. Category 2 captures all other cases.

3.12 The following points were raised in respect of s4 factors only.

3.13 The Law Society thought that the s4 offence factor 'incident escalated into violence' should be subject to a qualification:

In relation to the offence of threatening behaviour, the category 1 harm factors include 'incident escalated into violence'. In such a case it is likely that additional charges will be included on the indictment reflecting the violence, so that the factor should contain the qualification '(if not subject to separate charge)', so as to remove the risk of double-counting. If the facts warrant an additional charge the CPS are likely to advise that it be added. However, there are instances where there is no 'victim' of the offence, because the victim will not wish to cooperate with the prosecution or cannot be found, but the CCTV of the incident clearly shows an assault taking place. These instances are cases where the additional offending can properly be reflected in the sentence for the disorder offence(s). – Law Society

The LCCSA thought the factor should not even be included;

The committee could not see why "incident escalated into violence" was a factor at all, given that if the incident escalated into actual physical violence a different offence to a s 4 POA would have been committed.

3.14 It is not proposed that this factor be removed. It was included as it was considered that where violence is provoked and eventuates, this would make the harm caused in the offence more serious and the guideline should provide for it. It is possible a s4 offence would still be charged where the offence results in actual violence whether or not assault charges arise, and as the Law Society note there may not be a victim willing to support an assault prosecution and a court may be sentencing a sole s4 charge in such situations. In the event that other offences were charged the fact that an incident escalated into violence would be highly relevant to the seriousness of the s4 offence, and provocation of violence would be a

separate element to any resulting assault. The overall sentence would be adjusted for totality.

Question 2: Does the Council agree to retain the high culpability factor ‘incident escalated into violence’ in the s4 guideline?

3.15 The LCCSA went on to raise a further point;

The committee took the view that the only factor that needed to be included in Category 1 harm was “victim feared serious violence”. The committee did not see why a defendant who causes fear of serious violence to one person should be treated the same as a defendant who causes fear of violence to multiple people. The committee took the view that fear of serious violence should be the primary determinant of which cases fell into the highest category, and the number of people who were caused that fear should have no bearing upon which category the offence falls in to.– LCCSA

The MA also questioned the factors relating to fear being caused to one or multiple persons, although specifically questioned why fear caused to a single victim does not need to be immediate to attract a high culpability categorisation;

Category 1 includes: ‘Victim feared serious violence or fear of immediate violence caused to multiple persons present’. It is not clear why fear of violence has to be immediate for multiple people and not for a single victim? We would suggest that ‘immediate’ should be removed, particularly as ‘immediate’ is already included in the offence definition. – MA

The MA point regarding the offence requirement that the threat of violence be immediate is a valid one, and as worded the factors may appear to imply that a threat towards a single victim does not need to be immediate, which is not the case. The distinction between the factors is in the level of fear caused, and in development it was considered that a threat to an individual victim causing fear of serious violence would be equal to a high level of harm where multiple victims fear any violence. The Council is asked to consider if this principle should be maintained, or if they agree with the LCCSA point and only one factor of ‘victim(s) feared serious violence’ should be included in the highest category of harm. If the Council does wish to maintain a distinction and have a higher threshold for fear caused to a single victim than for multiple victims, it is suggested that the word ‘immediate’ should be removed from the multiple victims factor. The point regarding level of fear required for single or multiple victims is also relevant to s4A and s5 offences, as the harm factors include two factors of ‘serious distress or alarm caused’ and ‘distress or alarm to multiple persons present’.

Question 3: Does the Council wish to reword the first harm factor as ‘victim(s) feared serious violence’ and remove the multiple victims factor, or if both factors are

retained does it agree to remove the word ‘immediate’ from the multiple victims factor?

3.16 The MA also suggested ‘serious distress’ should be included as a harm or aggravating factor;

We also query whether causing serious distress should be a category 1 level of harm, or referenced as an aggravating factor. - MA

3.17 Serious distress is included as harm factors for s4A and s5 offences, but these offences specifically relate to the causing of harassment, alarm or distress. As the s4 offence relates to the causing of fear or provoking violence, it may not be appropriate to include a ‘distress’ related factor for this offence, particularly as the factor may be present in a high number of cases and have an inflationary effect on categorisation.

Question 4: Does the Council wish to include an additional harm or aggravating factor of ‘serious distress’ in the s4 guideline?

Aggravating and mitigating factors

3.18 Almost all respondents approved of the aggravating and mitigating factors. The MA suggested the same changes to the mental health or learning disability factor as made for the affray guideline and the removal of the qualifying ‘where related to the commission of the offence’ which the Council agreed at the last meeting. This change will be effected to this factor across the guidelines. The MA also suggested an additional aggravating factor be included:

An aggravating factor for violent disorder and affray is ‘incident occurred in victim’s home’ and we would propose that this should also be an aggravating factor in relation to this offence.- MA

While all offences can be committed in a private or public place, they cannot be committed where the offender and the victim are in a dwelling so it is not proposed this factor be included.

3.19 A further issue raised was the treatment of alcohol within the guideline as an aggravating factor. This matter was subject to considerable discussion in the guideline development, as it was noted that often offenders behave out of character under the influence of drink and analysis of cases identified that for that reason the factor is often used applied as mitigation. The Council agreed that it should not be.

3.20 The Law Society agreed with the Council’s position that the influence of alcohol on the offender should be an aggravating factor;

The factors for the various s4, s4A and s5 offences include the clear statement that acting under the influence of alcohol or drugs is an aggravating, and not mitigating, factor. We acknowledge that there is some inconsistency in the courts' approach to intoxication, and indeed that of defence lawyers, but think it would be correct to say that, nowadays, most sentencers regard intoxication as aggravation not mitigation. In any event, a clear statement in the guideline will at least encourage consistency on this point. – Law Society

Sentences

3.21 Sentence levels were intended to provide for relativity between offences and with aggravated offence sentences. While ranges provide for custody in a number of categories for more serious offences, it was agreed that only the most serious s4 offences should attract a custodial starting point. The sentences included in the existing MCSG guidelines are included at Annex D

3.22 Road testing findings at events with magistrates found no issues with sentences for the basic offences. However, one or two consultation respondents raised concerns.

3.23 The Howard League response criticised nearly all custodial sentences in the guideline and included a lengthy discussion of the current political consideration of short term custodial sentences:

In May 2018, the justice secretary David Gauke stated that short prison sentences of less than 12 months do not rehabilitate prisoners and should be a last resort. He noted that prisoners held for less than a year have a recidivism rate of about 66%, higher than the reoffending rate of those handed non-custodial sentences.

In the same month, the prisons minister, Rory Stewart called for a "massive reduction" in the number of people sent to prison for a short sentence, saying incarceration of under 12 months makes offenders more likely to commit crime. Research published by the Ministry of Justice showed that short prison sentences have significantly worse outcomes than community sentences.

The Sentencing Council guidelines will have an impact on sentencing practice. The guidelines should be encouraging the use of effective community programmes, rather than expensive and ineffective short term prison sentences. The Sentencing Council appears to be out of step with government thinking, research and evidence. – Howard League

3.24 Other responses expressed concern that sentences were too low in some cases; *Again the committee is concerned to see the range for the lowest type of offending (for a s4) to start at a discharge. Less serious offending could and should be captured by a charge under Section 5 POA 86 and not S4 POA 86. - DJ Legal Committee*

3.25 The MA noted the starting point of the most serious category of s4A offence was lower than in the existing guideline;

We note that the starting point at the highest level is now a high level community order whereas previously it was 12 weeks' custody - MA

3.26 In developing the guideline it was initially agreed that the existing starting point for a s4A offence should be retained. However, this was later revised to a high level community order to provide for relativity with s4 sentences to reflect the s4 is a more serious offence, and it was agreed a 12 week starting point should be maintained for a serious s4 offence. Updated statistics illustrate that while there are a fairly high proportion of custodial sentences (18% immediate and suspended in 2017) imposed for a s4A offence, the highest proportion of sentences imposed are fines:

S4A – sentence distribution

Year	Absolute & Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with	Total
2013	18%	38%	26%	6%	9%	4%	100%
2014	19%	40%	23%	6%	8%	4%	100%
2015	18%	38%	25%	7%	9%	3%	100%
2016	15%	39%	25%	7%	10%	3%	100%
2017	15%	40%	24%	7%	11%	3%	100%

The table below illustrates the lengths of custodial sentences imposed for S4A (estimated, pre guilty plea);

Sentence length band	Number of offenders sentenced to immediate custody					Proportion of offenders sentenced to immediate custody				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
Up to and including 1 month	22	22	41	44	42	9%	9%	13%	13%	12%
1 to 2	51	67	68	91	104	21%	27%	21%	27%	29%
2 to 3	71	73	81	82	72	29%	29%	25%	24%	20%
3 to 4	31	22	34	26	37	13%	9%	10%	8%	10%
4 to 5	37	32	54	55	60	15%	13%	17%	16%	17%
5 to 6	36	36	48	38	41	15%	14%	15%	11%	12%
Total	248	252	326	336	356	100%	100%	100%	100%	100%

3.27 It is not proposed that the starting point be revised back to 12 weeks for a s4A, as to retain relativity with s4 sentences this would require an increase in the most serious s4 category starting point of 12 weeks custody, which will also be discussed in this paper. A custodial sentence is available within the range of three categories to reflect the statutory maximum and provide for custodial sentences in appropriate cases.

Question 5: Does the Council agree to retain the s4A starting point of a high level community order in category A1?

3.28 There are issues with the s4 starting point which did not arise from consultation responses but require consideration in respect of other decisions the Council have recently made. Since developing the Public Order guideline work has commenced on revising the Assault guideline. The existing common assault offence guideline includes a high level community order as the starting point for the most serious category 1 offences, with a range of a low level community order – 26 weeks’ custody. In the revision of the guideline the starting point and range has been maintained, to provide for relativity with ABH offences and to avoid including a 12 week starting point, as the Council has previously questioned the value of a custodial sentence of such short duration and have preferred not to include 12 week starting points. The agreed revised draft common assault guideline is included at **Annex E**.

3.29 In developing s4 sentences, it was noted that relativity to common assault offences should be considered at the point the assault guideline was revised, as common assault is considered more serious as it will often involve use of violence rather than the threat or provocation of violence. It is important to note that the existing guideline’s highest categories do not reflect such relativity and include a high level community order for a common assault and a 12 week custodial starting point for a s4.

3.30 The tables below illustrate current sentencing distribution and lengths of custodial sentences imposed for each offence;

S4 – sentence distribution

Year	Absolute & Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
2013	13%	24%	37%	11%	12%	2%	100%
2014	12%	25%	36%	11%	12%	4%	100%
2015	13%	25%	35%	13%	12%	2%	100%
2016	12%	23%	35%	14%	14%	2%	100%
2017	11%	23%	34%	15%	15%	2%	100%

S4 – immediate custodial sentence volumes of offenders and sentence lengths (estimated, pre guilty plea)

Sentence length band	Number of offenders sentenced to immediate custody					Proportion of offenders sentenced to immediate custody				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
Up to and including 1 month	39	50	55	62	58	5%	6%	6%	7%	7%
1 to 2	133	145	160	167	155	16%	16%	18%	18%	18%
2 to 3	230	250	236	266	232	28%	28%	26%	29%	27%
3 to 4	99	114	96	122	93	12%	13%	11%	13%	11%
4 to 5	146	156	192	137	158	18%	18%	21%	15%	19%
5 to 6	176	171	163	154	157	21%	19%	18%	17%	18%
Total	823	886	902	908	853	100%	100%	100%	100%	100%

Common Assault – sentence distribution

Year	Absolute & conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
2013	15%	14%	39%	12%	14%	5%	100%
2014	16%	15%	37%	12%	14%	5%	100%
2015	15%	16%	39%	13%	14%	3%	100%
2016	15%	16%	38%	14%	14%	3%	100%
2017	14%	16%	39%	14%	14%	3%	100%

Common Assault - immediate custodial sentence volumes of offenders and sentence lengths (pre guilty plea)

Sentence length band	Number of offenders sentenced to immediate custody					Proportion of offenders sentenced to immediate custody				
	2013	2014	2015	2016	2017	2013	2014	2015	2016	2017
Up to and including 1 month	272	352	379	421	400	4%	5%	5%	6%	7%
1 to 2	770	915	990	984	876	12%	14%	14%	15%	14%
2 to 3	1,124	1,260	1,323	1,283	1,173	18%	19%	19%	20%	19%
3 to 4	739	754	823	747	647	12%	11%	12%	11%	11%
4 to 5	1,196	1,315	1,266	1,227	1,118	19%	20%	18%	19%	18%
5 to 6	2,127	2,145	2,249	1,917	1,852	34%	32%	32%	29%	31%
Total	6,228	6,741	7,030	6,579	6,066	100%	100%	100%	100%	100%

3.31 It will be noted that common assault sentence distribution is very similar to that for s4, but while both attract similar proportions of sentences of up to one month, proportions of higher sentences towards the top of the statutory maximum are significantly higher for common assault with almost half of pre-guilty plea sentences falling between 4-6 months. This could be attributable to more serious ABH offences being charged as common assault prior to revised CPS guidance being issued, however.

3.32 As the draft common assault guideline has now been agreed, the Council is asked to consider if further consideration should be given to the s4 starting point in the most serious category. The level of emotional or psychological type harm may be of a similar level in each offence and while common assault requires only the apprehension of violence by a victim, it does include the potential for physical harm to also be caused. The Council therefore needs to consider if the s4 starting point should be revised down to a high level community order or lower to provide for relativity with common assault starting points. It would also be necessary to revise the A2 and B1 categories to a medium level community order. This could result in considerable deflation from existing sentencing practice given that currently almost a third of sentences are custodial (with an equal split between immediate and suspended sentences), and would mean that the most serious s4 starting point is the same as for a serious s4A offence (unless the s4A starting point is further decreased to a medium level community order. However this would be a more notable decrease for a s4A than the current starting point of 12 weeks.) An alternative option is to revise serious common assault sentences upwards from a high level community order to a custodial starting point, which may appear unjustifiably inflationary. A further option is for the current position where the different starting points for each offence is maintained.

3.33 There are risks associated with all options. Maintaining the different starting points for common assault and s4 may appear to not reflect the relativity between offences, while revising the s4 sentences down may look unjustifiably deflationary and invite criticism, from magistrates in particular as the sentencers of these offences. On the other hand increasing the starting point for a common assault offence while the effectiveness of short term custodial sentences is topical and a political issue may invite further criticism such as that from the Howard League that the Council has not considered the effectiveness of sentences in developing the guideline. A clear rationale for the approach taken will be required and included in the consultation document to mitigate the risk associated with the Council's decision.

Question 6: Does the Council wish to revise the starting point in A1 of a s4 sentence?

Racially aggravated approach

3.34 The racially aggravated approach in the draft guidelines which included a separate sentencing table specifying a starting point and range for aggravated offences attracted the greatest variation of views. On the one hand many respondents agreed with the principle of a separate sentencing table, and approved of the approach;

We concur with the Council's conclusion that it is impossible for each element of an aggravated offence to be adequately provided, for the reasons as set out in the draft guideline on page 33. We agree that assessing seriousness of the basic offence at step one and assessing related elements as a second step is a pragmatic and sensible solution to the difficulty highlighted at page 33. We also agree that whilst the level of aggravation is identified, sentencers should use a separate sentencing table to identify the appropriate starting point and sentence range.- DJ Legal Cttee

The MA welcomes the addition of a separate sentencing table. – MA

We consider that all the guidance in the draft guidelines on racial and religious aggravation is in line with an appropriate and consistent approach to sentencing. – Law Society

3.35 HM Circuit Judges thought the sentences in some categories were too low;

The draft guideline proposes three levels of 'racial or religious aggravation'. For a Category 1 harm/high level of racial aggravation case the starting point is suggested at 36 weeks custody with a range of 16 weeks' - 18 months' custody. The starting point may be too low for 'top end' cases where:

- (i) Racial/ religious aggravation was the predominant motivation for the offence;*
- (ii) The offender was a member of, or was associated with, a group promoting hostility base on race or religion;*
- (iii) The racial/religious aggravation was intended to cause and does cause severe distress to an individual, a local or wider community.*

The draft guideline for a Category A1/High racially aggravated S4A offence has a starting point of 26 weeks' custody. Again, having regard to the maximum sentence of two years' imprisonment in the Crown Court, the starting point may be too low for a 'top end' offence with one or more of the aggravating features set out at (i), (ii) and (iii) above.- HM Circuit Judges

3.36 In road testing the opposite view was found, and when used by magistrates who would usually sentence these offences, the sentences they arrived at were almost universally thought to be too high. Some respondents also thought they were too high:

The committee took the view that the proposed uplifts were too severe. A Category A1 section 4 offence has a starting point of 12 weeks imprisonment, but a Category A1 section 4 has a starting point of 36 weeks' imprisonment, a 200% uplift. The difference was deemed to be especially severe given that the practical difference between a section 4 offence and a

racially aggravated section 4 offence can often be a single racially abusive word uttered at the time of commissioning the offence - LCCSA

3.37 The LCCSA also thought the approach was overly complex;

The committee took the view that the proposed approach to assessing the level of aggravation was unnecessarily complex, unduly prescriptive and would pose a problem for benches sentencing offences of this nature. The committee took the view that there should simply be a further step in the sentencing process that obliged the sentencer to apply an uplift to the basis that there was racial or religious aggravation. - LCCSA

This was also a finding of road testing, where it was noted that the additional table approach might cause sentencing to take longer. It was felt that the sentencing table may result in more consistent sentencing, however.

3.38 Responses were varied and the overall findings of road testing were that while the sentencing table would produce consistency of sentence, sentences were significantly higher. Revising sentences will not be an option as, as was discussed in developing sentences, if sentences do not properly reflect the two year statutory maximum set by Parliament this may attract criticism that the Council has not properly reflected the gravity of any racial or religious aggravation in sentences.

3.39 The Council has already agreed in considering the different approaches to assessing aggravation in Arson and Criminal Damage offences earlier in the year that the less prescriptive uplift approach would be preferable, and that consistency of approach across guidelines is important. It is therefore proposed that this approach is adopted for the aggravated s4 and s4A public order offences. Annex F includes the uplift table and wording agreed for racially and religiously aggravated arson and criminal damage offences. However, members present in the development of the guideline will recall this approach will not work for a s5 offence, given the statutory maximum sentence is limited to a level 4 fine. The approach consulted upon for s5 offences included a percentage uplift approach to calculating the aggravated sentence. Page 94 of Annex A illustrates the approach for s5, which it is proposed should be retained in the definitive guideline.

3.40 It should be noted that as the uplift approach was not tested for Public Order, findings from testing this approach in other guidelines will inform the final resource assessment. In testing with other guidelines it was found that the uplift approach may still cause an inflationary impact, but any potential impact will be outlined in the final resource assessment and is not likely to be as marked as the increase in using a separate sentencing table.

3.41 It will be important to have a clear rationale for not including the consultation approach in the definitive guideline, which does not solely relate to concerns regarding sentence inflation. As well as highlighting that consistency of approach across guidelines is important, it will be clarified that some sentencers in road testing found the additional table

approach time consuming and complex, and had concerns regarding disproportionate sentences which were shared by a number of respondents.

Question 7: Does the Council agree to include the uplift approach for sentencing aggravated s4 and s4A offences?

4 ISSUES

4.1 There is currently existing guidance in MCSG for sentencing all offences discussed in this paper. It will be important that responses are fully considered and post consultation changes are clearly explained.

5 RISKS

The draft resource assessment did not anticipate any inflationary or deflationary impacts of the guideline. Any revisions to the draft guidelines will be considered as part of the final resource assessment to assess whether an impact on current sentence practice is anticipated.

Threatening behaviour – fear or provocation of violence Public Order Act 1986 (section 4)

Triable summarily
Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated threatening behaviour – fear or provocation of violence Crime and Disorder Act 1998 (section 31(1)(a))

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 1 year 6 months' custody

The racially or religiously aggravated offence is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

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**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by a group
- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

B – Lesser culpability

- All other cases

Harm

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

Category 1

- Victim feared serious violence
- Fear of immediate violence caused to multiple persons present
- Incident escalated into violence

Category 2

- All other cases

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
Category 1	Starting point 12 weeks' custody	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point High level community order	Starting point Low level community order
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Medium level community order

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 36 weeks' custody	Starting point 26 weeks' custody	Starting point 16 weeks' custody
	Category range 16 weeks' – 1 year 6 months' custody	Category range 6 weeks' – 1 year's custody	Category range High level community order – 36 weeks' custody
A2 or B1	Starting point 12 weeks' custody	Starting point 6 weeks' custody	Starting point High level community order
	Category range 6 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – 16 weeks' custody
B2	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 26 weeks' custody	Category range Low level community order – 12 weeks' custody	Category range Band C fine – High level community order

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.

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 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 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 motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

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

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

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

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role where offending is part of group activity

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where linked to commission of offence

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**

For **racially or religiously aggravated offences only** 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 should consider whether to make compensation and/or other 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.

Disorderly behaviour with intent to cause harassment, alarm or distress Public Order Act 1986 (section 4A)

Triable summarily
Maximum: 26 weeks' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress Crime and Disorder Act 1998 (section 31(1)(b))

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 1 year 3 months' custody

The racially or religiously aggravated offence is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

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**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by a group
- Sustained incident
- Use of substantial force
- Production of weapon
- Missiles thrown

B – Lesser culpability

- All other cases

Harm

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

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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.

Harm	Culpability	
	A	B
Category 1	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point Low level community order	Starting point Band C fine
	Category range Band C Fine – 12 weeks' custody	Category range Discharge – Low level community order

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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)

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below;

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point 6 weeks' custody
	Category range 6 weeks' – 1 year 3 months' custody	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody
A2 or B1	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 16 weeks' custody
B2	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band C fine – 6 weeks' custody	Category range Band B fine – High level community order

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.

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 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 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 motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

Leading role where offending is part of group activity

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

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

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

Commission of offence whilst under the influence of alcohol or drugs

Offence committed whilst on licence or post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Minor/peripheral role in group activity

No previous convictions or no relevant/recent convictions

Remorse

Previous good character

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where related to the commission of the offence

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**

For **racially or religiously aggravated offences only** 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 should consider whether to make compensation and/or other 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.

Disorderly behaviour Public Order Act 1986 (section 5)

Triable summarily
Maximum: Level 3 fine

Offence range: Discharge – Fine

Racially or religiously aggravated disorderly behaviour Crime and Disorder Act 1998 (section 31(1)(c))

Triable summarily
Maximum: Level 4 fine

Offence range: Discharge – Fine

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**.

For racially and religiously aggravated offences, identify the basic offence category then move to consider the racially and religiously aggravated guidance to identify the appropriate sentence category.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by group
- Sustained incident
- Use of force

B – Lesser culpability

- All other cases

Harm

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

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

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
Category 1	Starting point Band C fine	Starting point Band B fine
	Category range Band B – Band C fine	Category range Band A – Band C fine
Category 2	Starting point Band B fine	Starting point Band A fine
	Category range Band A – Band C fine	Category range Conditional discharge – Band B fine

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY**Summary only offence. Maximum sentence for the aggravated offence is level 4 fine.**

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 table includes 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, and apply the appropriate uplift to the sentence.

<p>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</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>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> • Fine for basic offence: Multiply basic fine by 2.5 • Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category
<p>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</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>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> • Fine for basic offence: Multiply basic fine by 2 • Discharge for basic offence: impose fine at mid-top of basic offence category range
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</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>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> • Fine for basic offence: Multiply basic fine by 1.5 • Discharge for basic offence: impose fine at low-mid of basic offence category range

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.

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 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 motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

Other aggravating factors:

Planning

Leading role where offending is part of group activity

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

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability)

History of antagonising the victim

Commission of offence whilst under the influence of alcohol or drugs

Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Minor/peripheral role where offending is part of group activity

Remorse

Previous good character

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability where related to the commission of the offence

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**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other 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**

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

Section six: Section 4, Section 4A and Section 5 Public Order offences

These are summary offences providing for a range of disorderly behaviour. There is existing guidance within the MCSG for sentencing these offences. These include examples of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors. There is significant overlap between the offences in relation to the type of conduct required to constitute an offence.

Due to the similarity between offences the factors included are very similar. Each draft guideline is discussed in detail below, and factors, sentence levels and the approach to sentencing in each guideline discussed and outlined.

Racially and religiously aggravated offences

Each offence has a racially or religiously aggravated counterpart, provided for by section 31 Crime and Disorder Act 1998. Section 31 provides:

- (1) A person is guilty of an offence under this section if he commits—
 - (a) an offence under section 4 of the Public Order Act 1986 (fear or provocation of violence);
 - (b) an offence under section 4A of that Act (intentional harassment, alarm or distress); or
 - (c) an offence under section 5 of that Act (harassment, alarm or distress),

which is racially or religiously aggravated for the purposes of this section.
- (4) A person guilty of an offence falling within subsection (1)(a) or (b) above shall be liable —
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence falling within subsection (1)(c) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

The proposed guidelines include additional guidance at step two for assessing the seriousness of and sentencing racially aggravated offences. The approach requires the sentencer to first identify the category of the basic offence, and then tailor the sentence depending on the level of aggravation present. Due to differing statutory maximum sentences for basic and aggravated offences, the guidelines for these offences include separate sentence tables or guidance on applying an uplift to reflect the level of aggravation. Further detail is provided in the summary of each guideline.

SECTION 4

Threatening Behaviour – fear or provocation of violence

Section 4(1) of the Public Order Act provides that a person is guilty of this offence if he –

- uses towards another person threatening, abusive or insulting words or behaviour, or
- distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

A person found guilty of the basic offence under this section is liable on summary conviction in the magistrates' court to a term not exceeding 26 weeks. In 2016, 6,500 offenders were sentenced for this offence. A person guilty of a racially or religiously aggravated offence is liable to a maximum of two years' imprisonment in the Crown Court and 26 weeks' in the magistrates' court. In 2016, 580 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

It is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases. Analysis of a limited number of cases did not identify a range of behaviour providing for three categories of culpability.

Culpability demonstrated by one or more of the following

A – High culpability

- Targeting of individual(s) by a group
- Intention to cause fear of serious violence
- Sustained incident
- Use of substantial force
- Production of weapon
- Missile thrown

B – Lesser culpability

- All other cases

High culpability factors

The Council considers that the presence of the factors listed indicate higher culpability of an offender. For a section 4 offence to be committed it is necessary for the offender to intend to cause a person to believe that immediate unlawful violence will be used, therefore the factor '*intention to cause fear of serious violence*' is proposed. Presence of this factor would be established by considering the nature and level of the threat. Where individuals are targeted by a group, this will always make the offence more serious, so this factor is included at culpability A. The other factors listed are factors which were present in cases analysed and are all considered to imply a higher level of intention to threaten or provoke violence. The existing MCSG guidance for this offence includes a

factor for the most serious activity which includes ‘*use of weapon*’ and ‘*missile thrown*’. The Council also considers that a sustained incident or an incident involving the use of substantial force would increase the culpability of an offender.

The Council is consulting on these factors and seek views on whether there are any other factors which indicate a higher level of culpability in an offence.

Lesser culpability

This category will capture offences where the factors proposed in category 1 are not present. The Council considers this will enable a straightforward and proportionate assessment of culpability, but seek views on whether the factors and approach are suitable.

Q17

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

As for culpability, two levels of harm are proposed:

Harm

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

Category 1

- Victim feared serious violence
- Fear of immediate violence caused to multiple persons present
- Incident escalated into violence

Category 2

- All other cases

Harm category 1 factors

These factors are considered to represent the highest level of harm which would be present in an offence of threatening or provoking violence. The factor ‘*victim feared serious violence*’ would be inferred from the conduct of the offender. For example an offender in very close proximity to another wielding an object in a threatening manner would be captured by this category. Fear of immediate violence to multiple persons captures the increased harm caused when multiple persons are present during an offence, for example, serious threats made to a number of people in a busy street. Incidents that escalate into violence from a threat would also result in a greater degree of harm. The Council is consulting on these factors and seek views on whether there are any other factors which indicate a higher level of harm in an offence.

Harm category 2 factors

This captures offences where factors specified in category 1 are not present.

Q18

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the common assault guideline (which is a comparable offence) and section 4A offences has also been observed, to ensure relativity of sentences, subject to differences in the substance of the offences.

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.

Harm	Culpability	
	A	B
Category 1	Starting point 12 weeks' custody	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point High level community order	Starting point Low level community order
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Medium level community order

Q19

Do you have any comments on the sentence ranges and starting points?

Racially aggravated section 4 offences

The guideline then goes on to address racially aggravated offences. The Council did consider developing separate guidelines for aggravated offences, but it was not possible to develop a model that enabled each element of the offence to be adequately provided for. For example, an offence may involve low level threats of violence that do not cause a victim a high degree of fear, but a high level of racial aggravation may be present which is deeply upsetting for the victim.

The seriousness of the basic offence and the appropriate basic offence category is therefore assessed at step one, with the aggravated elements assessed at step two. Once the level of aggravation is identified, a separate sentence table is included to identify the appropriate starting point and sentence range;

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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)

Q20

Do you agree with the approach to assessing the level of aggravation present in an offence?

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 36 weeks' custody	Starting point 26 weeks' custody	Starting point 16 weeks' custody
	Category range 16 weeks' – 1 year 6 months' custody	Category range 6 weeks' – 1 year's custody	Category range High level community order – 36 weeks' custody
A2 or B1	Starting point 12 weeks' custody	Starting point 6 weeks' custody	Starting point High level community order
	Category range 6 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – 16 weeks' custody
B2	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 26 weeks' custody	Category range Low level community order – 12 weeks' custody	Category range Band C fine – High level community order

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.

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 starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts. The sentences are intended to be proportionate and relative to substantive offence sentences.

Q21

Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 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 motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Commission of offence whilst under the influence of alcohol or drugs

Other aggravating factors:

Planning

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

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

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

Other factors included are considered to be factors which increase the seriousness of a section 4 offence. Particular consideration was given to the factor *'commission of offence whilst under the influence of drink or drugs'*, which is a standard factor included in guidelines. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minimal/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is '*minor/peripheral role in group activity*'.

Q22

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q23

Do you have any other comments on the structure and content of the draft guideline?

SECTION 4A

Disorderly behaviour with intent to cause harassment, alarm or distress

A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he —

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

A person guilty of an offence under this section is liable on summary conviction in the magistrates' court to imprisonment for a term not exceeding 26 weeks. In 2016, 3,200 offenders were sentenced for the basic offence. A person guilty of a racially or religiously aggravated offence is liable to a maximum of two years' imprisonment in the Crown Court and 6 months' in the magistrates' court. In 2016, 2,400 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

As for the more serious section 4 offence, it is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases.

Culpability demonstrated by one or more of the following:

A – High culpability

- Targeting of individual(s) by a group
- Sustained incident
- Use of substantial force
- Production of weapon
- Missile thrown

B – Lesser culpability

- All other cases

High culpability factors

With the exception of the factor *'intention to cause fear of serious violence'* the high culpability factors proposed are as for the section 4 offence of threatening or provoking violence.

The Council considers that parity of these factors is appropriate due to the similarity in the conduct required to make out a section 4 or a section 4A offence, with the same conduct required but a distinction in whether the intention is to cause fear or provocation of violence or to cause harassment, alarm or distress.

Existing MCSG guidance provides for a weapon being brandished or used for a section 4A offence, and a limited review of cases did identify the presence of weapons in a number of more serious offences; in one offence an offender jabbed a steel bar in the direction of the victim, while in another a car jack was wielded at the victim. While the factor *'missile thrown'* is not included in existing section 4A guidance, such behaviour could be as serious as producing a weapon and would likely cause a high level of alarm or distress.

The Council is consulting on the proposed factors and whether any factors should be added or removed.

Lesser culpability

This is a catch all category for offences not involving factors listed in culpability category A.

Q24

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence.

Harm

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

Category 1

- Serious distress or alarm caused
- Distress or alarm caused to multiple persons present

Category 2

- All other cases

Harm category 1 factors

The proposed factors are self explanatory and are intended to reflect the most serious harm which could be caused or intended by this offence.

Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q25

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the section 4 and section 5 offences has also been observed, to ensure relativity within the limitations of the different statutory maximum sentences and the substance of the offences.

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
Category 1	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 12 weeks' custody
Category 2	Starting point Low level community order	Starting point Band C fine
	Category range Band C fine – 12 weeks' custody	Category range Discharge – Low level community order

Q26

Do you have any comments on the sentence ranges and starting points?

Racially aggravated section 4A offences

The guideline then goes on to address racially aggravated offences, using the same approach as for the section 4 offence explained at page 33.

The seriousness of the basic offence and the appropriate basic offence category is therefore assessed at step one, with the aggravated elements assessed at step two. Once the level of aggravation is identified, a separate sentence table is included to identify the appropriate starting point and sentence range.

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

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.

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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

LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION

- 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)

Q27

Do you agree with the approach to assessing the level of aggravation present in an offence?

Once the court has considered these factors and any other such factors it considers relevant, the court should sentence according to the relevant category in the table below:

Basic Offence Category	Level of Racial/Religious Aggravation		
	High	Medium	Low
A1	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point 6 weeks' custody
	Category range 6 weeks' – 1 year 3 months' custody	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody
A2 or B1	Starting point 6 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – 16 weeks' custody
B2	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
	Category range Medium level community order – 12 weeks' custody	Category range Band C fine – 6 weeks' custody	Category range Band B fine – High level community order

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.

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.

Q28 Do you agree with the sentence levels and ranges for the aggravated offence, and the inclusion of a separate sentencing table?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 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 motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity

Offence committed whilst on bail

'Previous convictions', 'Offence motivated by or demonstrating hostility based on characteristics' and 'offence committed whilst on bail' are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Commission of offence whilst under the influence of alcohol or drugs

Other aggravating factors:

Planning

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

Leading role where offending is part of group activity

Vulnerable persons or children present

Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation

History of antagonising the victim

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

Other factors included are considered to be factors which increase the seriousness of a section 4A offence. As for the section 4 offence, particular consideration was given to the factor *'commission of offence whilst under the influence of drink or drugs'* which is a standard factor included in guidelines. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour by the courts. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minor/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is '*minor/peripheral role in group activity*'.

Q29

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q30

Do you have any other comments on the structure and content of the draft guideline?

SECTION 5

Disorderly behaviour causing or likely to cause harassment, alarm or distress

A person is guilty of this offence if he —

- (a) uses threatening or abusive words or behaviour, or disorderly behaviour, or
- (b) displays any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. In 2016, 5,100 offenders were sentenced for the basic offence. A person guilty of a racially or religiously aggravated offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. In 2016, 1,400 offenders were sentenced for the aggravated offence.

There is existing guidance in the MCSG for this offence. These include examples of the type of activity and require an assessment of conduct to assess the seriousness of the offence, rather than assessing harm and culpability separately. The draft guidelines developed adopt the standard Sentencing Council guideline approach, assessing individual culpability and harm factors.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

As for the more serious section 4 and section 4A offences, it is proposed that culpability be limited to two levels: one listing factors that indicate higher levels of culpability and a lower culpability category that would capture all other cases.

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Sustained incident • Use of force
B – Lesser culpability	<ul style="list-style-type: none"> • All other cases

High culpability factors

The high culpability factors included for the section 5 offence are reflective of factors included for the section 4 and section 4A offence. ‘*Sustained incident*’ is included as for the other offences, to recognise higher culpability on the part of an offender where the duration of the incident is long lasting. Such incidents are provided for in the existing MCSG guidance by the activity ‘*substantial disturbance caused*’ and an aggravating factor of ‘*lengthy incident*’; ‘*sustained incident*’ is intended to encapsulate both these factors.

The threshold of use of force as a factor in this offence is lower than the ‘substantial’ force required to illustrate high culpability in a section 4 or section 4A offence. This is because as this offence does not require intent but only a likelihood that harassment, alarm or distress would be caused, it is considered that any use of force would increase that likelihood and the culpability of an offender. The Council is consulting on the proposed factors and whether any factors should be added or removed.

Lesser culpability

This is a catch all category for offences not involving factors listed in culpability category A.

Q31

Do you agree with the proposed approach to the assessment of culpability? Please give reasons where you do not agree.

Harm factors

Once the court has determined the level of culpability the next step is to consider the harm caused or intended to be caused by the offence. The factors proposed for the section 5 offence are as for the section 4A offence. Both offences require harassment, alarm or distress to be intended or likely to be caused. The potential harm will therefore be the same in each offence.

Harm

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

Category 1	<ul style="list-style-type: none"> • Serious distress or alarm caused • Distress or alarm caused to multiple persons present
Category 2	<ul style="list-style-type: none"> • All other cases

Harm category 1 factors

The proposed factors are self explanatory and are intended to reflect the most serious harm which could be caused or intended by this offence.

Harm category 2 factors

This is a catch all category and provides for cases where a lower level of harm is present in an offence.

Q32

Do you agree with the proposed approach to the assessment of harm? Please give reasons where you do not agree.

STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings Database and a limited analysis of first-instance transcripts as few were available due to this being a summary only offence. Reference to the ranges within the section 4A offences have also been observed, to ensure relativity within the limitations of the different statutory maximum sentence for offences. The statutory maximum sentence for this offence is a level 3 fine, which significantly limits the range of sentences.

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.

Harm	Culpability	
	A	B
Category 1	Starting point Band C fine	Starting point Band B fine
	Category range Band B – Band C fine	Category range Band A – Band C fine
Category 2	Starting point Band B fine	Starting point Band A fine
	Category range Band A – Band C fine	Category range Conditional discharge – Band B fine

Q33

Do you have any comments on the sentence ranges and starting points?

Racially or religiously aggravated section 5 offences

The seriousness of the basic offence is assessed at step one, with the aggravated elements assessed at step two, as for the section 4 and section 4A offences.

The approach to identifying the appropriate sentence differs for this offence, due to the limited statutory maximum sentence. The statutory maximum sentence for the basic offence is a level 3 fine, and for the aggravated offence a level 4 fine. This means it is not possible to include a sentence table that provides adequately for an appropriate uplift in sentence, given that penalties are restricted to fine bands.

The guideline therefore combines the aggravation assessment and uplift guidance. The same factors as for other aggravated offences is considered to identify whether the level of aggravation is high, medium or low, and guidance is included on appropriate increases to the penalty depending on type of sentence and level of aggravation.

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Summary only offence. Maximum sentence for the aggravated offence is a level 4 fine.

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 table includes 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, and apply the appropriate uplift to the sentence.

<p>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</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>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2.5 Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category
<p>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</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>SENTENCE UPLIFT</p> <ul style="list-style-type: none"> Fine for basic offence: Multiply basic fine by 2 Discharge for basic offence: impose fine at mid-top of basic offence category range

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) 	<ul style="list-style-type: none"> • Fine for basic offence: Multiply basic fine by 1.5 • Discharge for basic offence: impose fine at low-mid of basic offence category range

Q34 Do you agree with the approach to assessing the seriousness of the aggravated section 5 offence, and to the penalty uplifts proposed?

The court should then consider any additional factors, not identified at step one or the first stage of step two, which may aggravate or mitigate the offence.

These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court’s discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors.

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 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 motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or transgender identity
Offence committed whilst on bail

‘Previous convictions’, ‘Offence motivated by or demonstrating hostility based on characteristics’ and ‘offence committed whilst on bail’ are factors which the court is required by statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, these factors are considered at step two after the starting point has been established

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation:

Offence committed whilst on licence or subject to post sentence supervision
History of failure to comply with court orders
Other aggravating factors:
Commission of offence whilst under the influence of alcohol or drugs
Planning
Offence committed against those working in the public sector or providing a service to the public
Leading role where offending is part of group activity
Vulnerable persons or children present
Victim is targeted due to a vulnerability (or a perceived vulnerability) where not already taken into account in considering racial or religious aggravation
History of antagonising the victim
Victim had no opportunity to escape situation (ie: on public transport)

Other factors included are considered to be factors which increase the seriousness of a section 5 offence. As for the section 4 offence, particular consideration was given to the factor ‘*commission of offence whilst under the influence of alcohol or drugs*’. Analysis of cases found that this factor often mitigated the sentence as an offender may have behaved out of character whilst intoxicated. However, the Council takes the firm view that it would not be acceptable for the seriousness of behaviour in relation to this offence as for the section 4 and section 4A offences, to be seen to be reduced due to intoxication. The public have a right to be protected from such behaviour by the courts. It would be more appropriate for the court to consider whether the mitigating factor of good character and/or exemplary conduct apply where it is demonstrated an offender behaved out of character.

The Council also considers that it is important that the offence is aggravated where offending is directed towards vulnerable persons and those providing a service to the public.

Factors reducing seriousness or reflecting personal mitigation
Minor/peripheral role where offending is part of group activity
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability where linked to commission of offence
Sole or primary carer for dependent relatives

Many of the mitigating factors are standard factors included within guidelines. The only non-standard factor identified as relevant is ‘*minor/peripheral role in group activity*’.

Q35

Do you agree with the aggravating and mitigating factors? Please state which, if any, should be removed or added.

Q36

Do you have any other comments on the structure and content of the draft guideline?

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Road testing of the public order guidelines with magistrates

Background and method

At a series of events with magistrates, scenario-based exercises were used to test out how the guidelines for threatening behaviour (section 4) and disorderly behaviour (section 4A) might work 'in the field', particularly for racially or religiously aggravated cases. Magistrates were asked to review a scenario in pairs or groups of three, and then sentence it using the new draft guideline, filling out a detailed questionnaire as they went along. The events were:

- The MA AGM in November 2017, attended by approximately 80 magistrates, of which around half reviewed this guideline.
- A further regional magistrates' AGM in April 2018, attended by approximately 60 magistrates.
- Two further, smaller consultation events held in different parts of the country in May 2018, the first of which was attended by 11 magistrates and the second of which was attended by three magistrates (in this latter event, the magistrates worked on their own rather than in pairs/groups).

Two different scenarios were used, one at the MA AGM and two at the three further events. The guidelines used at the MA AGM also differed slightly to the one used at the later events, with the latter giving more detailed guidance on how to judge the level of racial aggravation. At the two smaller events, participants were also asked to sentence a racially aggravated criminal damage scenario, which presented an opportunity to compare the approaches across the two guidelines.¹

As with all our qualitative work, the sample size was small and self-selecting, which means that the findings cannot be taken as representative of all magistrates. They provide an insight into how magistrates may use and respond to the guideline, but we cannot be sure that these findings are typical of the wider group.

Key findings

- Both the scenarios were initially categorised consistently across magistrates i.e. almost all participants arrived at the same categories for culpability and harm before taking into account the racial element of the offence and adding the uplift. These categorisations were as expected by policy.
- Across both scenarios, the categorisation of the level of racial aggravation was much more variable than the categorisation of the basic offence. For example, for the threatening behaviour scenario, opinion was divided as to whether the level of racial aggravation was high, medium or low, with the categorisation as 'high' arising primarily from participants' assessment that the behaviour caused 'Severe distress to victim and family'.

¹ The draft public order guidelines contained a separate sentencing table for racially aggravated offences, whereas the draft criminal damage guideline contained guidance on adjustment of the sentence levels in the table for the basic offence. In the draft public order guideline, aggravating and mitigating factors were placed after the racial aggravation step, whereas in the draft criminal damage guideline they came before.

- It seemed that when magistrates focused on the distress caused, they tended to overlook the need to separate out the distress caused *by the racial aggravation* from the overall distress. Consequently, despite the wording in the guideline, they made the decision about the level of racial aggravation on the basis of a global sense of the distress caused, and hence there was an element of double counting.
- Opinion was divided as to whether it was better to have a separate sentencing table for the racially aggravated cases, or not. Magistrates favoured a consistent approach to the positioning of mitigating and aggravating factors across guidelines.

Findings by scenario and notes on the discussions

Threatening behaviour (s4) scenario (reviewed at all events, n = 24 pairs/groups)

In an offence lasting ten minutes, defendant threatened and racially abused a shop keeper, leaving the shop keeper and other customers extremely frightened. There were strong mitigating circumstances.

This scenario was categorised very consistently across participants: at the first event, all 15 pairs/groups categorised the basic offence as A1, and of the 24 pairs/groups at the subsequent three events, 22 gave a categorisation of A1, and two B1. Participants unanimously categorised this offence as harm 1 on the basis of two factors: 'Victim feared serious violence' and 'Fear of immediate violence caused to multiple persons present'. Similarly, most frequently participants saw the behaviour as culpability A on the basis of, 'Intention to cause fear of serious violence' and 'Sustained incident'.

However, opinion as to the level of racial aggravation was more variable. Table 1 details the level of racial aggravation chosen and the reason(s) for that choice from the three most recent consultation events (n = 24 pairs/groups). This suggests that those who chose to focus on **the distress caused to the victim** in the scenario tended to see the level of racial aggravation as **high** (see yellow shading), whereas those who focused on the **proportion of the offence which was felt to be racially aggravated**, saw the level of aggravation as **medium or low** (see green shading). Or, putting it another way, all seven participants who categorised the level of racial aggravation as high did so on the basis of severe distress and 5/7 did so *solely* on the basis of severe distress. Because of the variability in categorising the level of racial aggravation, final sentences were therefore quite wide-ranging: between a medium level community order and 36 weeks' custody, before guilty plea.

It may be that sentencers find it difficult to mentally apportion the distress caused *because of the racial aggravation*, so, despite the wording in the guideline, they make the decision based on a global sense of distress. There was a little bit of qualitative evidence to this effect, arising from the 'disorderly' scenario. At the smallest event, where the magistrates worked on their own, two out of three categorised the level of racial aggravation as medium on the basis of 'aggravated nature caused some distress'. However, one magistrate seemed to consider the level of distress in more detail, saying that she rejected this factor because of the wording 'over and above the distress considered at step one'. Rather she saw the level of *additional* distress caused by the racially aggravated nature of the offence as minimal, and categorised the level of racial aggravation as low, based on this and the proportion of the offence that contained specific racial slurs (see below).

The other notable finding for this scenario was that in most instances, magistrates saw their end sentence (based on the sentencing table) as too tough for this defendant in this scenario. For example, one group who gave a sentence of 26 weeks pre-guilty plea, 18 weeks post, wrote 'Disproportionately harsh penalty resulted (we checked twice)'. In total, **two thirds of the sample of 24 pairs/groups wrote comments like this (too harsh)**, with only a couple rating the sentence as

about right, and others leaving the question blank. This may suggest that the sentences in the table were pitched too high, or that the guideline caused magistrates to over-estimate the level of aggravation, or a combination of both. It should also be noted that the offender in this case was very sympathetic (he was drunk after attending the wake of a close bereavement, he was very remorseful) so magistrates may have simply felt sorry for him.

Disorderly behaviour (s4a) scenario (reviewed at the last three events, n =15 pairs/groups)

Offender became very angry when issued with a parking ticket and abused traffic warden, including racial slurs alongside other slurs. She also pushed past the victim to get to her car. Victim was upset at the name calling but also said that because of her job she was used to it.

For this scenario, almost all of the pairs/groups classified the offence as B2 (using the factors 'All other ..' (culpability) and 'All other cases..' (harm)). This categorisation was as expected. One group categorised the offence as A1 (seeing it as 'sustained' (culpability) and leading to 'serious distress' (harm)), two further said A2 (seeing culpability A because the offence was 'sustained') and one B1 (seeing the harm caused as 'serious distress').

The level of racial aggravation was seen as **low** by 8/15 pairs/groups, medium by 6/15 (with one response unclear). Most pairs/groups/individuals judged the racial aggravation on the basis that it formed **a minimal proportion** of the offence, with 8/8 who said '**low**' quoting this factor (in 7/8 cases in isolation, but in one case – the participant who did this exercise very carefully, described above - quoting 'minimal or no distress' as well).

Meanwhile, those who viewed it as **medium** did so either on the basis that the racial aggravation was **a significant proportion of the offence** and/or that it caused '**some**' distress (so consideration of the level of distress appeared once again to be pulling the categorisation upwards). Participants were generally happy with their end sentences (medium or low community order to Band B fine, post-guilty plea).

Note on the discussions at the two consultation events

The two consultation events presented a good opportunity to compare the way racially aggravated offences were dealt with in the two guidelines, the key differences being the use of a table for racially/religiously aggravated threat/disorderly behaviour, and the positioning of the aggravating and mitigating factors.

In one of the groups, the inclusion of the table was preferred by the majority of magistrates (three out of four pairs) because it was felt that it was clear and would lead to consistency (although earlier they were concerned about the severity of the penalties in this guideline). However, one group of three felt strongly that the *Criminal Damage* approach (no table) was better, because it gave them flexibility to decide on the level of uplift. At the smaller event, the facilitator noted that having the two tables for the public order offences seemed to take up more time, and cause a significant amount of to-ing and fro-ing (participants too felt it took up more time, and suggested you could have a separate guideline for racially aggravated offences that dispensed with the first table, until pointed out that sentence for un-aggravated offence needs to be stated in open court). There was a sense that the *Criminal Damage* approach was preferred, but that the inclusion of a table might lead to more consistent sentencing. The different positioning of the aggravating and mitigating factors was also noted at the second group: whilst they could see pros and cons to having aggravating and mitigating factors earlier (the base sentence includes aggravation and mitigation) and later (aggravating and mitigating factors stand out more), they felt they would like to see consistency across guidelines.

Table 1: Level of racial aggravation and reason for threatening behaviour scenario

	Level of racial aggravation	Factor ticked	Factor ticked
1	Medium	Aggravated nature causes severe distress to victim and family	RA was significant proportion
2	Low	Aggravated element formed minimal part	
3	Medium	RA was significant proportion	
4	Low	Aggravated element formed minimal part	
5	Low	Aggravated element formed minimal part	
6	Medium	Aggravated nature causes some distress to victim and family	
7	High	Aggravated nature causes severe distress to victim and family	
8	Medium	RA was significant proportion	
9	Not clear, remainder of form is not completed	Aggravated nature causes severe distress to victim and family	Aggravated nature causes some distress to victim and family
10	Low	Aggravated element formed minimal part	
11	Medium	Aggravated nature causes some distress to victim and family	
12	Medium	Aggravated nature causes severe distress to victim and family	RA was significant proportion
13	Medium	RA was significant proportion	
14	Low	Aggravated element formed minimal part	
15	High	Aggravated nature causes severe distress to victim and family	RA was significant proportion
16	High	Aggravated nature causes severe distress to victim and family	Aggravated nature causes serious distress to community
17	Low	Aggravated element formed minimal part	
18	High	Aggravated nature causes severe distress to victim and family	
19	Medium	RA was significant proportion	Aggravated nature causes severe distress to victim and family
20	High	Aggravated nature causes severe distress to victim and family	
21	Medium	RA was significant proportion	Aggravated nature causes some distress to victim and family
22	High	Aggravated nature causes severe distress to victim and family	
23	High	Aggravated nature causes severe distress to victim and family	
24	Low	Aggravated nature causes some distress to victim and family	Aggravated element formed minimal part

MCSG - S4 Threatening Behaviour**Offence seriousness (culpability and harm)****A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Fear or threat of low level immediate unlawful violence such as push, shove or spit	Low level community order	Band B fine to medium level community order
Fear or threat of medium level immediate unlawful violence such as punch	High level community order	Low level community order to 12 weeks custody
Fear or threat of high level immediate unlawful violence such as use of weapon; missile thrown; gang involvement	12 weeks custody	6 to 26 weeks custody

MCSG - S4A Disorderly Behaviour with intent to cause harassment alarm or distress**Offence seriousness (culpability and harm)****A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Threats, abuse or insults made more than once but on same occasion against the same person e.g. while following down the street	Band C fine	Band B fine to low level community order
Group action or deliberately planned action against targeted victim	Medium level community order	Low level community order to 12 weeks' custody
Weapon brandished or used or threats against vulnerable victim – course of conduct over longer period	12 weeks' custody	High level community order to 26 weeks' custody

MCSG - S5 Disorderly behaviour likely to cause harassment, alarm or distress**Offence seriousness (culpability and harm)****A. Identify the appropriate starting point**

Starting points based on first time offender pleading not guilty.

Examples of nature of activity	Starting point	Range
Shouting, causing disturbance for some minutes	Band A fine	Conditional discharge to band B fine
Substantial disturbance caused	Band B fine	Band A fine to band C fine

STEP ONE
Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- Targeting of vulnerable victim, where victim vulnerable by age, personal characteristics or circumstances
- Prolonged assault
- Use of substantial force
- Threatened or actual use of weapon or weapon equivalent*
- Leading role in group activity

B – Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

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

Harm

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

Category 1	More than minor physical or psychological harm
Category 2	Minor physical or psychological harm
Category 3	No physical injury No/very low level of distress

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence starting point.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point High level Community Order</p> <p>Category Range Low level Community Order - 26 weeks' custody</p>	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>
Harm 2	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - low level Community Order</p>
Harm 3	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - Low level Community Order</p>	<p>Starting point Band A Fine</p> <p>Category Range Discharge – Band C Fine</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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Other aggravating factors:

Spitting

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

Offence committed in prison

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

RACIALLY OR RELIGIOUSLY AGGRAVATED 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.

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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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. ▪ 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. 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some 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. 	
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>

Maximum sentence for the aggravated offence is 2 years imprisonment. 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.

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

5 April 2019
SC(19)APR05 – Firearms paper
Maura McGowan
Sophie Klinger
07976 300962

1 ISSUE

1.1 This is the seventh meeting to consider the firearms guideline. This paper asks the Council to consider revisions to the guidelines on possession with intent and transfer/manufacture following the March Council meeting and the meeting of the Firearms Working Group (FWG) on 12 March. The paper also discusses sentence levels for the possession and transfer/manufacture guidelines.

1.2 Currently, there are two further meetings scheduled to discuss the firearms guideline in May and July. The aim is to sign off the consultation version at the July meeting, if possible, with consultation planned for September.

2 RECOMMENDATION

2.1 It is recommended that the Council:

- in the possession with intent guidelines, agrees revisions to harm factors (paragraphs 3.1-3.4), aggravating and mitigating factors (paragraphs 3.5-3.12), and culpability factors (3.13)
- in the transfer/manufacture guideline, agrees revisions including new factors relating to scale/nature of the enterprise and factors on actual harm (paragraphs 3.14-3.19) and minor changes to aggravating factors (paragraphs 3.20-3.21)
- considers the order of step two factors across the guidelines (paragraph 3.22)
- considers sentence levels for guidelines 1-4 and 8 (paragraph 3.23 onwards) and the relativity of sentence levels across guidelines 1-8 (paragraph 3.44 and table at page 12).

3 CONSIDERATION

Revisions to possession with intent (guidelines 5-7/Annexes F-H) – harm

3.1 Following discussion at the March meeting and consideration by the FWG, several changes have been made to harm across the possession with intent guidelines. These changes apply across guidelines 5-7 (Annexes F-H).

3.2 The FWG has recommended that the catch-all factor be moved from category 2 to category 3, in the form 'All other cases'. While in the simple possession guidelines, the catch-all is the only factor in category 2, in these possession with intent guidelines there are several factors at category 2. The other two factors in category 3 (no/minimal risk of serious physical injury or death and no/minimal risk of serious disorder) have been removed, as they are covered by the catch-all. The factor 'Alarm/distress caused' has been retained at category 3 for clarity.

3.3 The FWG also discussed the possibility of adding risk of *psychological* injury to the risk-based factor at category 2. This would put risk of psychological and physical harm on the same footing in this factor. On the other hand, there are concerns it may unduly widen the category 2 factor as many cases may be seen to involve a high risk of serious psychological harm; actual alarm/distress or psychological harm is well covered and it may be appropriate to focus only on the risk of serious physical injury or death. The FWG agreed to test this with judges to see how the factor is approached with risk of psychological harm included.

3.4 Consideration has been given to the wording in bold below the harm table. The FWG discussed whether it was necessary to include the wording directing sentencers to balance factors falling under different levels of harm. Some considered the wording was unnecessary as factors under different levels were less likely to arise (e.g. no physical harm but high psychological harm) and sentencers were aware of the need to balance, however there was also a desire to retain the wording for consistency with the other guidelines and to remind sentencers of the need for balancing should it arise. It was agreed to test the wording with sentencers. Finally, the wording 'death or' has been added to the last line under the harm factors, relating to separate charges and totality.

Question 1: Is the Council content with these changes to harm?

Revisions to possession with intent (guidelines 5-7/Annex E - G) – aggravating/mitigating factors

3.5 At the March meeting the Council considered aggravating and mitigating factors and made some revisions. Some factors were referred to the FWG for consideration. The key changes recommended by the FWG are set out below.

3.6 **Factor A9/A12 'Offence committed to further organised criminal activity (except where already taken into account at step one)' (guidelines 5 and 6):** The Council wanted amendments to the previous wording of 'further organised criminal activity or protect territory'. The wording '*further or protect* organised criminal activity' had been suggested but the FWG

considered 'or protect' was unnecessary, so it has been omitted. The FWG agreed it was useful to qualify this factor to avoid double-counting with step one factors.

3.7 **A4 'Firearm is prohibited under section 5 and subject to minimum term (where not already increased to minimum term)' (guidelines 6 and 7):** The FWG agreed to add this wording to clarify that the factor should not apply in cases where the sentence has already been increased to meet the minimum term.

3.8 **A4/A5 'Firearm under section 5(1)(a) (automatic weapon)'**: This factor was already included as an aggravating factor under the transfer/manufacture guideline. The FWG decided to include it for the possession with intent guidelines as well. This is in addition to the aggravating factor in guidelines 6 and 7 for firearms prohibited under section 5.

3.9 **A5/A6 'Firearm modified to make it more ~~lethal~~ dangerous'**: The FWG considered that 'dangerous' was more appropriate wording for this factor.

3.10 **A11/A14 'Attempts to conceal or dispose of the firearm or other evidence'**: The FWG has agreed to include this factor, in part to address concerns over cases where the offender has taken steps to dispose of the firearm so it has not been recovered. The wording is consistent with that used in bladed articles, drugs, fraud and theft, but with specific reference to disposal of the firearm. It is broadly drafted so that it will apply to disposal of this as well as other evidence. The factor has been included in the possession with intent guidelines and the transfer/manufacture guideline (guidelines 5-8).

3.11 **M4 'Imitation firearm is unrealistic and unconvincing' (guidelines 6 and 7):** Previously this factor used the wording 'crude and unrealistic'. The Council had concerns about how 'unrealistic' would be assessed and from whose perspective this would be considered. The FWG has proposed this revised wording.

3.12 **M7 'Offender co-operated with investigation and/or made early admissions'**: This factor has been included to replace the factor 'co-operation with police'. The new wording is very similar to that used in the fraud guideline.

Question 2: Does the Council agree with these changes to aggravating and mitigating factors in guidelines 5-7?

Possession with intent (guidelines 6-7/Annexes F-G) – clarification in culpability factors

3.13 Minor changes are proposed to the culpability factors in the possession with intent guidelines that cover both firearms and imitation firearms; these are tracked in guideline 6

(**Annex F page 2**). The changes are to clarify that the factors relating to the firearm being discharged, loaded or held with ammunition, or not produced/visible, apply to imitation firearms as well as firearms. This is necessary because many of the weapons involved in cases under guidelines 6 and 7 are BB guns/air weapons or other items which can be loaded etc but are treated as imitation firearms. If the Council agrees with the clarification, it will be applied to guidelines 6 and 7, as well as guideline 4 (Annex D) on carrying in a public place, as these all cover imitation firearms.

Question 3: Does the Council agree with these changes to culpability factors in guidelines 4, 6 and 7 to clarify that they apply to imitation firearms?

Revisions to transfer/manufacture (guideline 8/Annex H) – harm

3.14 The Council agreed the model of harm for this guideline at **Annex H**, focusing on the scale and nature of the criminal enterprise and any actual harm caused. The Council asked the FWG to consider the wording of the harm factors.

3.15 **Factors relating to scale and nature of criminal enterprise (Annex H page 3):** At the last meeting, the Council decided not to include general explanatory wording about the scale and nature of the criminal enterprise above the harm categories,¹ but instead to explore putting some of the content from this wording into factors. This has been considered by the FWG. The FWG has agreed to include certain sub-factors on scale and nature under category 1 and category 3, relating to the number of weapons, time period, geographic range, and connection to organised criminal groups, drawing on *Stephenson*.² The wording ‘indicators may include’ has been added to make it clear the factors are indicative and not exclusive.

3.16 Elements not included are: type and variety of weapon (as these are effectively captured at step two and more broadly under sophistication); substantial profits (due to overlap with the culpability factors relating to expectation of financial and other advantage); number of people involved (as a small number of people could still be involved in large-scale production or distribution); and specific factors indicating sophistication, such as organisational complexity/coordination or sophisticated methods of operation.

¹ Wording originally proposed was as follows, located above the table:

“When considering the **scale** and **nature** of the enterprise, relevant considerations may include the number, type and variety of weapons involved, the value of profits, the number of people involved, the period of time and geographic range over which the enterprise operated, and connections to organised criminal groups.”

² *Attorney General's References (Nos 128-141 of 2015 and 8-10 of 2016)* [2016] EWCA Crim 54 (*R v Stephenson*).

3.17 New factors on scale and nature have been added to category 1 and category 3 only. Rather than including specific factors under category 2, the stand-alone catch-all factor in that category has been shifted so it forms part of the ‘medium-scale enterprise and/or some degree of sophistication’ factor. This makes it clearer that this catch-all factor will capture cases falling in between the specific factors in categories 1 and 3 or where there are factors from each of those categories that balance each other out (such as operation over a short time period or small geographic range but involving a large volume of weapons).

3.18 The text is as follow, listing the scale and sophistication factors only (actual harm factors are below at paragraph 3.19):

Category 1	<ul style="list-style-type: none"> • Large-scale commercial and/or highly sophisticated enterprise – indicators may include: <ul style="list-style-type: none"> ○ Large number of prohibited weapons/ammunition involved ○ Operation over significant time period ○ Operation over significant geographic range ○ Close connection to organised criminal group(s)
Category 2	<ul style="list-style-type: none"> • Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • Smaller-scale and/or unsophisticated enterprise – indicators may include: <ul style="list-style-type: none"> ○ Limited number of prohibited weapons/ammunition involved ○ Operation over limited time period ○ Operation over limited geographic range ○ Minimal/no connection to organised criminal group(s)

Question 4: Does the Council agree with these additional harm factors on scale and sophistication of the criminal enterprise in guideline 8?

3.19 **Factors relating to actual harm (Annex H page 3):** The FWG has proposed slight changes to the factors relating to actual harm. ‘Subsequently’ has been added to each factor to clarify that they apply to harm arising *after* the transfer/manufacture. ‘Extensively’ in category 1 and ‘serious’ in category 2 have been removed as they were seen as unnecessary. The factors now read as follows:

Category 1	<ul style="list-style-type: none"> Evidence firearm/ammunition <u>subsequently</u> used extensively to cause serious injury or death
Category 2	<ul style="list-style-type: none"> Evidence firearm/ammunition <u>subsequently</u> used in serious criminal offending (where not at category 1)
Category 3	<ul style="list-style-type: none"> Evidence firearm/ammunition not <u>subsequently</u> used in criminal offending

Question 5: Does the Council agree with these changes to actual harm factors in guideline 8?

Revisions to transfer/manufacture (Guideline 8/Annex H) – aggravating/mitigating factors

3.20 **Aggravating factors A10 and A5 (Annex H page 4-5):** The FWG agreed to remove factor A10 ('Firearm/ammunition held with multiple weapons ...') as it is less relevant to manufacture/transfer than simple possession and possession with intent, the volume of weapons is already an element in harm, and the presence of ammunition is captured in A5.

3.21 Factor A5 has been amended to: 'Compatible ammunition and/or silencer(s) supplied with firearm (See step six on totality when sentencing for more than one offence.)'. The extra wording has been added because analysis of transcripts indicated that around 75% of cases involved compatible ammunition as well as the firearm, and often there were separate charges relating to the ammunition.

Question 6: Does the Council agree with removing A4 and the addition to A5 on totality?

Order of aggravating/mitigating factors across the guidelines

3.22 The Council asked for the aggravating and mitigating factors to be re-ordered. Across all of the guidelines, the factors have been grouped so that those relating to the firearm/imitation firearm itself come first, followed by other factors relating to the offending, and finally factors relating to the offender (noting that these distinctions are not always clear-cut). Guideline 6 or 7 may be referred to as an example as they have the highest number of aggravating factors.

Question 7: Does the Council agree with the order of the step two factors?

Sentence levels

3.23 The Council considered an earlier draft of sentence levels for guideline 1 at the December 2018 meeting, and guidelines 5-7 at the March 2019 meeting. The following section of the paper sets out revisions made to sentence levels for guideline 1, and levels for

guidelines 2-4 and 8 which have not yet been considered. This is followed by an overview of the sentence levels across the eight guidelines.

3.24 Data on sentence levels, including volumes, outcomes, pre-guilty plea ACSLs, and pre-guilty plea sentence lengths is at **Annex I**.

Sentence levels – possession of prohibited weapon (Guideline 1/Annex A)

3.25 The Council initially considered a draft of these sentence levels at the December 2018 meeting. It was agreed to use two separate tables, one for cases subject to the 5-year minimum term (table 1) and one for cases not subject to the minimum term (table 2). The Council was generally content with the levels in the two tables but wanted to reduce the 6 month increments in the starting points and category ranges.

3.26 The tables have been revised to remove most of the 6 month increments. In the minimum term table (table 1), the starting point in boxes B3 and C2 have been left at 5 years 6 months' custody. There is only a limited range of sentences in this table (5 to 10 years) and the lower end is somewhat crowded so this 6 month increment is necessary to distinguish these boxes from those above and below.

3.27 There is one particular issue to note with table 2 (non-minimum term cases). Compared with other firearms offences, the offences falling under this table have relatively low rates of immediate custody, at 22%, and fairly high rates of suspended sentence (28%) and community orders (27%). A further 13% of offenders received fines and 8% received conditional discharges. The estimated median pre-guilty plea custodial length was 1 year 1 month for these non-minimum term cases.

3.28 It is expected the vast majority of table 2 cases will fall into culpability B or C as most will be type 3 weapons and there will be very few type 2 weapons that could fall into culpability A. Under the current levels in table 2, the boxes covering custody are B1, B2 and C1. The starting point in C1 and B2 has been set at 6 months, while the starting point in B1 is 2 years. The ranges across B1, B2 and C1 will cover around 90% of current custodial sentence levels, with the small proportion of cases that are higher expected to be covered by the cases falling into culpability A. The 6 month starting point in C1/B2 may appear low at first glance, but it was considered preferable to 1 year, as currently half of immediate custodial cases fall below 1 year 1 month, so setting the starting point for both boxes at 1 year would likely inflate sentence levels.

Question 8: Does the Council agree with the revised levels for guideline 1?

Sentence levels – possession without certificate (Guideline 2/Annex B)

3.29 The Council is asked to consider the draft levels for guideline 2 (**Annex B**) covering offences of possession without a certificate. The offences covered have a maximum penalty of 5 years' custody. The aggravated form of the offence (possession of a shortened shotgun or a thing converted into a firearm) has a maximum of 7 years. In 2017 there were around 150 offenders sentenced, including 14 for the aggravated form (less than 10% of total cases). In 2017 for all cases, immediate custody was the outcome in 42% of cases, with 25% receiving suspended sentences. A further 4% received a community order, while 14% received a fine, and 14% a discharge (13% conditional and 1% absolute). For custodial sentences, the estimated median pre-guilty plea length was 3 years.

3.30 The sentence levels have been drafted on the basis that most cases will fall into culpability B and C. Most cases will involve type 2 weapons and few are expected to involve high culpability factors. In the top box A1, the top of the range has been set at 4 years 6 months as 19% of immediate custody cases in 2017 received 5 years' custody. The top of the range could be set at 5 years but it is usual to leave some headroom and there may have been other factors such as concurrent charges that increased these sentences to the maximum sentence.

3.31 While the top of the range in A1 goes to 5 years' custody, there is a separate statement in bold above the table to draw sentencers' attention to the seven year maximum penalty for the aggravated form of the offence, stating that it may be appropriate to go above the category range for these cases. The aggravated weapons (converted firearms or shortened shotguns) are type 1 weapons so most will fall into culpability A.

3.32 In terms of non-custodial outcomes, the offences covered by this guideline have relatively few community orders (4%) and a relatively high proportion of conditional discharges (13%). Community orders are currently within the range for 5 out of 9 boxes (albeit only at the bottom of the range for A3, B2 and C1). This has the potential to increase rates of community orders, but seems preferable to restricting these boxes to custody only. Discharge has been used as the bottom of the range for both C2 and C3 to reflect the relatively high proportion of discharges.

Question 9: Does the Council agree with the proposed levels for guideline 2?

Sentence levels – possession by person prohibited (Guideline 3/Annex C)

3.33 The Council is asked to consider the draft sentence levels for guideline 3 (Annex C) on possession by a person with previous convictions who is prohibited from possessing a

firearm or ammunition. This is quite a low volume offence with around 50 offenders sentenced in 2017. Like the possession without a certificate guideline, the maximum penalty is 5 years' custody. Slightly more offenders received immediate custody, but sentences were shorter: in 2017, immediate custody was the outcome in 50% of cases, with 19% receiving suspended sentences. A further 10% received a community order, while 13% received a fine, and 8% a discharge. For custodial sentences, the estimated median pre-guilty plea length was 1 year 3 months (compared with 3 years for possession without a certificate).

3.34 The lower end of the sentence table is similar to that for possession without a certificate, since the non-custodial outcomes are fairly similar. However, where the box contains a custodial option, the levels are lower to reflect the lower median pre-guilty plea sentence lengths. The top of box A1 has been set at 4 years; there was only 1 custodial sentence falling above 4 years in 2017 (4% of custodial sentences), compared with the possession without a certificate guideline which had 19%.

Question 10: Does the Council agree with the proposed levels for guideline 3?

Sentence levels – carrying in public place (Guideline 4/Annex D)

3.35 The Council is asked to consider the sentence levels for guideline 4 (Annex D) on carrying a firearm in a public place. This offence covers a person having with them (a) a loaded shot gun; (b) an air weapon (whether loaded or not); (c) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm; or (d) an imitation firearm. It carries a maximum penalty of 7 years' custody, or 12 months' custody for imitation firearms. There were around 200 offenders sentenced in 2017. This was mainly for imitation firearms (nearly 60% of cases) and air weapons (36%).

3.36 This offence had much lower rates of immediate custody, compared with possession without a certificate and possession by person prohibited, and higher levels of community orders. In 2017, 21% of offenders received immediate custody, 24% received suspended sentences, 37% community orders, 12% fines and 5% conditional discharge. The estimated median pre-guilty plea sentence length was 6 months, significantly shorter than that for possession without a certificate (3 years) and possession by person prohibited (1 year 3 months).

3.37 This offence is subject to the minimum term, so the guideline will carry the usual guidance on this at step three, however it appears that this offence is only very rarely charged for weapons subject to the minimum term. All sentences were less than 5 years in 2017. Very few of these offences involve firearms or shotguns, and it is likely that cases

involving prohibited weapons are charged under other offences such as possession of a prohibited weapon or a possession with intent offence, which have higher maximum penalties. Since the application of the minimum term is expected to be rare, it was considered unnecessary to include separate tables for minimum term and non-minimum term cases.

3.38 As noted above, many of the cases under this offence involve imitation firearms, which have a lower maximum penalty of 12 months. Imitation firearms are type 3 weapons so would fall under culpability B or C. Only box B1 includes a range that goes above 12 months. The differing maximum penalty has been addressed in the table through an asterisk in box B1, highlighting the shorter maximum for imitation firearms.

Question 11: Does the Council agree with the proposed levels for guideline 4, including the single table?

Sentence levels – transfer/manufacture (Guideline 8/Annex H)

3.39 The manufacture and transfer offences carry a maximum penalty of life imprisonment. The offences are low volume with 25 cases in 2017. All offenders sentenced in 2017 received immediate custody. The estimated median pre-guilty plea sentence length was 9 years (note that this does not include any manufacture offences as there were none in 2017).

3.40 The Council considered the *Stephenson* judgment at the March meeting, in particular the indications about sentence levels for those in various roles in a large-scale enterprise. In brief the main points were (from [7]):

- For the leader of the enterprise, a starting point of 25 years prior to discount for plea (not to be taken as a maximum), with a materially greater sentence appropriate for previous convictions involving firearms. Those engaged in criminal enterprise under the leader should receive sentences reflecting the sentence for the leader (before any discount for plea), depending on the role they played;
- For the purchasers, sentences in the region of 15 years, with a significantly higher sentence required if any previous convictions for firearms;
- For those who assisted in transactions, sentences of not less than 8 years; sentences materially greater were required in cases where the assistance was significant; in the present case the sentences should have ranged from 12–8 years, depending on the role they played and any previous association with guns.

3.41 At the March meeting the Council considered whether the top box for this offence should be the same or higher than for the possession with intent to endanger life offence (Guideline 5/Annex E), in light of the *Stephenson* judgment. The Council agreed to reflect *Stephenson* with a higher range and starting point. Accordingly the starting point for A1 has been set at 20 years with a range of 16-26, compared with 18 years and a range of 16-22 for possession with intent to endanger life. A starting point of higher than 20 years was considered but this would be out of step with sentence levels from 2017 data.

3.42 Since purchasers would generally fall into culpability B, the 15 year starting point for purchasers in *Stephenson* is broadly equivalent to B1 (being a large-scale enterprise at harm category 1). B1 has a starting point of 14 years with a range of 12-18 years.

3.43 The range indicated in *Stephenson* of 8-12 years for those providing assistance in the transaction (in a large-scale enterprise at harm 1) broadly corresponds to the C1 box with a starting point of 10 years and a range of 8-14 years. Those providing more significant assistance may instead fall into culpability B (with materially greater assistance) or A (where a key facilitator).

Question 12: Does the Council agree with the proposed levels for guideline 8?

Sentence levels – comparison

3.44 It is useful for the Council to consider an overview of sentence levels across the package of guidelines as well as for each individual guideline. It is necessary to ensure that the individual levels are appropriate when compared with other firearms guidelines. The table below on page 12 sets out the sentence ranges, selected boxes from the sentence tables and current median sentence lengths for each guideline. Harm/culpability are equally balanced currently, so in each guideline the sentence table is symmetrical (with the exception of discharge being used in two boxes in guideline 2 – see paragraph 3.32 above). The Council may wish to consider whether it is content with this approach or whether it wishes to weight culpability (or harm) higher for any particular offence.

3.45 Further work will be done on the sentence levels across all guidelines to test them against transcripts.

Question 13: Does the Council agree with the overall relativity of sentence levels across the guidelines?

GUIDELINE	STAT MAX	RANGE	TOP BOX (A1)	MIDDLE BOX (B2)	BOTTOM BOX (C3)	MEDIAN SENTENCE LENGTH PRE-GP (2017)
1 – Possession of prohibited weapon*	10 years	<u>Table 1 Minimum term cases</u> 5 – 9 years	Starting point 8 years' custody Category range 7 – 9 years' custody	Starting point 6 years' custody Category range 5 – 7 years' custody	Starting point 5 years' custody Category range 5 – 6 years' custody	7 years 6 months
		<u>Table 2 Non-minimum term cases</u> Discharge – 5 years	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 6 months' custody Category range High level community order – 2 years' custody	Starting point Band C fine Category range Discharge – Low level community order	1 year 1 month
2 – Possession without certificate	5 years (7 years aggravated form)	Discharge – 4 years 6 months	Starting point 4 years' custody Category range 2 – 4 years 6 months' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Band A fine Category range Discharge – Band C Fine	3 years
3 – Possession by person prohibited	5 years	Discharge – 4 years	Starting point 3 years custody Category range 2 – 4 years' custody	Starting point 6 months' custody Category range High level community order – 1 year's custody	Starting point Band A fine Category range Discharge – Band C Fine	1 year 3 months
4 – Carrying in a public place*	7 years (12 months imitations)	Discharge – 4 years	Starting point 2 years custody Category range 1 – 4 years' custody	Starting point 3 months' custody Category range Medium level community order – 1 year's custody	Starting point Band A fine Category range Discharge – Band C Fine	6 months
5 – Possession with intent to endanger life*	Life	4 – 22 years	Starting point 18 years' custody Category range 16 – 22 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 5 years' custody Category range 4 – 7 years' custody	12 years
6 – Possession with intent to cause fear of violence*	Life	<u>Table 1 Firearms</u> 6 months – 9 years	Starting point 8 years' custody Category range 7 – 9 years' custody	Starting point 4 years' custody Category range 2 – 7 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 2 years' custody	5 years
		<u>Table 2 Imitation firearms</u> Medium level community order – 8 years	Starting point 7 years' custody Category range 6 – 8 years' custody	Starting point 3 years' custody Category range 1 – 5 years' custody	Starting point 6 months' custody Category range Medium level community order – 1 year's custody	2 years 3 months

GUIDELINE	STAT MAX	RANGE	TOP BOX (A1)	MIDDLE BOX (B2)	BOTTOM BOX (C3)	MEDIAN SENTENCE LENGTH PRE-GP (2017)
7 – Possession with intent* – other offences (intent to resist arrest, intent to commit an indictable/ Schedule 1 offence)	Life	<u>Table 1 Firearms</u> 1 – 16 years	Starting point 12 years' custody Category range 10 – 16 years' custody	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	12 years ³
		<u>Table 2 Imitation firearms</u> High level community order – 12 years	Starting point 9 years' custody Category range 6 – 12 years' custody	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 1 year's custody Category range High level community order – 3 years' custody	6 years
8 – Transfer/ Manufacture*	Life	5 – 26 years	Starting point 20 years' custody Category range 16 – 26 years' custody	Starting point 10 years' custody Category range 8 – 14 years' custody	Starting point 6 years' custody Category range 5 – 8 years' custody	9 years ⁴

* Minimum term may apply.

³ These figures should be treated with caution, due to the low number of offenders sentenced for this offence involving a firearm.

⁴ Note that as there were no manufacture offences sentenced in 2017, this figure includes transfer offences only.

4 IMPACT

4.1 A draft resource assessment will be considered in due course. The resource assessment will be developed in line with the Council's decision at the September 2018 meeting that the guideline should aim to replicate current sentencing practice (subject to specific issues arising out of the individual sentencing tables). The impact on resources within the system is likely to be negligible if the guideline continues to be developed in line with the aim of replicating current practice.

5 RISK

5.1 The Offensive Weapons Bill completed its third reading stage in the House of Lords on 19 March 2019 where final amendments were made. The Bill will now go to the Commons for consideration of Lords amendments. As noted previously, the Bill will prohibit two further items: rapid firing rifles⁵ and bump stock devices.⁶ Both items will be subject to the minimum term. They will need to be incorporated into the type of weapon table in the possession guidelines once the Bill has completed its passage.

5.2 The Home Office expects the Bill to pass and get Royal Assent in early April, subject to EU exit business. The date the Bill will come into effect is not yet known, but implementation of the firearms provisions is expected to be phased, to allow some time for people to surrender their rifles and claim compensation ahead of the prohibition on possession taking effect. We will continue to liaise with the Home Office as the Bill progresses.

⁵ Certain chambered weapons from which cartridge cases are extracted by propellant gas. According to the Home Office, these fire at a rate that is significantly greater than a conventional bolt-action rifle, making them closer to self-loading rifles, which are already prohibited.

⁶ A bump stock device is an attachment that increases the rate of fire, so that a semi-automatic weapon can fire almost as quickly as an automatic weapon.

Firearms – Possession of prohibited weapon

Possession, purchase or acquisition of a prohibited weapon or ammunition

Firearms Act 1968 (section 5(1), 5(1A))

Indictable only:

Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c)
Section 5(1A)(a)

Triable either way:

Section 5(1)(b)
Section 5(1A)(b), (c), (d), (e), (f), (g)

Maximum: 10 years' custody

Offence range: Discharge – 9 years' custody

This offence is subject to statutory minimum sentencing provisions.
See STEPS TWO AND THREE for further details.

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**.

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

The categorisations below are indicative only and should not be applied mechanistically. Courts should take care to ensure the categorisation is appropriate for the specific weapon by moving up or down a category where necessary. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

References to weapon below include a component part of such a weapon.

Type 1	Weapon that is capable of killing two or more people at the same time or in rapid succession <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(a) ○ section 5(1)(ab) ○ section 5(1)(aba) ○ section 5(1)(ac) ○ section 5(1)(ad) ○ section 5(1)(ae) ○ section 5(1A)(c)
Type 2	All other weapons falling between Type 1 and Type 3 <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(af) ○ section 5(1A)(a) Ammunition under section 5(1)(c), 5(1A)(b) and (d)-(g) (where not at Type 3)
Type 3	Weapon that is not designed to be lethal <ul style="list-style-type: none"> • This would normally include a weapon under section 5(1)(b) Very small quantity of ammunition

Culpability B – Other culpability factors

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:
High culpability: <ul style="list-style-type: none"> • Firearm discharged • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability: <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition <u>or stun gun that is charged</u> • Firearm/ammunition intended for use (where not at High culpability)
Lower culpability: <ul style="list-style-type: none"> • No use or intention to use

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
Table 1 should be used if the offence is subject to statutory minimum sentencing provisions, unless there are exceptional circumstances. Table 2 should be used for all other cases. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
TABLE 1	Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))		
Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7-9 years' custody	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 6 years' custody Category range 5-7 years' custody
Category 2	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody
Category 3	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody	Starting point 5 years' custody Category range 5 – 6 years' custody
TABLE 2	Offences not subject to the statutory minimum sentence		
Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 2 years' custody
Category 2	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 2 years' custody	Starting point Medium level community order Category range Band D fine – High level community order
Category 3	Starting point 6 months' custody Category range High level community order – 1 year's custody	Starting point Medium level community order Category range Band D fine – High level community order	Starting point Band C fine Category range Discharge – Low level community order

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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Firearm modified to make it more dangerous
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing for more than one offence.)
- A6. Offence was committed as part of a group (except where already taken into account at step one)
- A7. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A8. Abuse of position as registered firearms dealer or certificate holder
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A11. Failure to comply with current court orders
- A12. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. No knowledge or suspicion that firearm/ammunition is prohibited
- M6. Held on behalf of another through coercion, intimidation, or exploitation

- M7. Voluntary surrender of firearm/ammunition
- M8. Offender co-operated with investigation and/or made early admissions
- M9. Remorse
- M10. Serious medical condition requiring urgent, intensive or long-term treatment
- M11. Age and/or lack of maturity
- M12. Mental disorder or learning disability
- M13. Sole or primary carer for dependent relatives

STEP THREE

Minimum Term

1. Where the minimum term provisions under section 51A of the Firearms Act 1968 apply, a court must impose a sentence of at least 5 years' custody **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.**

Applicability

2. The minimum terms provisions apply when sentencing:
 - an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
 - certain other offences committed in respect of a firearm or ammunition specified in the provisions above.¹
3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of 5 years applies to offenders aged 18 or over at the date of conviction. [See below \[LINK\] for sentencing offenders aged under 18.](#)
5. Where the minimum term applies, this should be stated expressly.

Exceptional circumstances

6. In considering whether there are 'exceptional circumstances' that would justify not imposing the statutory minimum sentence, the court must have regard to the particular circumstances of the offence and the offender.
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing:² see Sentencing B in [Criminal Practice Directions](#) VII: Sentencing. Where the offender has sought to rely on exceptional circumstances, a clear justification should be given for why exceptional circumstances are found or not found.

Principles

8. [The circumstances must indeed be exceptional.](#)³ It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term by too readily accepting exceptional circumstances.⁴ The court should

¹ s51A(1)-(1A) Firearms Act 1968: The minimum term provisions also apply to the following offences in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a):

- section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- section 16 (possession of firearm with intent to injure);
- section 16A (possession of firearm with intent to cause fear of violence);
- section 17 (use of firearm to resist arrest);
- section 18 (carrying firearm with criminal intent);
- section 19 (carrying a firearm in a public place);
- section 20(1) (trespassing in a building carrying a firearm).

² [R v Rogers Re B 2016 EWCA Crim 801.](#)

³ [R Wilkinson \[2009\] EWCA Crim 1925.](#)

⁴ [R v Dawson 2017 EWCA Crim 2244.](#)

consider whether the imposition of the minimum term would result in an arbitrary and disproportionate sentence.⁵

9. The court should look at all of the circumstances as a whole. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.⁶
10. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
 - One or more lower culpability factors;
 - The type of weapon or ammunition falling under type 2 or 3;
 - One or more mitigating factors;
 - A plea of guilty.⁷

Where exceptional circumstances are found

11. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

12. The court may find it useful to refer to the range of sentences under culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in STEP TWO above. The court should impose a sentence that is appropriate to the individual case.

Sentencing offenders aged under 18 [*DROPDOWN BOX*]

1. Where the offender is aged 16 or 17 when the offence was committed, the minimum term is 3 years' custody.⁸ Where the offender is under 16 when the offence was committed, the minimum term does not apply.⁹
2. Subject to the minimum term, the court should determine the sentence in accordance with the *Sentencing Children and Young People* guideline, particularly paragraphs 6.42-6.49 on custodial sentences.
3. This guidance states at paragraph 6.46: "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."
4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders under 18.

⁵ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁶ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁷ R v Shaw 2011 EWCA Crim 167.

⁸ Section 51A(5)(a).

⁹ Section 51A(1)(b).

STEP FOUR

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 FIVE

Reduction for guilty pleas

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

Where a **minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required 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

Ancillary orders

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

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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.

Firearms – Possession without certificate

Possession, purchase or acquisition of a firearm without a certificate

Firearms Act 1968 (section 1(1)(a))

Possession, purchase or acquisition of ammunition without a certificate

Firearms Act 1968 (section 1(1)(b))

Possession, purchase or acquisition of a shotgun without a certificate

Firearms Act 1968 (section 2(1))

Triable either way

Maximum: 5 years' custody, or 7 years for the section 1(1) offence where it is aggravated within the meaning of section 4(4) of the Act (shortened shotgun or converted firearm)

Offence range: Discharge – 4 years 6 months' custody

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**.

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

Type 1	<ul style="list-style-type: none"> • Shotgun which has been shortened within the meaning of section 4(4) • Firearm which has been converted within the meaning of section 4(4)
Type 2	<ul style="list-style-type: none"> • All other firearms or shotguns • Ammunition (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Very small quantity of ammunition

Culpability B – Other culpability factors

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:	
High culpability:	<ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability:	<ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
Lower culpability:	<ul style="list-style-type: none"> • No use or intention to use

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

<p>Harm The court should consider the factors set out below to determine the level of harm that has been caused or was risked.</p> <p>Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.</p> <p>This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.</p> <p>When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
<p>Category 2</p>	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
<p>Category 3</p>	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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 the offence is aggravated under section 4(4) (i.e. the weapon is a converted firearm or shortened shotgun), the maximum penalty is seven years and it may be appropriate to go above the top of the category range.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody Category range 2 – 4 years 6 months' custody	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody
Category 2	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Medium level community order Category range Discharge – 6 months' custody
Category 3	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Medium level community order Category range Band A fine – 6 months' custody	Starting point Band A fine Category range Discharge – Band C Fine

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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Firearm modified to make it more dangerous
- A4. Steps taken to disguise firearm

- A5. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step five on totality when sentencing for more than one offence.)
- A6. Offence was committed as part of a group (except where already taken into account at step one)
- A7. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A8. Abuse of position as registered firearms dealer or certificate holder
- A9. Possession continued after certificate refused or revoked
- A10. Poor record of firearms compliance
- A11. Commission of offence whilst under the influence of alcohol or drugs
- A12. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A13. Failure to comply with current court orders
- A14. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. Held on behalf of another through coercion, intimidation, or exploitation
- M6. Steps taken to obtain certificate
- M7. Certificate not obtained/renewed due to genuine oversight or misunderstanding
- M8. Good record of firearms licensing compliance
- M9. Voluntary surrender of firearm/ammunition
- M10. Offender co-operated with investigation and/or made early admissions
- M11. Remorse
- M12. Serious medical condition requiring urgent, intensive or long-term treatment
- M13. Age and/or lack of maturity
- M14. Mental disorder or learning disability
- M15. 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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 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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Firearms – Possession by person prohibited

Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition

Firearms Act 1968 (section 21(4))

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

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**.

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or ammunition prohibited under section 5 (whether or not the minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required • Ammunition for which a certificate is required (where not at Type 3)
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm • Very small quantity of ammunition

Culpability B – Other culpability factors

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:
High culpability: <ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability: <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
Lower culpability: <ul style="list-style-type: none"> • No use or intention to use

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

<p>Harm The court should consider the factors set out below to determine the level of harm that has been caused or was risked.</p> <p>Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.</p> <p>This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.</p> <p>When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.</p>	
<p>Category 1</p>	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
<p>Category 2</p>	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
<p>Category 3</p>	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody Category range 2 – 4 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 1 year's custody
Category 2	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 6 months' custody Category range High level community order – 1 year's custody	Starting point Medium level community order Category range Band A fine – 6 months' custody
Category 3	Starting point 6 months' custody Category range High level community order – 1 year's custody	Starting point Medium level community order Category range Band A fine – 6 months' custody	Starting point Band A fine Category range Discharge – Band C Fine

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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Firearm modified to make it more dangerous
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step five on totality when sentencing for more than one offence.)

- A6. Offence was committed as part of a group (except where already taken into account at step one)
- A7. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A8. Commission of offence whilst under the influence of alcohol or drugs
- A9. Failure to comply with current court orders
- A10. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. No knowledge or suspicion that firearm/ammunition is prohibited
- M6. Held on behalf of another through coercion, intimidation, or exploitation
- M7. Genuine misunderstanding about terms of prohibition
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. 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 reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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 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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Firearms – Carrying in a public place

Carrying a firearm in a public place

Firearms Act 1968 (section 19)

- (a) a loaded shot gun
- (b) an air weapon (whether loaded or not)
- (c) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm
- (d) an imitation firearm

Triable either way:

Indictable only if the firearm is a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af) or section 5(1A)(a) of the Firearms Act 1968

Summary only if the firearm is an air weapon

Maximum: 7 years' custody (12 months' custody for imitation firearms)

Offence range: Discharge – 4 years' custody

This offence is subject to statutory minimum sentencing provisions. See STEPS TWO and THREE for further details.

**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**.

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

Type 1	<ul style="list-style-type: none"> • Firearm or shotgun prohibited under section 5 (whether or not the mandatory minimum sentence applies) (where not at Type 2)
Type 2	<ul style="list-style-type: none"> • Weapon prohibited under section 5(1)(b) • Firearm, shotgun or air weapon for which a certificate is required
Type 3	<ul style="list-style-type: none"> • Air weapon that is not prohibited and for which no certificate is required • Imitation firearm

Culpability B – Other culpability factors

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:
<p>High culpability:</p> <ul style="list-style-type: none"> • Firearm discharged, other than for lawful purpose • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
<p>Medium culpability:</p> <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition used or intended for use (where not at High culpability)
<p>Lower culpability:</p> <ul style="list-style-type: none"> • No use or intention to use • Possession falls just short of reasonable excuse

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
The offence may be subject to a minimum sentence. Where the minimum sentence applies, ¹ and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years custody Category range 1 – 4 years' custody	Starting point 1 years' custody Category range 6 months' – 2 years' custody*	Starting point 3 months' custody Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 years' custody Category range 6 months' – 2 years custody	Starting point 3 months' custody Category range Medium level community order – 1 year's custody	Starting point Medium level community order Category range Band A fine – 3 months' custody
Category 3	Starting point 3 months' custody Category range Medium level community order – 1 year's custody	Starting point Medium level community order Category range Band A fine – 3 months' custody	Starting point Band A fine Category range Discharge – Band C Fine

* Where the firearm is an imitation firearm, the maximum penalty is 12 months' 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:

- A1. 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
- A2. Offence committed whilst on bail

¹ The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

Other aggravating factors:

- A3. Firearm modified to make it more dangerous
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Steps taken to make imitation firearm appear more realistic (where not charged separately)
- A6. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing for more than one offence.)
- A7. Offence was committed as part of a group (except where already taken into account at step one)
- A8. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A9. Abuse of position as registered firearms dealer or certificate holder
- A10. Commission of offence whilst under the influence of alcohol or drugs
- A11. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A12. Failure to comply with current court orders
- A13. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. No knowledge or suspicion that firearm/ammunition is prohibited
- M6. Held on behalf of another through coercion, intimidation, or exploitation
- M7. Genuine mistake about whether covered by lawful authorisation
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. Sole or primary carer for dependent relatives

STEP THREE
Minimum Terms
[To come]

STEP FOUR

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 FIVE

Reduction for guilty pleas

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

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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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Firearms – Possession with intent to endanger life

Possession with intent to endanger life

Firearms Act 1968 (section 16)

Indictable only

Maximum: Life imprisonment

Offence range: 4 – 22 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).

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 offence is subject to statutory minimum sentencing provisions. See STEPS TWO and THREE for further details.

**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:
<p>A – High culpability:</p> <ul style="list-style-type: none"> • Sophisticated nature of offence/significant planning • Leading role where offending is part of a group activity • Distribution or supply of firearms on a large scale • Firearm discharged • Prolonged incident
<p>B – Medium culpability:</p> <ul style="list-style-type: none"> • Firearm loaded or held with compatible ammunition but not discharged • Significant role where offending is part of a group activity • Some degree of planning • Other cases falling between high and lower culpability
<p>C – Lower culpability:</p> <ul style="list-style-type: none"> • Lesser role where offending is part of group activity • Little or no planning or unsophisticated offending • Firearm not produced or visible • Conduct limited in scope and duration

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual harm caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Severe physical harm caused • Severe psychological harm caused
Category 2	<ul style="list-style-type: none"> • Serious physical harm • Serious psychological harm • Offence committed in circumstances where person(s) put at high risk of <u>death or serious physical or psychological injury or death</u> • Offence committed in circumstances where there is a high risk of serious disorder • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • Alarm/distress caused • <u>All other cases</u> • Offence committed in circumstances where person(s) put at no/minimal risk of serious physical injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step seven).

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.			
This offence is subject to minimum sentence provisions. Where the minimum sentence applies, ¹ and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 18 years' custody Category range 16 – 22 years' custody	Starting point 14 years' custody Category range 11 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody
Category 2	Starting point 14 years' custody Category range 11 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 7 years' custody Category range 5 – 9 years' custody
Category 3	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 5 years' custody Category range 4 – 7 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:

- A1. 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
- A2. Offence committed whilst on bail

¹ The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

- A3. 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:

- A4. Firearm under section 5(1)(a) (automatic weapon)
- A5. Firearm modified to make it more ~~lethal~~dangerous
- A6. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A7. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A8. Offence was committed as part of a group (except where already taken into account at step one)
- A9. Offence committed to further organised criminal activity (except where already taken into account at step one)
- A10. Expectation of substantial financial gain (except where already taken into account at step one)
- A11. Attempts to conceal or dispose of the firearm or other evidence
- A12. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A13. Abuse of position as registered firearms dealer or certificate holder
- A14. Commission of offence whilst under the influence of alcohol or drugs
- A15. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A16. Failure to comply with current court orders
- A17. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Firearm/ammunition is not prohibited under section 5
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm/ammunition
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity

- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

STEP THREE

Minimum Terms

[To come once finalised]

STEP FOUR

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 FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 244A 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

Reduction for guilty pleas

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

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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 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

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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Firearms – Possession with intent to cause fear of violence

Possession with intent to cause fear of violence

Firearms Act 1968 (section 16A)

Indictable only

Maximum: 10 years' custody

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

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 offence is subject to statutory minimum sentencing provisions. See STEPS TWO and THREE for further details.

**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:
<p>A – High culpability:</p> <ul style="list-style-type: none"> • Intention falling just short of intent to endanger life • Conduct intended to maximise fear or distress • Sophisticated nature of offence/significant planning • Leading role where offending is part of a group activity • Firearm <u>or imitation firearm</u> discharged • Prolonged incident
<p>B – Medium culpability:</p> <ul style="list-style-type: none"> • Firearm <u>or imitation firearm</u> loaded or held with compatible ammunition but not discharged • Significant role where offending is part of a group activity • Some degree of planning • Other cases falling between high and lower culpability
<p>C – Lower culpability:</p> <ul style="list-style-type: none"> • No intention to cause injury to persons • Lesser role where offending is part of group activity • Little or no planning or unsophisticated offending • Firearm <u>or imitation firearm</u> not produced or visible • Conduct limited in scope and duration

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual harm caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Severe physical harm caused • Severe psychological harm caused
Category 2	<ul style="list-style-type: none"> • Serious physical harm caused • Serious psychological harm caused • Offence committed in circumstances where person(s) put at high risk of <u>death or serious physical or psychological injury or death</u> • Offence committed in circumstances where there is a high risk of serious disorder
Category 3	<ul style="list-style-type: none"> • <u>Alarm/distress</u> caused • <u>All other cases</u>

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step seven).

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.			
Table 1 should be used if the offence is in respect of a firearm. Table 2 should be used for an imitation firearm.			
The offence may be subject to a minimum sentence. Where the minimum sentence applies, ¹ and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
TABLE 1	Firearm		
Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7 – 9 years' custody	Starting point 6 years' custody Category range 4 – 8 years' custody	Starting point 4 years' custody Category range 2 – 7 years' custody
Category 2	Starting point 6 years' custody Category range 4 – 8 years' custody	Starting point 4 years' custody Category range 2 – 7 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody
Category 3	Starting point 4 years' custody Category range 2 – 7 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 2 years' custody
TABLE 2	Imitation firearm		
Harm	Culpability		
	A	B	C
Category 1	Starting point 7 years' custody Category range 6 – 8 years' custody	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 3 years' custody Category range 1 – 5 years' custody
Category 2	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 3 years' custody Category range 1 – 5 years' custody	Starting point 1 year's custody Category range 6 months – 2 years' custody
Category 3	Starting point 3 years' custody Category range 1 – 5 years' custody	Starting point 1 year's custody Category range 6 months – 2 years' custody	Starting point 6 months' custody Category range Medium level community order – 1 year's custody

¹ The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

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:

- A1. 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
- A2. Offence committed whilst on bail
- A3. 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:

- A4. Firearm is prohibited under section 5 and subject to minimum term (where not already increased to minimum term)
- A5. [Firearm under section 5\(1\)\(a\) \(automatic weapon\)](#)
- A6. Firearm modified to make it more ~~lethal~~ [dangerous](#)
- A7. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A8. Imitation firearm is readily convertible²
- A9. Steps taken to make imitation firearm appear more realistic (where not charged separately)
- A10. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A11. Offence was committed as part of a group (except where already taken into account at step one)
- A12. Offence committed to further organised criminal activity ([except where already taken into account at step one](#))
- A13. Expectation of substantial financial gain (except where already taken into account at step one)
- A14. Attempts to conceal or dispose of the firearm or other evidence

² [Drop-down box to show relevant statutory provision or link to statute - Section 1(6) Firearms Act 1982]

- A15. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A16. Abuse of position as registered firearms dealer or certificate holder
- A17. Commission of offence whilst under the influence of alcohol or drugs
- A18. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A19. Failure to comply with current court orders
- A20. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Imitation firearm is ~~crude or unrealistic~~ unrealistic and unconvincing
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

STEP THREE

Minimum Terms

[To come once finalised]

STEP FOUR

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 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

Reduction for guilty pleas

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

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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 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

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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Firearms – Possession with intent – other offences

Use of firearm to resist arrest

Firearms Act 1968 (section 17(1))

Possession while committing a Schedule 1 offence

Firearms Act 1968 (section 17(2))

Carrying firearm with criminal intent

Firearms Act 1968 (section 18)

Indictable only

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

These are serious specified offences for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

These are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

These are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This offence is subject to statutory minimum sentencing provisions. See STEPS TWO and THREE for further details.

**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:
<p>A – High culpability:</p> <ul style="list-style-type: none"> • Sophisticated nature of offence/significant planning • Leading role where offending is part of a group activity • Firearm discharged • Prolonged incident • Serious nature of intended offence
<p>B – Medium culpability:</p> <ul style="list-style-type: none"> • Firearm loaded or held with compatible ammunition but not discharged • Significant role where offending is part of a group activity • Some degree of planning • Other cases falling between high and lower culpability
<p>C – Lower culpability:</p> <ul style="list-style-type: none"> • No intention to cause injury to persons • Lesser role where offending is part of group activity • Little or no planning or unsophisticated offending • Conduct limited in scope and duration • Firearm not produced or visible • Less serious nature of intended offence

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual harm caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Severe physical harm caused • Severe psychological harm caused
Category 2	<ul style="list-style-type: none"> • Serious physical harm caused • Serious psychological harm caused • Offence committed in circumstances where person(s) put at high risk of <u>death or serious physical or psychological injury</u> or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 3	<ul style="list-style-type: none"> • Alarm/distress caused • <u>All other cases</u>

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

Where separate charges apply, for example in relation to any death or injury caused, the court should have regard to totality (see step seven).

STEP TWO			
Starting point and category range			
<p>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.</p> <p>This offence is subject to minimum sentence provisions. Where the minimum sentence applies,¹ and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.</p>			
TABLE 1	Firearm		
Harm	Culpability		
	A	B	C
Category 1	Starting point 12 years' custody Category range 10 – 16 years' custody	Starting point 9 years' custody Category range 7 – 11 years' custody	Starting point 7 years' custody Category range 5 – 9 years' custody
Category 2	Starting point 9 years' custody Category range 7 – 11 years' custody	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 4 years' custody Category range 2 – 6 years' custody
Category 3	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 4 years' custody Category range 2 – 6 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody
TABLE 2	Imitation firearm		
Harm	Culpability		
	A	B	C
Category 1	Starting point 9 years' custody Category range 6 – 12 years	Starting point 7 years' custody Category range 5 – 9 years	Starting point 5 years' custody Category range 3 – 7 years
Category 2	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody
Category 3	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 year's custody Category range High level community order – 3 years' custody

¹ The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

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:

- A1. 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
- A2. Offence committed whilst on bail
- A3. 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:

- A4. Firearm prohibited under section 5 and subject to minimum term (where not already increased to minimum term)
- A5. [Firearm under section 5\(1\)\(a\) \(automatic weapon\)](#)
- A6. Firearm modified to make it more ~~lethal~~ [dangerous](#)
- A7. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A8. Imitation firearm is readily convertible²
- A9. Steps taken to make imitation firearm appear more realistic (where not charged separately)
- A10. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A11. Offence was committed as part of a group (except where already taken into account at step one)
- A12. Offender's actions resulted in a suspect avoiding arrest
- A13. Expectation of substantial financial gain (except where already taken into account at step one)
- A14. Attempts to conceal or dispose of the firearm or other evidence

² [Drop-down box to show relevant statutory provision or link to statute - Section 1(6) Firearms Act 1982]

- A15. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A16. Abuse of position as registered firearms dealer or certificate holder
- A17. Commission of offence whilst under the influence of alcohol or drugs
- A18. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A19. Failure to comply with current court orders
- A20. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Imitation firearm is unrealistic and unconvincing~~crude or unrealistic~~
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

STEP THREE

Minimum Terms

[To come once finalised]

STEP FOUR

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 FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 244A 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

Reduction for guilty pleas

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

Where a **mandatory minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the mandatory minimum.

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.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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 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

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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Firearms – Transfer and manufacture

Manufacture weapon or ammunition specified in section 5(1)

Firearms Act 1968 (section 5(2A)(a))

Sell or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(b))

Possess for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(c))

Purchase or acquire for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(d))

Indictable only

Maximum: Life imprisonment

Offence range: 5 – 26 years' custody

This offence is subject to statutory minimum sentencing provisions. See STEPS TWO AND THREE for further details.

**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:
<p>A – High culpability:</p> <ul style="list-style-type: none"> • Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator • Significant planning, including but not limited to significant steps to evade detection • Abuse of position of trust or responsibility, for example registered firearms dealer • Expectation of substantial financial or other advantage • Involves others through coercion, intimidation or exploitation
<p>B – Medium culpability:</p> <ul style="list-style-type: none"> • Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture • Some degree of planning, including but not limited to some steps to evade detection • Expectation of significant financial or other advantage • Other cases falling between high and lower culpability
<p>C – Lower culpability:</p> <ul style="list-style-type: none"> • Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction • Involved through coercion, intimidation or exploitation • Little or no planning • Expectation of limited, if any, financial or other advantage

Harm	
The court should consider the steps set out below to determine the level of harm caused.	
This step is assessed by reference to the scale and nature of the enterprise and any actual harm caused, regardless of the offender's role.	
Category 1	<ul style="list-style-type: none"> • <u>Large-scale commercial and/or highly sophisticated enterprise – indicators may include:</u> <ul style="list-style-type: none"> ○ <u>Large number of prohibited weapons/ammunition involved</u> ○ <u>Operation over significant time period</u> ○ <u>Operation over significant geographic range</u> ○ <u>Close connection to organised criminal group(s)</u> • Evidence firearm/ammunition <u>subsequently</u> used to cause serious injury or death
Category 2	<ul style="list-style-type: none"> • <u>Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:</u> <ul style="list-style-type: none"> ○ <u>Factors in both 1 and 3 are present which balance each other out; and/or</u> ○ <u>The harm falls between the factors as described in 1 and 3</u> • Evidence firearm/ammunition <u>subsequently</u> used in <u>serious</u> criminal offending (where not at category 1)
Category 3	<ul style="list-style-type: none"> • <u>Smaller-scale and/or unsophisticated enterprise – indicators may include:</u> <ul style="list-style-type: none"> ○ <u>Limited number of prohibited weapons/ammunition involved</u> ○ <u>Operation over limited time period</u> ○ <u>Operation over limited geographic range</u> ○ <u>Minimal/no connection to organised criminal group(s)</u> • Evidence firearm/ammunition not <u>subsequently</u> used in criminal offending

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
This offence may be subject to minimum sentencing provisions. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
Harm	Culpability		
	A	B	C
Category 1	Starting point 20 years Category range 16 – 26 years	Starting point 14 years Category range 12 – 18 years	Starting point 10 years Category range 8 – 14 years
Category 2	Starting point 14 years Category range 12 – 18 years	Starting point 10 years Category range 8 – 14 years	Starting point 8 years Category range 6 – 12 years
Category 3	Starting point 10 years Category range 8 – 14 years	Starting point 8 years Category range 6 – 12 years	Starting point 6 years Category range 5 – 8 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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Firearm under section 5(1)(a) (automatic weapon)
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Compatible ammunition and/or silencer(s) supplied with firearm ([See step six on totality when sentencing for more than one offence.](#))

- A6. Others put at risk of harm, including by location or method of manufacture or transfer
- A7. Use of business as a cover
- A8. Attempts to conceal or dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. ~~Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step six on totality when sentencing for more than one offence.)~~
- A11. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A12. Failure to comply with current court orders
- A13. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm/ammunition not prohibited weapon subject to minimum term
- M4. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M5. Genuine belief that firearm will not be used for criminal purpose
- M6. No knowledge or suspicion that item possessed was firearm/ammunition
- M7. No knowledge or suspicion that firearm/ammunition is prohibited
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. Sole or primary carer for dependent relatives

STEP THREE
Minimum Term
[To come]

STEP FOUR
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 FIVE

Reduction for guilty pleas

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

Where a **minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required 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

Ancillary orders

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

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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.

Annex I

Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, all courts, 2007-2017

Guideline group	Legislation	Section	Offence	Number of adult offenders sentenced										
				2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Group 1 (Maximum: 10 years)	Firearms Act 1968	5(1)(a)-(af), (c) 5(1A)(a)	Minimum term applies Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	249	340	360	308	207	172	206	253	364	463	402
			5(1A)(a) Possess/ purchase disguised firearm											
		Minimum term does not apply 5(1)(b) 5(1A)(b)-(g) Possess/ purchase/ sell or transfer military equipment	835	889	896	840	771	634	581	485	469	482	358	
TOTAL SECTION 5 OFFENCES				1,084	1,229	1,256	1,148	978	806	787	738	833	945	760
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	Firearms Act 1968	1(1)	Possess a firearm/ammunition without a certificate ¹	-	-	-	-	163	139	128	126	101	128	97
			Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) ¹	-	-	-	-	13	13	6	15	8	6	14
			2(1) Possess shotgun without a certificate	51	55	39	54	38	35	30	37	36	31	41
TOTAL 1(1) & 2(1) OFFENCES				246	240	230	251	216	194	164	178	145	168	152
Group 3 (Maximum: 5 years)	Firearms Act 1968	21(1) & (4) 21(2) & (4) & Sch 6	Possess a firearm/ shotgun/ air weapon/ ammunition when prohibited for life/ five years	102	89	111	95	89	74	62	53	49	60	48
Group 4 (Maximum: 7 years, or 12 months for imitation)	Firearms Act 1968	19	Possess loaded/unloaded firearm and suitable ammunition in public place	96	53	31	23	21	12	16	10	14	12	7
			Possess a loaded shotgun in a public place	24	21	11	7	3	6	4	2	1	2	2
			Possess a loaded / unloaded air weapon in a public place	366	274	250	221	151	127	101	92	103	69	74
			Possess an imitation firearm in a public place	0	47	96	84	84	87	89	103	98	112	120
TOTAL SECTION 19 OFFENCES				486	395	388	335	259	232	210	207	216	195	203
Group 5 (Maximum: Life)	Firearms Act 1968	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	47	63	53	48	69	64	70	44	54	53	77
Group 6 (Maximum: 10 years)	Firearms Act 1968	16A	Possess a firearm with intent to cause fear of violence ¹	-	-	-	-	101	81	82	74	77	98	74
			Possess an imitation firearm with intent to cause fear of violence ¹	-	-	-	-	146	139	138	145	162	180	187
			TOTAL SECTION 16A OFFENCES	299	327	257	274	250	230	221	221	241	280	261
Group 7 (Maximum: Life)	Firearms Act 1968	17(1), 17(2), 18(1)	Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence ¹	-	-	-	-	18	15	13	10	7	11	5
			Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence ¹	-	-	-	-	34	17	20	28	17	20	27
			TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES	96	81	73	50	52	34	33	38	24	31	33
Group 8 (Maximum: Life)	Firearms Act 1968	5(2A)(a) 5(2A)(b) 5(2A)(c) 5(2A)(d)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ²	-	-	-	-	-	-	-	0	0	4	0
			Sell / transfer prohibited weapon / ammunition ²	-	-	-	-	-	-	-	0	0	10	19
			Possess prohibited weapon / ammunition for sale / transfer ²	-	-	-	-	-	-	-	0	0	4	5
			Purchase / acquire prohibited weapon / ammunition for sale / transfer ²	-	-	-	-	-	-	-	0	0	0	1
TOTAL SECTION 5(2A) OFFENCES				-	-	-	-	-	-	-	0	0	18	25

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Data for these specific offences not available prior to 2011

2) These offences came into force on 14 July 2014. Cases in 2016 may have been sentenced prior to the Stephenson judgment

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1 (Maximum: 10 years)	Minimum term applies 5(1)(a)-(af), (c)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0	0	1	5	46	348	2	402
	5(1A)(a)	Possess/ purchase disguised firearm								
	Minimum term does not apply 5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1	30	47	96	99	78	7	358
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment								
		TOTAL SECTION 5 OFFENCES	1	30	48	101	145	426	9	760
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate	2	11	12	5	27	39	1	97
		Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0	0	0	0	2	12	0	14
	2(1)	Possess shotgun without a certificate	0	8	9	1	9	13	1	41
		TOTAL 1(1) & 2(1)	2	19	21	6	38	64	2	152
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	0	4	6	5	9	24	0	48
Group 4 (Maximum: 7 years, or 12 months for imitation)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0	10	25	75	48	43	2	203
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	0	0	0	0	0	72	5	77
		Possess a firearm with intent to cause fear of violence	0	0	0	1	12	59	2	74
Group 6 (Maximum: 10 years)	16A	Possess an imitation firearm with intent to cause fear of violence	0	1	0	8	49	125	4	187
		TOTAL SECTION 16A OFFENCES	0	1	0	9	61	184	6	261
Group 7 (Maximum: Life)		Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0	0	0	0	0	4	1	5
	17(1), 17(2), 18(1)	Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0	0	0	1	2	24	0	27
		TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES	0	0	0	1	2	29	1	33
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ²	0	0	0	0	0	4	0	4
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0	0	0	0	0	25	0	25

Source: Court Proceedings Database, Ministry of Justice

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1 (Maximum: 10 years)	Minimum term applies	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0%	0%	<0.5%	1%	11%	87%	<0.5%	100%
	5(1)(a)-(af), (c)	Possess/ purchase disguised firearm								
	5(1A)(a)	Minimum term does not apply								
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	<0.5%	8%	13%	27%	28%	22%	2%	100%
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment								
		TOTAL SECTION 5 OFFENCES	<0.5%	4%	6%	13%	19%	56%	1%	100%
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate	2%	11%	12%	5%	28%	40%	1%	100%
		Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0%	0%	0%	0%	14%	86%	0%	100%
	2(1)	Possess shotgun without a certificate	0%	20%	22%	2%	22%	32%	2%	100%
		TOTAL 1(1) & 2(1)	1%	13%	14%	4%	25%	42%	1%	100%
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	0%	8%	13%	10%	19%	50%	0%	100%
Group 4 (Maximum: 7 years, or 12 months for imitation firearms)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0%	5%	12%	37%	24%	21%	1%	100%
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	0%	0%	0%	0%	0%	94%	6%	100%
		Possess a firearm with intent to cause fear of violence	0%	0%	0%	1%	16%	80%	3%	100%
Group 6 (Maximum: 10 years)	16A	Possess an imitation firearm with intent to cause fear of violence	0%	1%	0%	4%	26%	67%	2%	100%
		TOTAL SECTION 16A OFFENCES	0%	<0.5%	0%	3%	23%	70%	2%	100%
Group 7 (Maximum: Life)		Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0%	0%	0%	0%	0%	80%	20%	100%
	17(1), 17(2), 18(1)	Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	0%	0%	0%	4%	7%	89%	0%	100%
		TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES	0%	0%	0%	3%	6%	88%	3%	100%
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ²	0%	0%	0%	0%	0%	100%	0%	100%
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0%	0%	0%	0%	0%	100%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

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

2) Data shown for this offence relates to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Sentence range (using estimated pre GP sentence lengths)
Group 1 (Maximum: 10 years)	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	6 years 6 months	7 years 6 months	Fine - 10 years' custody
		Possess/ purchase disguised firearm			
	Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1 year 7 months	1 year 1 month	Discharge - 8 year's custody
		Possess/ purchase/ sell or transfer military equipment			
		TOTAL SECTION 5 OFFENCES	5 years 7 months	6 years 5 months	Discharge - 10 year's custody
Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)	1(1)	Possess a firearm/ammunition without a certificate	3 years 1 month	3 years	Discharge - 5 years' custody
		Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) ⁶	2 years 5 months	1 year 11 months	SSO - 4 years' custody
	2(1)	Possess shotgun without a certificate ⁶	2 years 10 months	2 years 3 months	Discharge - 5 years' custody
		TOTAL 1(1) & 2(1)	2 years 11 months	3 years	Discharge - 5 years' custody
Group 3 (Maximum: 5 years)	21	Possess a firearm when prohibited for life / five years due to previous conviction	1 year 8 months	1 year 3 months	Discharge - 4.5 years' custody
Group 4 (Maximum: 7 years, or 12 months for imitation)	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	10 months	6 months	Discharge - 4.5 years' custody
Group 5 (Maximum: Life)	16	Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so	12 years 5 months	12 years	1 year 8 months - 27 years' custody (and indeterminate)
Group 6 (Maximum: 10 years)	16A	Possess a firearm with intent to cause fear of violence	4 years 10 months	5 years	CO - 10 years' custody
		Possess an imitation firearm with intent to cause fear of violence	2 years 8 months	2 years 3 months	Discharge - 9 years 9 months' custody
		TOTAL SECTION 16A OFFENCES	3 years 4 months	2 years 6 months	Discharge - 10 years' custody
Group 7 (Maximum: Life)	17(1), 17(2), 18(1)	Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence ⁴	13 years 11 months	12 years	7 years 6 months - 24 years' custody
		Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence	5 years 11 months	6 years	CO - 12 years' custody
		TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES	7 years 4 months	7 years	CO - 24 years' custody
Group 8 (Maximum: Life)	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ^{5,6}	17 years 9 months	20 years 3 months	8 years - 22 years 6 months' custody
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	12 years	9 years	5 years 7 months - 26 years 6 months' custody

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) 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.
- 3) Excludes life and indeterminate sentences.
- 4) These figures should be treated with caution, due to the low number of offenders sentenced for this offence involving a firearm
- 5) The ACSLs and ranges shown for this offence relate to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment
- 6) These figures should be treated with caution, due to the low number of offenders sentenced for this offence.

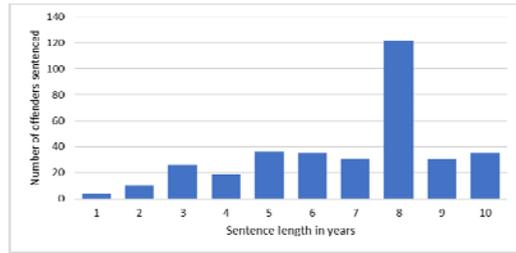
Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2017

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

Group 1 (Maximum: 10 years)

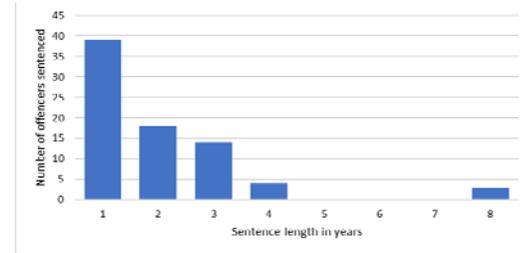
Minimum term applies

Sections 5(1)(a)-(af),(c) & 5(1A)(a) combined, 2017



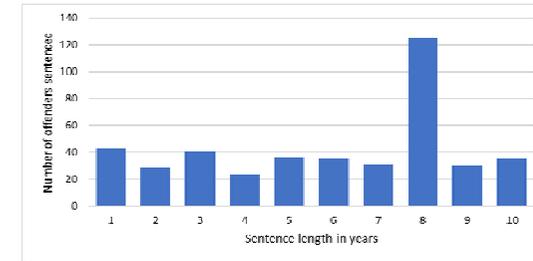
Minimum term does not apply

Sections 5(1)(b) & 5(1A)(b)-(g) combined, 2017



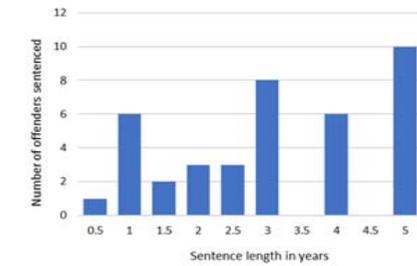
All Group 1 offences

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) & 5(1A)(b)-(g) combined, 2017

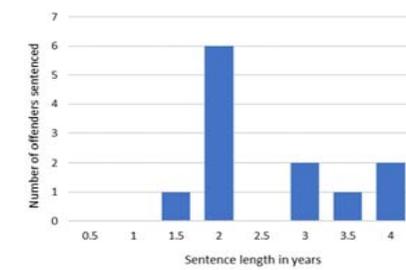


Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)

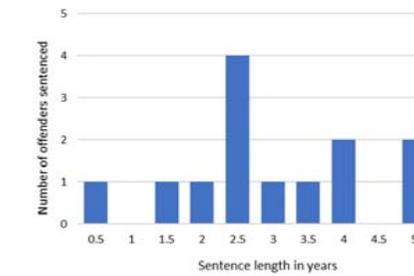
Section 1(1) - Possess a firearm/ammunition without a certificate, 2017



Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2017

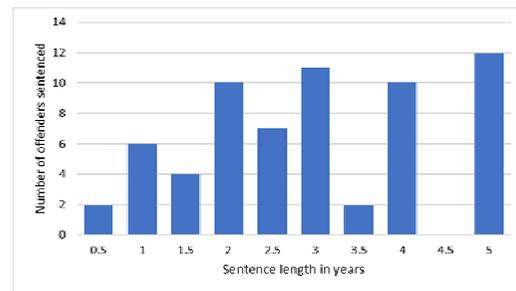


Section 2(1) - Possess shotgun without a certificate, 2017



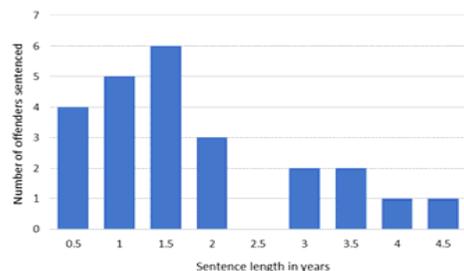
All Group 2 offences

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2017



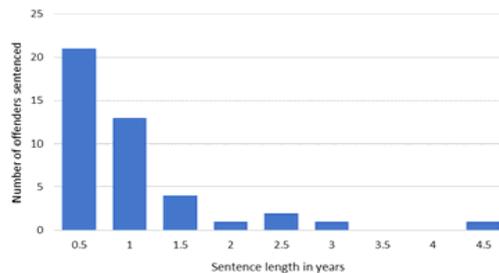
Group 3 (Maximum: 5 years)

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2017



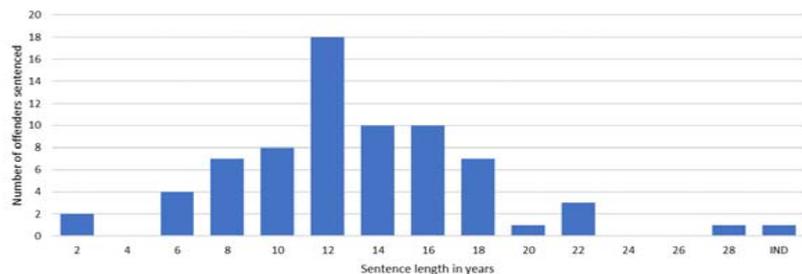
Group 4 (Maximum: 7 years, or 12 months for imitation)

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/airweapon/ imitation firearm in public place, 2017



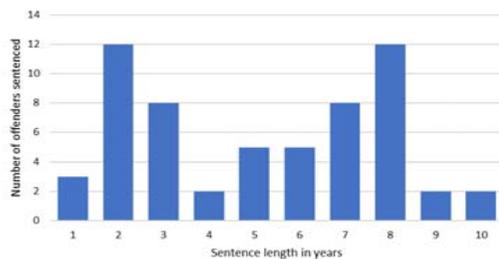
Group 5 (Maximum: Life)

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so, 2017

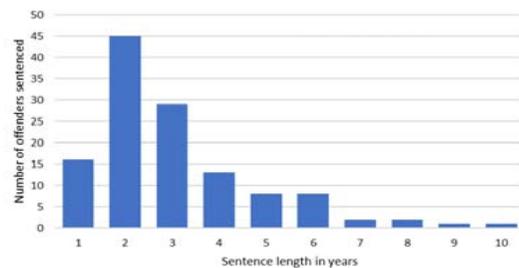


Group 6 (Maximum: 10 years)

Section 16A - Possess a firearm with intent to cause fear of violence, 2017

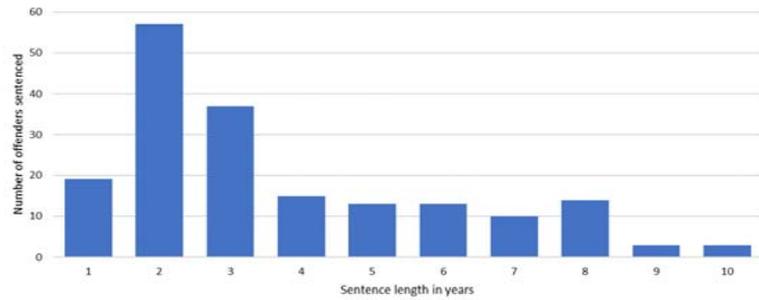


Section 16A - Possess an imitation firearm with intent to cause fear of violence, 2017



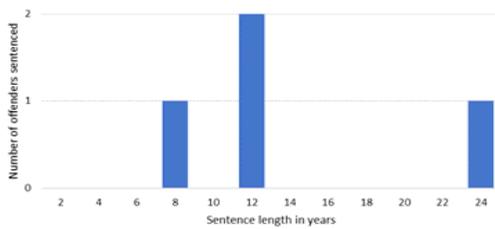
All Group 6 offences

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence, 2017

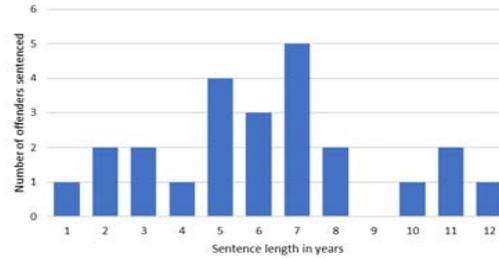


Group 7 (Maximum: Life)

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2017

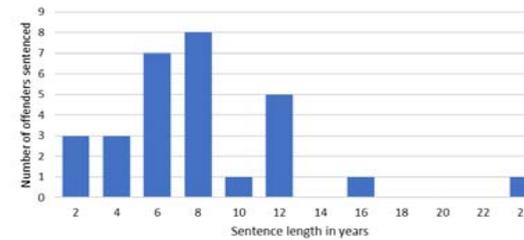


Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2017



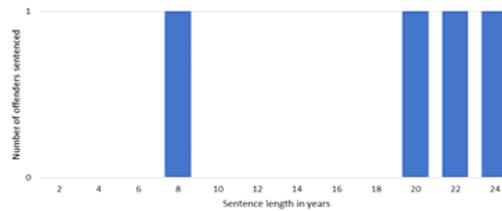
All Group 7 offences

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2017

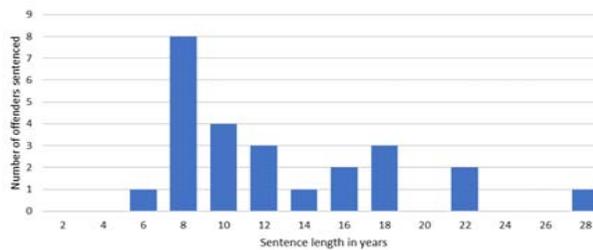


Group 8 (Maximum: Life)

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016¹



Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2017¹



Note:

1) The data shown for this offence relates to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.

Note:

1) Separate sentence length breakdowns for section 5(2A)(b)-(d) offences have not been shown due to low volumes.

Table 4: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2017

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

Group 1 (Maximum: 10 years)**Minimum term applies**

Sections 5(1)(a)-(af),(c) & 5(1A)(a) combined, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	4	1%
2	10	3%
3	26	7%
4	19	5%
5	36	10%
6	35	10%
7	31	9%
8	122	35%
9	30	9%
10	35	10%
Total	348	100%

Minimum term does not apply

Sections 5(1)(b) & 5(1A)(b)-(g) combined, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	39	50%
2	18	23%
3	14	18%
4	4	5%
5	0	0%
6	0	0%
7	0	0%
8	3	4%
Total	78	100%

All Group 1 offences

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) & 5(1A)(b)-(g) combined, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	43	10%
2	28	7%
3	40	9%
4	23	5%
5	36	8%
6	35	8%
7	31	7%
8	125	29%
9	30	7%
10	35	8%
Total	426	100%

Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)

Section 1(1) - Possess a firearm/ammunition without a certificate, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	1	3%
1	6	15%
1.5	2	5%
2	3	8%
2.5	3	8%
3	8	21%
3.5	0	0%
4	6	15%
4.5	0	0%
5	10	26%
Total	39	100%

Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	0	0%
1	0	0%
1.5	1	8%
2	6	50%
2.5	0	0%
3	2	17%
3.5	1	8%
4	2	17%
4.5	0	0%
5	0	0%
Total	12	100%

Section 2(1) - Possess shotgun without a certificate, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	1	8%
1	0	0%
1.5	1	8%
2	1	8%
2.5	4	31%
3	1	8%
3.5	1	8%
4	2	15%
4.5	0	0%
5	2	15%
Total	13	100%

All Group 2 offences

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	2	3%
1	6	9%
1.5	4	6%
2	10	16%
2.5	7	11%
3	11	17%
3.5	2	3%
4	10	16%
4.5	0	0%
5	12	19%
Total	64	100%

Group 3 (Maximum: 5 years)

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	4	17%
1	5	21%
1.5	6	25%
2	3	13%
2.5	0	0%
3	2	8%
3.5	2	8%
4	1	4%
4.5	1	4%
5	0	0%
Total	24	100%

Group 4 (Maximum: 7 years, or 12 months for imitation)

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
0.5	21	49%
1	13	30%
1.5	4	9%
2	1	2%
2.5	2	5%
3	1	2%
3.5	0	0%
4	0	0%
4.5	1	2%
5	0	0%
Total	43	100%

Group 5 (Maximum: Life)

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	2	3%
4	0	0%
6	4	6%
8	7	10%
10	8	11%
12	18	25%
14	10	14%
16	10	14%
18	7	10%
20	1	1%
22	3	4%
24	0	0%
26	0	0%
28	1	1%
Indeterminate	1	1%
Total	72	100%

Group 6 (Maximum: 10 years)

Section 16A - Possess a firearm with intent to cause fear of violence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	3	5%
2	12	20%
3	8	14%
4	2	3%
5	5	8%
6	5	8%
7	8	14%
8	12	20%
9	2	3%
10	2	3%
Total	59	100%

Group 7 (Maximum: Life)

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	0	0%
6	0	0%
8	1	25%
10	0	0%
12	2	50%
14	0	0%
16	0	0%
18	0	0%
20	0	0%
22	0	0%
24	1	25%
Total	4	100%

Section 16A - Possess an imitation firearm with intent to cause fear of violence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	16	13%
2	45	36%
3	29	23%
4	13	10%
5	8	6%
6	8	6%
7	2	2%
8	2	2%
9	1	1%
10	1	1%
Total	125	100%

Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	1	4%
2	2	8%
3	2	8%
4	1	4%
5	4	17%
6	3	13%
7	5	21%
8	2	8%
9	0	0%
10	1	4%
11	2	8%
12	1	4%
Total	24	100%

All Group 6 offences

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
1	19	10%
2	57	31%
3	37	20%
4	15	8%
5	13	7%
6	13	7%
7	10	5%
8	14	8%
9	3	2%
10	3	2%
Total	184	100%

All Group 7 offences

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	3	10%
4	3	10%
6	7	24%
8	8	28%
10	1	3%
12	5	17%
14	0	0%
16	1	3%
18	0	0%
20	0	0%
22	0	0%
24	1	3%
Total	29	100%

Group 8 (Maximum: Life)

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016^{1,2}

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	0	0%
6	0	0%
8	1	25%
10	0	0%
12	0	0%
14	0	0%
16	0	0%
18	0	0%
20	1	25%
22	1	25%
24	1	25%
Total	4	100%

Notes:

1) The data shown for this offence relates to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.

2) These proportions should be treated with caution, due to the low number of offenders sentenced for this offence.

Source: Court Proceedings Database, Ministry of Justice

Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2017

Sentence length in years	Number of offenders sentenced	Proportion of offenders sentenced
2	0	0%
4	0	0%
6	1	4%
8	8	32%
10	4	16%
12	3	12%
14	1	4%
16	2	8%
18	3	12%
20	0	0%
22	2	8%
24	0	0%
26	0	0%
28	1	4%
Total	25	100%

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Sentencing Council meeting:
Paper:
Lead officials:
Lead Council members

5 April 2019
SC(19)APR06 – Drug Offences
Eleanor Nicholls
Rebecca Crane
Sarah Munro

1 ISSUE

1.1 This paper covers the approach to assessing harm (including proposed quantities) for the offences of importation, supply (including PWITS) and production of drugs/cultivation of cannabis under the Misuse of Drugs Act 1971 (the MDA). This will include the approach to assessing harm for new and uncommon drugs such as fentanyl. It also covers the approach to assessment of harm for the comparable offences under the Psychoactive Substances Act 2016 (the PSA). This builds on your agreement of culpability, aggravating and mitigating factors for the draft revised guidelines for these offences. This paper also discusses a further question about the approach to assessment of culpability following early road testing of the guidelines with magistrates.

2 RECOMMENDATION

2.1 That the Council agrees:

- the proposed approach to the assessment of harm for the main MDA offences;
- the proposed approach to the assessment of harm for the PSA offences;
- the proposed addition to the text on assessment of culpability for importation and supply offences.

3 CONSIDERATION

MDA Importation, Supply and Production offences – Assessment of Harm

3.1 At your meeting in October you agreed not to make major changes to the approach to the assessment of harm, retaining the current one-stage assessment

at Step One, based on quantity of the drug concerned, with other factors considered either as part of culpability or as aggravating/mitigating factors at Step Two. We have now received data on quantities of drugs seized by police and the Border Force, which has allowed us to see whether there have been any changes since the data on which the quantities in the current guideline were based. We have also reviewed Crown Court Sentencing Survey (CCSS) data and transcripts, and spoken to the NCA to find out more about how some of these offences are currently committed. Revised draft guidelines for these offences, including changes already agreed and those proposed below, are set out at Annex A.

Drugs to include in the Harm table

3.2 The current harm tables include the following drugs:

- heroin/cocaine
- ecstasy (tablets)
- LSD
- amphetamine
- cannabis
- ketamine

Analysis of law enforcement seizures data suggests that inclusion of LSD and ketamine may no longer be required. Police seizures of both of these drugs combined account for less than one percent of all seizures. There are several other drugs (for example, benzodiazepines) with higher volumes which are not explicitly listed within the guidelines. Ketamine and LSD would still be covered by the wording on newer and less common drugs (see below). I therefore propose to remove ketamine and LSD from the list of drugs, to shorten and simplify the table.

Question 1: Does the Council agree to removing ketamine and LSD from the harm table?

3.3 Discussions with the NCA, and analysis of the police and border force data have indicated that it may be necessary to add to the entry in the table for ecstasy. Ecstasy is a street name for tablets containing the Class A drug 3,4-Methylenedioxymethamphetamine (MDMA). An increasing number of seizures of MDMA by the police are seizures not of ecstasy in tablet form but of MDMA in other forms (powder or liquid, for example). These now make up over half of police seizures and the NCA report difficulties in having to convert the weight of

the MDMA in another form into a number of tablets, particularly when considering variable purity. They have asked us to consider including MDMA separately within the list, or including MDMA by weight rather than giving a number of tablets for ecstasy.

3.4 If we choose to include MDMA by weight, careful consideration must be given to the quantities and the conversion rate between tablets and other forms of the drug. The numbers of tablets given in the current guidelines are based on the 1996 guideline case of *R v Warren and Beeley*, in which an average of 100mg of MDMA per tablet was given as a reference point. It may be, however, that in the past 20 years the average purity of a tablet has changed; the Border Force appears to use a different conversion rate. Whichever rate we use, a note below the table should give information about an appropriate conversion rate for equating ecstasy tablets with MDMA in other forms, recognising that it can only be an average. Explicitly giving this information would allow courts to be consistent in linking the quantities in their case with the guideline amounts, for example, if our conversion guidance suggests an average of 100mg per tablet, but the tablets in a particular case contain 300mg per tablet, this would be a case where “high purity” as an aggravating factor would come into play. We are awaiting further information from the NCA, police and ACMD about conversion rates currently in use, and if Council agrees to giving weights of MDMA we will set out weights for each category at the May meeting.

Question 2: Does the Council wish to replace ecstasy tablets with weights of MDMA in the harm table for the imposition, supply and production offences?

3.5 Reviewing drug seizures data and offences data suggests another drug for inclusion in the harm table – synthetic cannabinoid receptor agonists (SCRAs). These Class B drugs, which include many forms of “Spice”, are synthetic drugs designed to mimic the effects of tetrahydrocannabinol (THC, the most potent psychoactive constituent of cannabis).

3.6 Seizures and cases involving these drugs have increased considerably since the current guideline was developed. For example, police seizures have increased from 4 in 2010 to 796 in 2017, and seizures are likely to increase as more drugs of this type become controlled under the MDA. There are now more seizures of these drugs than there are of either ketamine or LSD. There is therefore a strong case for including specific indicative quantities of SCRAs in the harm table. Setting appropriate quantities is challenging as there is considerable variation, and they

are seized in a variety of types (as powders/liquids containing the SCRA in a relatively pure form, and as herbal preparations in which the SCRA is sprayed onto leaves for smoking). My initial approach was to suggest using the same quantities as for cannabis. However, whilst seizures data show similar trends to cannabis in that the vast majority of seizures are very low weights (under 5g), the data show proportionally fewer of the very high weights found with cannabis seizures, perhaps owing to the nature of the drugs and their markets. The distribution of seizures of different weights is more similar to that of cocaine or heroin. Furthermore, although synthetic cannabinoids are also Class B drugs, many of them are more potent than cannabis. I therefore propose that we consult on including SCRAs in the harm table using weights used for cocaine and heroin, and invite consultation respondents to suggest any difficulties with this approach, and alternative quantities. I have asked the NCA and ACMD for their views on these quantities and will provide an update at the meeting if new information becomes available.

Question 3: Does the Council agree to including SCRA drugs within the harm table? Does the Council agree to consult on using the weights given for cocaine and heroin for SCRAs?

Number of harm categories and approach to assessment of harm

3.7 The current harm tables give four categories of harm, but the text above the table makes it clear that for operations on the most serious and commercial scale, with quantities substantially higher than those given in the top category, higher sentences may be appropriate, depending on the role of the offender. To see how this is working in practice, we have reviewed the CCSS data from the most recent full year (2014) on the proportion of cases falling into each category, for offences involving each class of drug, and I wanted to draw this to the Council's attention:

Importation offences

	Class A	Class B	Class C
Category 1	31%	17%	14%
Category 2	42%	23%	14%
Category 3	22%	47%	64%
Category 4	5%	13%	7%

Supply/PWITS offences

	Class A	Class B	Class C
Category 1	2%	0%	2%
Category 2	5%	3%	10%
Category 3 – based on quantity	29%	34%	39%
Category 3 – direct to users	53%	50%	42%
Category 4	11%	13%	8%

Note – percentage calculations do not include cases where the harm category was not indicated by the judge. Percentages shown may not add up to 100% due to rounding.

3.8 As this only covers the Crown Court, and cases sentenced by magistrates are likely to fall into Categories 3 and 4, it appears as though for the supply and PWITS offences, the great majority of cases overall will fall into categories 3 and 4, with categories 1 and 2 only being used in tiny numbers of cases. I had therefore considered simplifying the guideline by merging the two top categories for supply/PWITS into one, setting quantities (and sentence levels) between those currently given for categories 1 and 2.

3.9 If these categories were merged, there would be a risk of sentence inflation for cases which currently fall into category 2, in which sentencers would now have the option of much higher sentences, up to the top of the current category 1 range. However, this may be offset by reductions in sentences for cases which are currently at the lower end of category 2, but which (with a higher indicative quantity in this category) would now be placed in the range of the current category 3. Given the uncertainty of changing the approach (particularly the uncertainty of any impact on cases currently categorised as upper end of category 2), the fact that we have heard nothing so far suggesting that having two upper categories is problematic, and the fact that the Council decided in September last year that it did not want to change sentence levels for these offences, I am not proposing to merge the top two levels. I am suggesting, however, that we include a question at consultation asking whether respondents currently find any difficulties with the four-level structure.

Question 4: Does the Council agree to retaining the current four-level structure of the harm table for supply/PWITS offences, and to asking for views about the structure at consultation?

Quantities given in harm tables

3.10 We have also considered whether the quantities themselves set out in the tables are still appropriate, given the changing nature of drug offending. Analysis of police and Border Force seizure data and sentencing practice suggests that there have been no significant changes in proportions of seizures falling into the different categories which would suggest a need to change the quantities. I therefore propose to consult on retaining the current quantities, and ask respondents for any evidence suggesting a change in quantities is necessary.

Question 5: Does the Council agree to retaining the current quantities of drugs in the harm tables for the importation, supply and production offences?

Assessment of harm – very large quantities of drugs

3.11 Consideration of the number of levels of harm relates to a concern raised by some Crown Court judges and the NCA, namely how to assess harm where the quantities of drug in the case far exceed the indicative quantity of category 1. These judges felt that they are more frequently seeing cases of importation and supply with very high quantities (for example, 20kg of heroin or cocaine), which are far in excess of the quantity indicated in category 1 of the current guidelines. They felt that additional guidance on appropriate levels of sentence would be helpful. The current wording on very large quantities states, “Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender”. These sentences are very rarely used. In 2017, out of around 5,300 adult offenders receiving sentences of immediate custody for Supply/PWITS Class A in the Crown Court, only 1% (around 50 offenders) received an estimated pre-guilty plea sentence above the top of the category range for Class A drugs (16 years). Of those offenders, around 30 received sentences of 20 years or more (estimated pre-guilty plea).

3.12 The small numbers of cases involved suggest that the benefits of an additional category of harm would not outweigh the risk of complicating the guideline unnecessarily, and of harming the interests of justice since these cases are likely to be exceptional and contain many features which make them different

from other cases. It would also appear disproportionate, especially when the categories into which most cases fit, categories 3 and 4 are broad, and adding an extra category above may prompt calls for additional categories at the lower end. The text on large quantities already provides guidance by containing reference to a suggested sentence length for these cases. However, the text could be placed in a different place in the digital guideline, above the sentence levels table at step two, so that the court's attention is drawn to it at the relevant point.

Question 6: Is the Council content not to add an "extra large" category above the existing category 1, but to move the above statement from step one to step two?

3.13 In June last year we published a statement on sentencing offences involving newer or less common drugs (see Annex B). This is intended to assist sentencers in sentencing offences involving drugs which are not included in the harm table, particularly those whose prevalence is increasing, such as fentanyl and some synthetic cannabinoid receptor agonists. The statement asked sentencers to seek expert evidence to assist them in considering the equivalence of the drug before them with one of those listed in the harm table, for example, if the quantity of the particular drug was thought to be equivalent to 1kg of cocaine in terms of harm which it might cause, the sentencer should consider the starting point and range for offences involving 1kg of cocaine (category 2). This common sense approach mirrors that in the similar CPS guidance.

3.14 Now that we are revising the guidelines, I have considered in more detail the question of how to include these newer and/or less common drugs. The newer drugs which are now seen in a larger volume of cases I propose to include in the harm table (see above paragraphs 3.5-3.6 on SCRA's). The question of how to assess harm of drugs not listed in the table applies not just to newer drugs, but to all sorts of drugs which are not listed, for example, benzodiazepines or khat. The current guideline is silent on how to approach all other drugs, including those whose particular potency is currently causing public concern, so I propose to include the following above the harm table (text adapted from the guidance published in June last year):

<p>Where a drug is not listed in the table below, sentencers should consider expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but</p>

courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

3.15 This follows the approach taken in the recent case of *R v Levene, Lowther and Childs*, a case sentenced in January involving importation and supply of fentanyl and its even more dangerous variant, carfentanyl. In this case, the total quantity of both drugs was 5kg, and expert evidence could not exactly equate the harm caused by these particular drugs with a certain amount of heroin. The judge rejected the approach of multiplying the quantity by a fixed factor, which he felt would not be in the overall interests of justice, but he also rejected the defence's suggestion that he should base the starting point on 5kg of heroin and simply move up within the range; he felt the evidence that the drugs cause harm "many times" that of heroin meant that, whilst no arithmetical calculation could be made, he was justified in setting a starting point above the category range.

Question 7: Is the Council content to include the proposed wording to cover the sentencing of drugs not listed in the harm table?

Psychoactive Substances Act 2016 offences – assessment of harm

3.16 At the meeting in January, you discussed and agreed the approach to the assessment of culpability, and aggravating and mitigating factors, for offences under the PSA, which for the most part resemble closely the approaches and factors in the equivalent MDA offences. The approach to the assessment of harm for PSA offences needs to be different because, unlike in the MDA, under the PSA there is no list of controlled substances and no classifications by potential harm, so the offences cover a very wide range of substances, from nitrous oxide which the courts have deemed to be only just within the definition of a psychoactive substance at all, to a strong (but as yet uncontrolled) SCRA which causes paranoia and serious mental distress.

3.17 I have discussed potential harm models, including relating the harm of the substance to a class A, B or C drug, with the Council leads on this guideline (Rebecca Crane and Sarah Munro). We decided not to pursue a model involving relating the harm to that of a class A, B or C drug, since, firstly, the nature of substances within each class is very different, so drawing comparisons between a psychoactive substance and a whole class of drugs is difficult, and secondly because, particularly in the magistrates' courts, there is likely to be limited or no expert evidence available. Sarah and Rebecca agreed with my proposal to test (at consultation) a model based on the quantity of the substance (broadly defined),

but also including reference to how to deal with cases in which there is evidence of particularly harmful or particularly benign substances. The harm table would therefore read as follows:

Category of harm	
Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation • Supply in a custodial institution
Category 2	<ul style="list-style-type: none"> • Supply directly to users
Category 3	<ul style="list-style-type: none"> • Very small quantity

3.18 The harm table is set out in the draft Supply/PWITS guideline at Annex C (the same approach would be replicated for the Importation and Production offences). I tested this approach with a small group of magistrates at the AGM of the Wiltshire Magistrates' Association on 13 March. They were unfamiliar with the legislation, though very familiar with sentencing MDA offences. We tested the approach using a scenario based on a real case of PWITS of a type of synthetic cannabinoid not yet controlled under the MDA. The Magistrates used the categories consistently, and also said that expert evidence that the substance was particularly harmful would have changed their approach. Further testing would of course take place during consultation.

Question 8: Does the Council wish to adopt the proposed model for the assessment of harm for the PSA offences and the text of the harm table set out above?

3.19 The road testing with magistrates also revealed some concerns they had relating to the culpability factors in the current and proposed draft guidelines for MDA offences (which we are proposing to carry forward to the PSA offences). Many of the magistrates felt that references to "involving others" or position in a "chain" did not sufficiently take account of an offender in a supply or importation offence acting as a "sole trader" who was not consciously part of any larger scale operation. The current and revised draft guidelines do take account of this, and

sole traders may fall into significant or lesser role categories though are more likely to fall into the “lesser” category; someone who supplies or imports controlled drugs will be part of a larger operation, whether or not they are aware of it, in that they will buy their drugs from someone/somewhere and sell them on.

3.20 To make this clearer, we could remove or amend references to activities carried out “in a chain”. This is difficult to do without changing the intention of these factors, and it may be better to include additional text in the note above the table as follows:

One or more of these characteristics may demonstrate the offender’s role, <u>whether or not the offender is operating alone or consciously taking part in a wider operation</u> . These lists are not exhaustive.

Question 9: Does the Council wish to include the proposed text relating to offenders operating alone? If not, does the Council wish to amend the culpability factors to give more prominence to those operating as “sole traders”?

4. IMPACT AND RISKS

4.1 Some of the changes proposed above may have resource impacts and risks. A resource assessment will be carried out prior to consultation, and further information will be available to the Council when these guidelines are signed off for consultation.

Revision of Drug Offences Guideline – proposed sections for new guideline October 2018

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

Misuse of Drugs Act 1971 (section 3)

Customs and Excise Management Act 1979 (section 170(2))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

~~Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.~~

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role, whether or not the offender is operating alone or consciously taking part in a wider operation. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage, (save where this advantage is limited to meeting the offender's own habit) whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)
- Expectation of limited, if any, financial or other advantage (including meeting the offender’s own habit)

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step one but is dealt with at step two.

Category of harm

Indicative quantities of the most common drugs, upon which the starting point is to be based, are as follows given in the table below. Where a drug is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 10,000 tablets • <u>MDMA – TBC</u> • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • <u>Synthetic cannabinoid receptor agonists – 5kg</u>
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 2,000 tablets • <u>MDMA – TBC</u> • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • <u>Synthetic cannabinoid receptor agonists – 1kg</u>
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 300 tablets • <u>MDMA – TBC</u> • LSD – 2,500 squares • Amphetamine – 750g

	<ul style="list-style-type: none"> • Cannabis – 6kg • Ketamine – 150g • <u>Synthetic cannabinoid receptor agonists – 150g</u>
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 20 tablets • <u>MDMA – TBC</u> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • <u>Synthetic cannabinoid receptor agonists – 5g</u>

Step two – starting point and category range

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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

<u>Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.</u>			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 8 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody	Starting point 6 years' custody Category range 5 – 7 years' custody
Category 3	Starting point 8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody	Starting point 6 years' custody Category range 5 – 7 years' custody	Starting point 4 years 6 months' custody Category range 3 years 6 months' – 5 years' custody
Category 4	<p>Where the quantity falls below the indicative amount set out for category 4 on the previous page, first identify the role for the importation offence, then refer to the starting point and ranges for possession or supply offences, depending on intent.</p> <p>Where the quantity is significantly larger than the indicative amounts for category 4 but below category 3 amounts, refer to the category 3 ranges above.</p>		

[Note – the above table with additional text is given as an example showing position of text above the table. Detail of sentence levels will be considered in May.]

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions 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
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

Supplying or offering to supply a controlled drug
Misuse of Drugs Act 1971 (section 4(3))

Possession of a controlled drug with intent to supply it to another
Misuse of Drugs Act 1971 (section 4(3))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

~~Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.~~

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role, whether or not the offender is operating alone or consciously taking part in a wider operation. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility, for example, prison employee, medical professional
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation

- Expectation of limited, if any, financial or other advantage (including meeting the offender’s own habit)

Category of harm

In assessing harm, quantity is determined by the weight of the product. Purity is not taken into account at step one but is dealt with at step two. Where the offence is supply directly to users (including street dealing), the quantity of product is less indicative of the harm caused and therefore the starting point is not solely based on quantity. The court should consider all offences involving supplying directly to users as at least category 3 harm, and make an adjustment from the starting point within that category considering the quantity of drugs in the particular case.

Indicative quantities of the most common drugs, upon which the starting point is to be based) are as follows given in the table below. Where a drug is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 10,000 tablets • <u>MDMA – TBC</u> • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • <u>Synthetic cannabinoid receptor agonists – 5kg</u>
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 2,000 tablets • <u>MDMA – TBC</u> • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • <u>Synthetic cannabinoid receptor agonists – 1kg</u>
Category 3	<p>Where the offence is sSelling directly to users (“street dealing”) the starting point is not based on a quantity OR Where the offence is sSupply of drugs in prison by a prison employee the starting point is not based on quantity – see shaded box on page 10, OR</p> <ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 300 tablets • <u>MDMA – TBC</u> • LSD – 2,500 squares • Amphetamine – 750g

	<ul style="list-style-type: none"> • Cannabis – 6kg • Ketamine – 150g • <u>Synthetic cannabinoid receptor agonists – 150g</u>
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 20 tablets • <u>MDMA – TBC</u> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • <u>Synthetic cannabinoid receptor agonists – 5g</u> <p>OR</p> <p>Note – where the offence is selling directly to users <u>or supply in prison</u> (street dealing) the starting point is not based on quantity – go to category 3</p>

Step two – starting point and category range

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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- Has the community threshold been passed?

<u>Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.</u>			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 7 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody	Starting point 5 years' custody Category range 3 years 6 months' – 7 years' custody

Category 3	<p>Starting point 8 years 6 months' custody</p> <p>Category range 6 years 6 months' – 10 years' custody</p>	<p>Starting point 4 years 6 months' custody</p> <p>Category range 3 years 6 months' – 7 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 4 years 6 months' custody</p>
Category 4	<p>Starting point 5 years 6 months' custody</p> <p>Category range 4 years 6 months' – 7 years 6 months' custody</p>	<p>Starting point 3 years 6 months' custody</p> <p>Category range 2 – 5 years' custody</p>	<p>Starting point 18 months' custody</p> <p>Category range High level community order – 3 years' custody</p>

[Note – the above table with additional text is given as an example showing position of text above the table. Detail of sentence levels will be considered in May.]

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of drug offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that drug offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions 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
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

Production of a controlled drug

Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

Cultivation of cannabis plant

Misuse of Drugs Act 1971 (section 6(2))

Step one – determining the offence category

The court should determine the offender’s culpability (role) and the harm caused (output or potential output) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

~~Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the role of the offender.~~

Culpability demonstrated by the offender’s role

One or more of these characteristics may demonstrate the offender’s role, whether or not the offender is operating alone or consciously taking part in a wider operation. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility
- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender’s own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation

- Expectation of limited, if any, financial advantage, (including meeting the offender’s own habit)
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

Category of harm

In assessing harm, output or potential output are determined by the output or the potential output (the weight of the product or number of plants/scale of operation). For production offences purity is not taken into account at step one but is dealt with at step two.

Indicative output or potential output, upon which the starting point is to be based, is given in the table below. Where a drug is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

<p>Category 1</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 10,000 tablets • <u>MDMA – TBC</u> • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – operation capable of producing industrial quantities for commercial use • Ketamine – 5kg • <u>Synthetic cannabinoid receptor agonists – 5kg</u>
<p>Category 2</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 2,000 tablets • <u>MDMA – TBC</u> • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – operation capable of producing significant quantities for commercial use • Ketamine – 1kg • <u>Synthetic cannabinoid receptor agonists – 1kg</u>
<p>Category 3</p>	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 300 tablets • <u>MDMA – TBC</u> • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 28 plants • Ketamine – 150g • <u>Synthetic cannabinoid receptor agonists – 150g</u>

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 20 tablets • <u>MDMA – TBC</u> • LSD – 170 squares • Amphetamine – 20g • Cannabis – 9g (domestic operation) • Ketamine – 5g • <u>Synthetic cannabinoid receptor agonists – 5g</u>
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Step two – starting point and category range

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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- Has the community threshold been passed?

<u>Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.</u>			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	<p style="text-align: center;">Starting point 14 years' custody Category range 12 – 16 years' custody</p>	<p style="text-align: center;">Starting point 10 years' custody Category range 9 – 12 years' custody</p>	<p style="text-align: center;">Starting point 7 years' custody Category range 6 – 9 years' custody</p>
Category 2	<p style="text-align: center;">Starting point 11 years' custody Category range 9 – 13 years' custody</p>	<p style="text-align: center;">Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody</p>	<p style="text-align: center;">Starting point 5 years' custody Category range 3 years 6 months' – 7 years' custody</p>
Category 3	<p style="text-align: center;">Starting point 8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody</p>	<p style="text-align: center;">Starting point 5 years' custody Category range 3 years 6 months' – 7 years' custody</p>	<p style="text-align: center;">Starting point 3 years 6 months' custody Category range 2 – 5 years' custody</p>
Category 4	<p style="text-align: center;">Starting point 5 years 6 months' custody Category range 4 years 6 months' – 7 years 6 months' custody</p>	<p style="text-align: center;">Starting point 3 years 6 months' custody Category range 2 – 5 years' custody</p>	<p style="text-align: center;">Starting point 18 months' custody Category range High level community order – 3 years' custody</p>

[Note – the above table with additional text is given as an example showing position of text above the table. Detail of sentence levels will be considered in May.]

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors include:

- Nature of any likely supply
- Level of any profit element
- Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately
- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- Exposure of drug user to the risk of serious harm, for example, through the method of production/mixing of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity or high potential yield
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Offender's vulnerability was exploited
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions 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
- Sole or primary carer for dependent relatives

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Do not retain this copy. Only the online version of a guideline is guaranteed to be up to date.

Drug offences involving newer and less common drugs

Effective from: for guidance only

The Drug Offences Guideline came into force in 2012 and covers the main possession, supply, importation and production offences in the Misuse of Drugs Act 1971. By virtue of s125 (1) (b) of the Coroners and Justice Act 2009, sentencers may also refer to this guideline when sentencing other relevant offences, for example, offences under the Psychoactive Substances Act 2016.

Drug offences – assessing harm

For most offences, the drug offences guidelines use class and quantity of the drug as the key element of assessing the harm caused by the offence, with higher quantities indicating higher harm. The current guideline covers all drugs included in the Misuse of Drugs Act 1971. However, as indicators of the level of harm, the guideline gives the indicative quantities of only the most common drugs: heroin, cocaine, ecstasy, LSD, amphetamine, cannabis and ketamine.

Example – [supplying or offering to supply a controlled drug](#)

To put the offence of supplying or offering to supply a controlled drug in the most serious category, the quantity of drug required would be:

- for amphetamine, 20kg
- for heroin or cocaine, only 5kg

The Council intended, and case law has clearly shown, that where the drug in question is not listed in the guideline, the assessment of harm will be based on the equivalent level of harm caused by the relevant quantity of that drug.

Newer drugs – assessing harm

Since publication of the drug offences guidelines, there has been an increase in the number of cases before the courts involving newer drugs, such as synthetic opioids, which may have much higher potency and potential to cause harm than more common drugs.

Where these newer drugs are covered by the guideline but not specifically listed in the section on assessment of harm, the approach to assessing harm in these cases should be as with all cases of controlled drugs not explicitly mentioned in the guidelines. Sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused.

Example – [supplying or offering to supply a controlled drug](#)

If the quantity of the drug would cause as much harm as 5kg of heroin, the offence would be in the most serious category.

Where the offence is not covered by the guideline (such as offences under the Psychoactive Substances Act 2016) the approach should be the same, but the court must also take into account any difference in the statutory maximum penalty.

Annex B

Expert evidence

In line with [CPS guidance](#), prosecutors will be providing courts with this information and expert evidence to ensure that the court can make a correct assessment of harm in cases involving drugs not explicitly listed in the guidelines. This is likely to include evidence on the potency of the drug in question, and the value of sales, along with evidence on the wider harm caused to the community as well as to the drug users and others immediately affected in the case.

The Council published an [evaluation of the Drug Offences guideline](#) on 1 June 2018, and has now started work to revise the guideline. We will consult on a revised draft guideline in due course, and consultation documents will be available on the website.

It is important to note that this guidance does not carry the same authority as a sentencing guideline, and sentencers are not obliged to follow it. However, it is hoped that the majority of sentencers will find it useful in assisting them to deal with these cases.

Supplying, or offering to supply, a psychoactive substance
Psychoactive Substances Act 2016 (sections 5(1) or 5(2))

Possession of psychoactive substance with intent to supply
Psychoactive Substances Act 2016 (section 7(1))

Step one – determining the offence category

The court should determine the offender's culpability (role) and the harm caused with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role, whether or not the offender is operating alone or consciously taking part in a wider operation. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility, for example, prison employee, medical professional
- Exploitation of children and/or vulnerable persons to assist in the offending
- Exercising control over the home of another person for the purposes of the offending

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation
- Involvement through naivety/exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.

<i>Category of harm</i>	
<u>Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.</u>	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation • Supply in a custodial institution
Category 2	<ul style="list-style-type: none"> • Supply directly to users
Category 3	<ul style="list-style-type: none"> • Very small quantity

Step two – starting point and category range

	Leading Role	Significant Role	Lesser Role
Category 1	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 2	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody
Category 3	Starting point 26 weeks' custody Category range High level community order – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody	Starting point Low level community order Category range Band A fine – medium level community order

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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Where appropriate, consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

Where appropriate, the court should also consider the community threshold as follows:

- Has the community threshold been passed?

*Factors increasing seriousness**Statutory aggravating factors:*

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- In connection with the offence, the offender used a courier who, at the time of the commission of the offence, was aged under 18 (except where taken into account at Step 1)
- The offence was committed on or in the vicinity of school premises at a relevant time
- The offence was committed in a custodial institution
- Offence committed on bail

Other aggravating factors include:

- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of psychoactive substance user to the risk of serious harm, for example, through the method of production/mixing of the substance
- Exposure of those involved in dealing in the psychoactive substance to the risk of serious harm, for example through method of transporting the substance

- Exposure of third parties to the risk of serious harm
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- High purity
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence of psychoactive substance offending should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that psychoactive substance offending is prevalent in their area, and is causing particular harm in that community; and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of psychoactive substance to which offender addicted
- Mistaken belief of the offender regarding the type of substance, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- Low purity
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions 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
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

Sentencing Council meeting: 5 April 2019
Paper number: SC(19)APR07 – Assault
Lead Council member: Julian Goose & Rob Butler
Lead officials: Lisa Frost & Caroline Nauth-Misir
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1 ISSUE

This paper includes feedback and findings from the recent road testing with Crown Court judges on draft guidelines for ABH and GBH which were agreed for testing at the November 2018 meeting.

2 RECOMMENDATION

That the Council:

- considers the findings from the recent road testing of harm models for ABH and GBH; and
- agrees final draft guidelines for ABH and GBH s18 and s20 offences.

3 CONSIDERATION

3.1 This meeting requires consideration of road testing of draft ABH and GBH guidelines with Crown Court judges. The Council is asked to note the findings which have informed minor proposed changes to factors and sentence levels.

3.2 Road testing of a draft ABH guideline was undertaken with magistrates last autumn and findings reported to the Council in November 2018. It was found that magistrates preferred a specific harm model in versions of the guidelines tested, and the Crown Court road testing sought to identify the model preferred by judges. Due to evaluation findings regarding sentence levels and a perception that they were too low for ABH, the road testing also sought views on the sentence levels agreed for offences more likely to be sentenced in the Crown Court.

3.3 The early GBH guideline drafts were also tested. These sought to test factors agreed, and specifically the treatment of weapons in the revised draft s20 and s18 guidelines, additional culpability factors, the proposed harm model and sentences. Road testing findings from testing with Crown Court judges are included at **Annex A**.

ABH culpability factors

3.4 Culpability factors agreed for ABH (shown in **Annex B**) were the same as for s20 offences, given the relationship between the offences and for an offence charged as s20 to be sentenced as an ABH were a GBH level of harm not to be found. Issues highlighted in road testing are discussed below.

3.5 In relation to the way weapons are treated in the guideline, one judge said that it was unlikely there would be an ABH with a highly dangerous weapon, as those types of weapons lead to more severe injuries and therefore are charged as GBH/wounding. Some judges suggested that for ABH all weapons should be captured in the top category, and an aggravating factor included to provide for instances where the weapon was deemed highly dangerous, for example, acid. However, a number of judges approved of the way weapons were treated in this guideline. It is not proposed the factor be revised given the need previously identified to provide for the same factors to be included across the ABH and s20 guidelines, and to ensure a proportionate categorisation of seriousness depending on the weapon involved.

3.6 Some issues were identified with the factor 'prolonged assault', which was included in place of 'sustained and repeated', which it was agreed should be removed from the existing guideline due to issues of interpretation. Although some judges questioned what amounted to 'prolonged', the factor was applied fairly consistently in one of the ABH scenarios tested. It is not suggested the factor be revised as it was previously agreed that a prolonged assault demonstrates greater culpability of the offender.

Question 1: Does the Council agree to retain the culpability factor 'prolonged assault' in the draft ABH guideline?

3.7 In considering the high culpability factor '*victim obviously vulnerable due to age, personal characteristics or circumstances*' a small number of judges questioned whether the vulnerability had to be obvious to the defendant at the time of the

assault, or to the judge when sentencing. For clarity the wording 'at the time of the offence' could be added if the Council thinks appropriate.

Question 2: Does the Council wish to expand the factor relating to vulnerable victim to clarify the vulnerability must be obvious at the time of the offence?

3.8 Overall, factors were applied appropriately and categorisations were broadly as anticipated. No other changes are proposed to factors in the final draft ABH guideline.

ABH harm model

3.9 In the earlier road testing with magistrates of a draft ABH guideline it was identified that magistrates preferred a harm model referencing other offences of GBH and common assault as a 'benchmark' for high and low levels of harm. Views were sought in an online testing exercise with Crown Court judges on a preferred model at the same time, and judges indicated no preference between a model which referenced other offences and one which did not.

3.10 A complication of referencing other offences in the ABH harm models became apparent when considering sentence levels for ABH and S20 GBH offences. It was agreed that the offences should be treated as separate and distinct and not a continuum of each other, given that Parliament has deemed the offences share the same statutory maximum sentence. For this reason, it was agreed that other offences should not be referenced in the ABH harm model. However, it was agreed to test whether removing reference to other offences impacted upon the harm categorisation. The models tested in the recent Crown Court road testing exercise were as follows.

ABH Harm Model One

Harm To assess the level of harm caused by the offence, the court must consider; <ul style="list-style-type: none">• The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm• Where in that range of injuries the injury caused falls	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

ABH Harm Model Two

Harm Assault occasioning actual bodily harm causes injury which is more serious than in most cases of common assault, but which falls below the really serious injury in cases of grievous bodily harm. To assess the level of harm caused by the offence, the court must consider; <ul style="list-style-type: none">• The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm• Where in that range of injuries the injury caused falls	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

3.11 In summary, it was found application of both models to the same scenario did not impact the harm categorisation achieved, and judges indicated no particular

preference for a harm model. The only point to note was that a number of judges suggested a greater description or examples of injuries in each category would be helpful:

"Well I can understand why you have essentially three categories you know, upper, lower and middle but it might be a little helpful to have in mind what the Sentencing Council would rank as medium level". Judge

"I think we could probably do with a definitions section of what is psychological harm and what is high level, medium level psychological harm and low level." Judge

3.12 The Council has agreed that it is not possible or desirable to include descriptive injury categories given the range of scale and types of injuries which may occur in an ABH, and the need to avoid defining injury levels such as 'injury just short of very serious harm' given the potential for 'guideline shopping' and comparisons with GBH s20 sentences. The difficulty with defining the wide ranging injuries possible in an ABH will be explained in the consultation document.

3.13 It is proposed that harm model 1 be included in the revised draft guideline.

Question 3: Does the Council agree that harm model 1 should be included in the revised draft guideline?

ABH – sentences

3.14 Sentences were agreed at the November meeting. These sought to address the evaluation finding that sentences in the existing guideline are perceived as too low. While it was noted that some of this could be due to charging practice, and GBH type offences being charged as ABH, it was also noted that 40% of sentences imposed in the lowest category of seriousness were custodial sentences which the lowest category range does not provide for.

3.15 It was agreed that sentences should reflect statistical evidence of current sentencing practice. The road testing found that sentences included in the revised draft guideline were perceived as 'about right', although depending on the scenario tested in some cases were still considered too low.

3.16 It is not proposed that these sentences be revised for consultation. While road testing did find in some cases sentencers thought sentences were too low, others were satisfied with the sentences they arrived at. It is difficult to ascertain an overall impact from the two specific scenarios used to test the application of factors. The resource assessment, which will be prepared for consideration prior to sign off of the

guideline, will identify if any unintended impacts are apparent. Ultimately revision is seeking to address the evaluation findings that sentences in the existing guideline are too low, and while some factor revisions (such as distinguishing between weapons) will result in some cases attracting lower harm categorisations and a lower starting point than at present, it was agreed that sentences should be proportionate.

Question 4: Does the Council agree to retain the previously agreed ABH sentence levels for consultation?

GBH

3.17 The draft guidelines agreed for s20 and s18 GBH are included at **Annexes C and D**. The road testing specifically sought to test the factors that were revised based on evaluation findings, the harm models for these offences, and views on sentence levels.

GBH culpability factors

3.18 Although there are two separate GBH offences, s18 and s20, the existing guideline includes exactly the same factors for both. The distinction between offences is that the s18 offence requires proof of intent to cause GBH, while for a s20 offence there is no need to demonstrate the offender intended to inflict the harm caused; just that the offender was reckless or intended some harm. As s20 requires only intention of some harm or recklessness that GBH would be caused, an offender can be found guilty of ABH if bodily harm not amounting to GBH is found.

3.19 Revisions agreed to culpability factors for GBH offences were as for ABH offences. These included distinguishing between weapons and including highly dangerous weapons at high culpability and other weapons at medium culpability; amending the factor 'targeting of vulnerable victim' to 'victim obviously vulnerable due to age, personal characteristics or circumstances'; and substituting 'prolonged assault' for the factor 'sustained and repeated' given issues with inconsistent assessment of sustained and repeated noted in the evaluation.

3.20 Two additional factors were agreed for s18 offences only. These were a high culpability factor of 'revenge' and a lesser culpability factor of 'offender acted in response to prolonged or extreme violence or abuse by victim'. The latter factor was included to recognise cases akin to loss of control manslaughter where GBH instead of a death is caused to a victim. Extensive discussion and consideration of including

this factor took place, but it was agreed that an offender whose culpability were to be affected in such a way should be provided for at step one. The high culpability factor of 'revenge' was included to be clear of the distinction between a revenge attack and an offender who 'snaps' following prolonged or extreme violence or abuse.

3.21 The road testing highlighted some issues with the new factors, a summary of which is as follows;

- Only one judge sentencing GBH scenarios disapproved of distinguishing between weapons in the draft guideline, with all others approving of the approach.
- ABH findings noted that sentencers believed that 'prolonged' was harder to assess and potentially presented a higher threshold than sustained and repeated. This was not found to be an issue in road testing of a relevant GBH scenario, where sentencers easily assessed the incident as prolonged due to the nature of the attack, even though duration was not specified.

3.22 In relation to the abused offender factor, there was strong support that this be included, for all of the reasons the Council agreed to include it:

"I would prefer having the lesser culpability including prolonged or extreme violence rather than having to go to mitigating features because it's difficult to mitigate down from you know 12 years. Whereas if it's lesser culpability you are straight away into a much lower area". Judge

"It certainly is something that should be recognised at stage one when you're looking at stage 1, yes" Judge

"I think that new box lesser culpability box would do that. It would allow a lot of judges to give a lot of very vulnerable women the right sentence, so I'd urge that to go in" – Judge

The impact of the factor upon S18 sentences will be discussed later in this paper.

Question 5: Subject to decisions made in respect of factors in the ABH guideline, does the Council agree to retain the high culpability factors in the draft GBH guidelines for consultation?

GBH - Harm model

3.23 The harm model agreed for GBH offences includes greater definition of the level of injuries and their impact, as this is easier to define in cases which must involve really serious harm. The road testing sought to identify if there were any issues with application of these factors.

3.24 Four GBH scenarios were road tested, two s20 and two s18, with a view to identifying if there were any issues with application of the factors. The harm model met with broad approval, with some judges explicitly stating they prefer the treatment of harm in the new guideline, particularly as 'serious in the context of the offence' was expressed by some judges as a challenge to understand in the existing assault guideline.

3.25 Factors were generally applied as expected and the anticipated categorisation was made, suggesting the factors are appropriate. However, there was some difficulty and discussion in the s18 offence scenario where sugared boiling water was used as a weapon and resulted in severe disfigurement of the victim, and judges did not seem to feel that the factors allowed them to categorise the injuries at a high level of harm. The description of injury was as follows; *V was left with severe burns and permanent scarring to his face. One of his eyelids permanently drooped and he was left devastated and depressed at his appearance.* It was expected that sentencers would find harm to be at category 2, as the injuries were grave but not life threatening. This proved to be the case with four out of five judges finding category 2 harm and one finding harm to be at category 1. The scenario sought to test sentencer views on the thresholds of harm in the model, and issues were identified with the high threshold of category 1 harm;

"Well it's not life-threatening, or particularly grave. There's no evidence of lifelong dependencies or third party care, but it's the permanent scar to his face. I mean that's a matter of degree which is difficult to express in writing... I've no doubt the photographs would be horrible, but if they were horrible enough...that scarring on your face does affect your ability to carry out your day to day activities. Especially if, a supervisor at work, needed to speak to customers for example and things like that."

"Having a permanent facial disfigurement is hell of a burden to carry".

"Looking at the wording on the new draft guideline you can't get it into the higher category and I think that's wrong, if I was the victim with those injuries I would want the higher category."

3.26 One of the other s18 scenarios tested included life threatening injuries and was appropriately assessed as category 1 harm. However, the scenario in question appeared to cause particular concerns for sentencers as they felt the threshold of the

wording left them unable to categorise the injuries at the highest level, even though one sentencer did so by assessing the injuries as particularly grave and impacting upon the victim's day to day activities.

3.27 Using the existing guideline the injury was assessed unanimously as greater harm, but only two categories of harm, greater and lesser (in the context of the offence), are included in the existing guideline. The previous SGC guideline included a very serious injury causing permanent disfigurement with a 5 year starting point with a range of 4-6 years custody.

Type/nature of activity	Starting point	Sentencing range
Victim suffered life-threatening injury or particularly grave injury from a pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim	13 years custody	10 – 16 years custody
Victim suffered life-threatening injury or particularly grave injury (where the offence was not pre-meditated) OR Pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim (but not resulting in a life threatening injury or particularly grave injury)	8 years custody	7 – 10 years custody
Victim suffered a very serious injury or permanent disfigurement OR Pre-meditated wounding or GBH OR Other wounding or GBH involving the use of a weapon that came to hand at the scene	5 years custody	4 – 6 years custody
Other wounding or GBH	4 years custody	3 – 5 years custody

3.28 As the existing guideline would provide for a category 1 assessment and a 12 year starting point, it is unsurprising sentencers felt restricted by the harm 2 categorisation in respect of their sentence. Most judges came to a higher sentence using the current guideline compared with the draft guideline by at least 18 months, but up to 6 years. This is unsurprising given the 6 year difference between the category 1 and 2 starting points in the existing GBH S18 guideline. The judge who categorised the offence as A1 using the draft guideline came to the same sentence with the current guideline.

3.29 It was anticipated in developing the factors that permanent disfigurement could be captured at the highest category of harm: the factors as drafted were intended to capture the injuries in such cases in *both* categories depending on their impact upon the victim. It must be recognised that the highest category of harm in a GBH offence will be for injuries which are life threatening or severely life changing. Some disfigurements and scarring would fall into the latter category, but the impact would differ depending on the nature and location of the injury.

3.30 It is recognised that some facial disfigurement, such as that caused by an acid attack or by burns, would be horrendous for a victim. It should be noted that such injuries could be captured by the 'particularly grave' factor, but if this has not proved an obvious factor to apply in practice, perhaps it would be preferable to reference it expressly. To ensure such cases are appropriately captured an additional high harm factor of 'severe and permanent facial or extensive bodily disfigurement' could be included in the highest harm category if the Council thinks appropriate. It may also be that combining 'particularly grave' with 'life threatening' injuries in the factor may have caused sentencers to feel the threshold were too high, so separating these factors may be an alternative way to address the issue.

Question 6: Does the council wish to include an additional category 1 harm factor of 'severe and permanent facial or extensive bodily disfigurement' or, as an alternative, to separate out the factors?

GBH s20 - Sentences

3.31 Sentences for GBH s20 were not intended to deviate too far from the existing guideline, as the evaluation of the existing guideline, while showing a slight increase in ACSL and a shift in disposal types, did not find the existing guideline caused a significant change in sentencing practice. The sentence levels were therefore developed and approved in line with statistics on current sentencing practice for s20 GBH offences, and relative to ABH sentences.

3.32 Road testing identified that due to the revision to factors, particularly the treatment of weapons, in the revised draft guideline, sentences for the two s20 scenarios tested came out lower using the new guideline than the existing. While sentencers were initially satisfied with the sentence they arrived at using the revised draft guideline, upon sentencing with the existing guideline they preferred the higher sentence. This was not an issue where judges assessed the weapon in the domestic

scenario as highly dangerous (a broken bottle), but where the weapons in the scenarios were found to fall into category B this led to lower starting points.

3.33 As the factors are intended to provide for more proportionate seriousness assessments, and to address the inflationary impact of the weapons factor in the existing guideline, it is not proposed that this be revised or that sentences are reconsidered at this point. The revision to the weapons factor was intended to ensure more proportionate sentences, and that use of lower level weapons such as a shod foot will attract a lower sentence than use of a knife. The resource assessment which will be available prior to sign off of the guideline will consider if the revision of factors and the effect upon categorisation and starting points will have a deflationary effect beyond any that the Council are satisfied with. Weapons were a factor present in an average of 45% of s20 cases in CCSS data between 2011-2015, so an assessment will be made of the impact of distributing the weapons factor across two categories of culpability rather than one.

Question 7: Does the Council agree not to consider whether S20 sentences should be revised until it has considered the draft resource assessment of the guideline?

3.34 Rewording of the highly dangerous weapons guidance could also be included to refer to 'bladed articles' instead of knives, as it was somewhat surprising that sentencers did not assess a broken bottle as highly dangerous, which could be due to the threshold the additional guidance on highly dangerous weapons appears to present.

Question 8: Does the Council wish to amend the highly dangerous weapon guidance to include reference to bladed articles rather than knives, to ensure appropriate weapon categorisation?

GBH s18 - Sentences

3.35 The Council will recall that a key consideration in developing sentences for the s18 offence was to ensure an offender who 'snaps' in a loss of control type situation does not attract a higher sentence than they would have received had they killed their victim and been sentenced with the loss of control manslaughter guideline. This meant other sentence starting points and ranges were required to be relative to the relevant categories of s18 offences, and the objective of testing was to test if this resulted in sentences being perceived as too low.

3.36 Two versions of the draft guideline were tested, one including the abused offender lesser culpability factor, and one which did not. Both guidelines included the same sentences. In sentencing the domestic abuse scenario which did not include the abused offender lesser culpability factor, most judges stopped following the guideline on seeing the sentence starting point this would result in, which was 12 years (A1), and said they would depart from the guidelines. In using the version which included the abused victim factor, four of the five judges assessed the offence as category B1 with one judge assessing as C1. In using the existing guideline, two of the judges applied the higher culpability weapon factor and lesser culpability provocation factor to either find a category 2 seriousness assessment and a 6 year starting point, and those finding the offence to be category 1 moved down the category range. Most final sentences using the guideline with the abused victim factor were in the region of category 2 assessment sentences in the existing guideline, of between 6 – 8 years. This suggests the 7 year starting point in this category is appropriate. However, one judge who assessed the offence as category C1 attracting a 4 year starting point said that the sentence was too low. Had all relevant factors been applied however (use of highly dangerous weapon), the categorisation would have been as for other judges and a more appropriate sentence achieved.

3.37 While the top end sentences, (A1, B1 and A2) generally appear to be perceived as fairly proportionate, and in line with the existing guideline, other s18 sentences were broadly considered as too low in road testing. Most sentences were considerably lower using the draft guideline than using the existing guideline. In the s18 scenario tested relating to the drunken assault by an offender on his ex-girlfriend's new partner, sentences were higher in every case using the existing guideline by at least two years, and up to as much as 6 and a half years. Interestingly, however, this scenario was based on a Court of Appeal case which found 4 years to be an appropriate sentence, and the sentences using the draft revised guideline were more in line with this ranging from 2 years 6 months to 5 years.

3.38 In particular, the sentences in the lower categories of seriousness were questioned, with one judge noting;

"I found it curious, that the sentences in harm 3, that's culpability A, culpability B and culpability C, go down to 2 and a half years, for a section 18! I mean that is very, very low, for a section 18. And I just wonder whether they're starting it too low there."

3.39 This was a concern of the Council prior to testing, given the seriousness of a s18 offence. While the sentences at the top end of the table did not appear to cause concern, the sentences in the mid to lower end of the table were not felt to be appropriate. The starting points of category B1 and C1 were intended to be relative to the loss of control manslaughter guideline for a comparable offence where death is not caused.

3.40 Given road testing findings a revised sentence table is included below for the Council's consideration. The 7 year starting point for a category B1 case has been retained, but the starting point of category C1 has been adjusted and shares the same starting point as a loss of control manslaughter case. A lower sentence remains available within the range, as this would perhaps be a more proportionate way to address this issue and avoid all other sentences being too low.

The existing s18 guideline sentences are also included below for reference and comparison:

HARM	CULPABILITY		
	A	B	C
Harm 1	Starting point 12 years Category Range 10-16	Starting point 7 years Category Range 6-10	Starting point 5 years Category Range 4-7
Harm 2	Starting point 7 years Category Range 6-10	Starting point 5 years Category Range 4-7	Starting point 4 years Category Range 3-6
Harm 3	Starting point 5 years Category Range 4-7	Starting point 4 years Category Range 3-6	Starting point 3 years Category Range 2-4

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 years' custody	9-16 years' custody
Category 2	6 years' custody	5-9 years' custody
Category 3	4 years' custody	3-5 years' custody

It should be remembered that the evaluation highlighted the existing guideline had an inflationary effect, but that it has been identified through an analysis of cases and CCSS data that this is likely to be due to the placement of factors (for example all weapons are captured in greater culpability and 78% of s18 cases involved weapons) and not attributable to the existing starting points and ranges being too high, given that they are slightly lower than the previous SGC guideline starting points.

3.41 Should the Council approve of the revised sentence levels, the resource assessment will consider the impact of the sentences agreed and whether they are likely to remedy the evaluation finding that the s18 guideline was inflationary or if they will result in a more pronounced deflationary effect. This will be prepared for the Council to consider prior to sign off of the guideline.

Question 9: Does the Council agree to consult on the proposed revised sentences included above?

4 IMPACT /RISKS

4.1 It will be important reputationally to ensure decisions made in revising the guideline are based on evidence of issues identified in the evaluation, to ensure the Council is seen to be responsive to issues with the guideline. Revision proposals seek to address inflationary issues by revising factors rather than sentences where appropriate. It is also important to note that sentences have been developed in line with evidence of current sentencing practice.

4.2 The draft resource assessment will consider if there will be any unintended impact of revisions, and the Council will be able to consider these prior to sign off of the consultation on the revised guidelines.

Assault Guideline: Crown Court Roadtesting

This paper summarises the qualitative research on the Assault Guideline. Twenty interviews were conducted with Crown Court judges either over the phone or face-to-face, with the aim of testing the new draft guidelines for ABH, s20 and s18. Judges were asked to sentence either two or three hypothetical scenarios (see annex – page 7 onwards), sentencing the scenario firstly with the new draft guideline and then again, with the current assault guideline.

As part of the roadtesting two ABH harm models were tested: one version which included '*Assault occasioning actual bodily harm causes injury which is more serious than in most cases of common assault, but which falls below the really serious injury in cases of grievous bodily harm*' as additional information and one version without this additional information. Two versions of the s18 guideline were also tested: one version which included the lesser culpability '*Offender acted in response to prolonged or extreme violence or abuse by victim*' and one version which excluded this factor.

The research has provided valuable information on how the guideline might work in practice to support development of the *Assault* guideline. However, there are limitations to the work¹, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

Key Findings

ABH

- Overall, some variation in sentences was found, both between judges using the same guidelines, and when comparing the draft and current guidelines. As a result, the research did not result in a conclusive picture of the impact that the draft ABH guideline will have on sentencing or of the consistency with which the guideline will be applied. However, the guidelines were generally well received by judges with only a limited number of issues being raised. As Council may recall the guideline was also well received by magistrates when the draft guideline was tested last year (2018). About a third of adult offenders sentenced for an ABH offence were sentenced in magistrates' court in 2017.
- Consistency of sentencing amongst judges varied between the two ABH scenarios:
 - In scenario one ("restaurant worker") judges were generally consistent, categorising the offender unanimously as culpability B and then as either harm category 1 or 2, as anticipated by policy.
 - For scenario two ("neighbours"), however, judges were divided between whether to place the offender in culpability A or culpability B. Despite it not being anticipated that any culpability A factors would be identified in this case, all judges bar one felt that this was a "*prolonged assault*"². Only when factors in culpability B or C were also felt to be relevant (e.g. use of a non-dangerous weapon or excessive self-defence) was the case categorised as category B.³

¹ Limitations include: this is a small sample which is not necessarily representative and the scenarios only include limited detail of the actual case, which makes comparison with the sentence given by the judge in the actual case difficult.

² Although it had not been anticipated that "*prolonged assault*" would be identified as a factor, given the nature and level of the attack this is acceptable.

³ For one judge categorising the scenario as culpability B, only one factor was felt to be present, so no "balancing" of factors between the categories was necessary.

- For harm in scenario two, most judges placed the offender in category 2 - medium level of physical or psychological harm. However, it had been anticipated that this would be categorised as a high level of harm (category 1).
- As a result of these differing categorisations, the impact of the draft guideline on final sentences varied between the two scenarios and in many cases resulted in a different sentence from that using the current guideline:
 - In scenario one, sentences using the draft guideline varied from 4 months to 15 months, with most being 12 months or over. All but one judge either came to a higher or the same sentence when using the draft guideline compared to the current guideline. For those that were higher, this may be attributable to the fact that judges generally categorised the scenario as offence category 2 using the current guideline (because it was deemed to be “greater harm”) which has a starting point of 26 weeks. Therefore, some of the cases that were categorised as B1 on the draft guideline – which has a starting point of 1 year – had a higher final sentence.
 - Again, for scenario two, final sentences using the draft guideline varied – from 4 months to 13 months, with most over 9 months. However, in contrast to the first scenario, most sentences were higher using the current guideline compared to the draft guideline, by at least 3 months. This also relates to the categorisation of the scenario and the consequent different starting points between the guidelines: for the current guideline, all but one judge placed the offender in category 1 (with a starting point of 18 months), generally because of the sustained and repeated assault and use of a weapon. However, using the draft guideline, categorisations, although varied, were in either A2, B1 or B2, which have starting points of 1 year, 1 year, and 26 weeks, respectively.
 - For both scenarios, judges either considered their sentences to be about right or slightly low using the draft guideline. However, there was no consistency or clear pattern regarding which sentences were perceived as too low or about right.
- When asked for their views on the draft guideline, judges were generally content; however, four issues were raised:
 - Some judges were not content with the phrase ‘*Prolonged assault*’ in culpability A as they felt it would lead to interpretation issues. Judges applied this factor fairly consistently in scenario two.
 - In culpability A, the factor ‘*Victim obviously vulnerable*’ led to some confusion as to whether the victim being vulnerable had to be obvious to the defendant at the time of the assault or to the sentencer only.
 - There were mixed views on whether the treatment of weapons in culpability was helpful or not. A few judges suggested that splitting the weapons out by ‘*highly dangerous*’ and ‘*which does not fall within category A*’ is unnecessary and unhelpful. They said that having to decide whether the weapon is highly dangerous or not is too complicated and open to interpretation, despite the definition provided in the guideline. However, just as many judges also noted that they liked the way weapons were treated in this guideline. It should be noted that not all judges commented on this part of the guideline.
 - On harm, irrespective of the model used, a quarter of the judges suggested that examples of what was meant by the different levels of harm (both physical and psychological) would be helpful. The judges did not indicate a preference for either model.

GBH s20

- Overall, the s20 draft guideline was received well: judges were content with the structure and factors present. However, whilst the research found the categorisation of many of the cases to be consistent between judges, there was variation in final sentences and between the current and draft guideline. The draft guideline resulted in lower sentences on each occasion.
- Judges were mostly categorising harm and culpability consistently using the draft guideline, and as expected by policy, for both s20 scenarios (B1 for the “pub” scenario and A3 or B3 for the “engagement party” scenario). This meant that the initial starting points in the draft guideline selected by judges were relatively consistent.⁴
- However, there did appear to be some variation in final sentences between judges using the draft guideline, despite this consistent categorisation: sentences ranged between 1 year and 18 months for scenario one, and between 15 months and 2 years and 6 months for scenario two. This indicates that the variation was introduced at step 2 at the stage of aggravating or mitigating the sentence.
- When comparing the draft and current guidelines, it was also found that:
 - In both scenarios judges came to higher sentences when using the current guideline by at least 3 months but ranging up to 1 year and 2 months. However, most sentences were higher by 6 months to 1 year.
 - Most judges preferred the higher sentence; this preference was unanimous in the second scenario, but also found to a lesser extent in the first scenario.
 - The higher sentences resulting from the current guideline again appear to relate to the different starting points selected by the judges (in addition to aggravating the sentence in the “pub scenario”; this may be because some of the aggravating factors in the current guideline do not appear in the draft guideline):
 - In scenario one (“pub”) judges categorised the offender as category 1 using the current guideline, which has a starting point of 3 years’ custody, on the basis of ‘*Use of a weapon*’. Because ‘*Use of a weapon or weapon equivalent which does not fall into category A*’ is in medium culpability on the draft guideline, judges were categorising the offender as B1 which has a starting point of 2 years’ custody - a full year lower than the current guideline starting point.
 - Scenario two (“engagement party”) shows a similar pattern. Judges who chose category 1 on the current guideline (starting point of 3 years’ custody⁵) categorised the offender as either A2/A3 on the draft guideline which led to a starting point of 2 years and 18 months respectively. Most judges who chose category 2 on the current guideline

⁴ Some starting points using the current guideline were, however, different from those in the guideline and based on where in the category the judge thought the offender would be (for example, high category 2, low category 1); this meant they sometimes opted for a starting point somewhere between two categories.

⁵ One judge selecting category 1 chose a starting point of 2 years and 6 months on account of it being at bottom of category 1; however, this is still higher than their starting point under the draft guideline of 1 year and 6 months.

(starting point of 18 months⁶) categorised the offender as B3 which led them to a 36 week starting point.

- Generally, judges were content with the culpability, harm and aggravating and mitigating sections of the guideline, with some judges explicitly saying they prefer the treatment of harm in the new guideline, particularly as *'serious in the context of the offence'* was expressed by some judges as a challenge to understand in the current assault guideline.

GBH s18

- Overall, as with s20, judges were generally content with the s18 draft guideline in terms of its structure and the factors present, and they were largely consistent when categorising the scenario. The impact that the guideline had on sentencing and judges' views on final sentences varied depending on which scenario they were sentencing – the “domestic abuse” scenario (scenario one), the “boiling water” (scenario two) or “drunk ex” scenario (scenario three).
- Judges mostly categorised the culpability and harm for the s18 offenders in all three scenarios consistently using the draft guideline and as expected by policy. There was slightly more discrepancy with scenario three, where judges were divided between culpability, A, B or A/B (all but one judge felt it was harm 3). However, despite the general consistency the final sentences varied in all three scenarios.
- Scenario one (“domestic abuse”) was sentenced with three separate guidelines, a draft version which included the lesser culpability factor (*'offender acted in response to prolonged or extreme violence or abuse by victim'*), a draft version without this factor and the current s18 guideline. It was found that:
 - When sentencing with **version one** of the draft guideline, (including the lesser culpability factor, where the offence was categorised mostly as B1, but also as C1 by one judge), judges gave sentences between 4-8 years.⁷ Judges tended to be sympathetic towards the offender, whilst recognising that the defendant has nearly killed someone – they therefore generally felt that the final sentences were appropriate⁸. When compared to sentences using the current guideline, most sentences were higher on the current guideline by at least 6 months but ranging up to 4 years.
 - When sentencing the same scenario with **version two** of the draft guideline, (without the lesser culpability factor, where the offence was categorised unanimously as A1), it was notable that when they reached the final sentence stage, three of the judges stopped following the guideline. One judge said they would depart from the guideline in this situation and the other two judges said they would go back and change the culpability/harm categorisations to achieve a lower sentence; in doing this, they reached a final sentence of 6 to 8 years. The two judges who followed the draft guideline reached a final sentence of 10 years, having applied several mitigating factors.

⁶ One judge chose a 2 year starting point as the offence was “borderline” with category 2, but this was still higher than the starting point of 1 year and 6 months.

⁷ However, the majority of sentences were between 4 and 6 years.

⁸ The judge who thought the offender was culpability C said that the sentence was too low.

- As a result of the higher culpability categorisation, all judges gave a higher sentence using version two of the draft guideline compared with version one; in addition, three of the five judges gave higher sentences using version two when compared with the current guideline (despite the use of a weapon, these three judges assessed the culpability in the current guideline as borderline between higher and lower culpability).
 - There were mixed views from judges on their preferred final sentences; two judges preferred version one (4 and 4.5 years), two judges preferred the current guideline (5 and 7 years) and one judge seemed to prefer version two (10 years).
 - Given the variation here and the observation that judges appeared to be sympathetic to the offender, it may be that they are using their discretion to reach what they deem to be an appropriate sentence for a case such as this; however, it is also apparent that their views on what is the most appropriate sentence differed.
 - For scenario two (“boiling water” – categorised mostly as A2, but as A1 by one judge) final sentences using the draft guideline ranged between 7 years and 6 months to 15 years (the latter being given by the judge who opted for A1). There was variation in judges’ views on the sentence, with some feeling that the sentence was too low and some that the sentence was about right.
 - For scenario three (“drunk ex” – categorised as B3, A3 or B2) final sentences ranged from 2 years and 6 months to 5 years, and for this scenario all judges felt the sentence was too low.
 - For both scenario two and three, all judges bar one gave a higher sentence using the current guideline compared with the draft guideline, by at least 18 months but ranging up to 6 years and 6 months. As with ABH and s20, this may relate to the starting points for the different categories in the guidelines:
 - In scenario two, all judges categorised the offender as category 1 on the current guideline which has a starting point of 12 years. Using the draft guideline, judges were mostly categorising the offender as A2 which has a starting point of 7 years. The one judge who categorised the offender as A1 on the draft guideline gave the same sentence when sentencing the scenario with the current guideline.
 - The biggest difference was in scenario three. Judges categorised the offender as category 1 or category 2 on the current guideline with starting points of 12 years and 6 years, respectively. However, using the draft guideline the offender was categorised as A3, B3 and B2 with starting points of 4 years, 3 years and 4 years respectively.
 - When commenting more generally on the guideline, several judges generally felt that the sentencing range was too low for a s18, especially for less serious cases with sentences that were under three years’ custody before guilty plea.
- Finally, judges were generally content with the structure and factors present in the guideline; however, two key findings on culpability and harm were apparent:
 - In scenario two (“boiling water”) judges placed the offender in harm category 2 as they saw the injury as ‘*Grave but non-life threatening*’. However, there was a strong feeling that severe facial burns and permanent scarring should be captured at harm category 1. It was felt that the pain caused and the permanent effect is substantial enough to be in the highest category. “*Looking at the wording on the new draft guideline you can't get it into the higher category and I think that's wrong, if I was the victim with those injuries I would want the higher category.*”

- Judges who sentenced the domestic abuse scenario were keen to retain the lesser culpability factor '*Offender acted in response to prolonged or extreme violence or abuse by victim*' in the guideline. The judges who did not sentence this scenario made little reference to this factor.

ANNEX A

Annex: Sentencing Tables

ABH Scenarios

ABH scenario one: restaurant worker

V was on his way home from a night out celebrating his birthday in the early hours of the morning and was very drunk. He was staggering through the town centre when he accidentally bumped into D who was walking home after work in his job at a fast food restaurant. Due to being unsteady on his feet V's weight fell against D and caused him to fall. D was unhurt but very angry, and immediately got up and grabbed V by the throat and punched him hard in the face four times before throwing him to the floor and walking off. The incident was captured on CCTV. The force of the punches knocked out V's front teeth, broke his nose and his lip was split. V had to undergo dental treatment and was without front teeth for a number of weeks before replacement teeth were fitted. V says he was unable to leave the house during this time and felt very depressed at his appearance, and he now feels scared and anxious if out at night alone. D has no previous convictions and pleaded guilty at the first hearing.

Higher sentence using the draft guideline

Draft guideline								Current guideline		
Judge	Harm model	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
3S	1	B – Vulnerable (A), no weapon (C)	1	14 months	None	No previous convictions	12 months	12 months	Greater harm & lower culpability Category 2	A – Ongoing effect M – No previous convictions
6D	1	B – Case falling between A&C	1	15-18 months	Revenge	Good character, remorse	15 months	9 months	Greater harm & middle culpability ⁹ Category 2	A – Location, timing, ongoing effect M – No previous convictions, remorse
9W	1	B – Prolonged (A), no weapon (C)	2	9 months	Walked away, vulnerable victim	Remorse, good character	9 months	9 months	Greater harm & lower culpability Category 2	A – Location, ongoing effect M – No previous convictions, isolated incident

⁹ When referencing the current guideline, the term 'middle culpability' is used for when judges felt that the culpability of the offender fell between higher culpability and lower culpability.

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12J	1	B – Case falling between A&C	2	9 months	Vulnerable victim	Good character	12 months	3 months	Middle harm & lower culpability Category 2/3	A – Location, timing M – Good character, single blow
15C	1	B – Case falling between A&C	½	12 months	Vulnerable victim, repeated and sustained attack	None	15 months	9-10 months	Greater harm & lower culpability Category 2	A – Ongoing effect M - None
4K	2	B – Vulnerable victim (A), no weapon used (C)	1	1 year	None	No previous convictions	15 months	8 months	Greater harm & lower culpability Category 2	A – None M – None
7J	2	B – Case falling between A&C	1	1 year	None	No previous convictions, provocation, remorse, good character	12 months	9 months	Greater harm & lower culpability Category 2	A – None M – No previous convictions, remorse good character, isolated incident, provocation
16H	2	B – Case falling between A&C	2 (but towards higher end)	26 weeks	Vulnerable victim	Not enough info to decide	7.5 months	13.5 months	Bottom of greater harm & borderline of higher culpability Category 1/2	A – Location, timing, ongoing effect M – Isolated incident, no previous convictions
18B	2	B – Case falling between A&C	2	26 weeks	None	No previous convictions & good character	4 months	4 months	Greater harm & lower culpability Category 2	A – None M – Good character
20K	2	B – Case falling between A&C	1 (bottom end)	1 years	Vulnerable victim	No previous convictions	15 months	15 months	Greater harm (culpability = missing) Category 1/2	A – None M – Good character

ANNEX A

ABH scenario two: neighbours

D had bought a car from a neighbour, V, and the car had developed a very expensive fault. D was telling another neighbour of the problem with the car when the neighbour told him that V had told him the car had a serious problem a few weeks before and he was going to ‘get shot of it.’ D was furious and went to V’s house and confronted him and asked for his money back. A nasty argument ensued and V became very aggressive and told D he ‘wasn’t giving him a fucking penny’ and ‘to get out of my fucking face before I do you’. D refused to leave so V then pushed D and punched him in the face. D was enraged and grabbed a heavy piece of wood which was leaned up against the wall of V’s house and swung it at V, hitting him around the head. V fell to the floor and D continued to hit him with the piece of wood and kick him to the face and body until other neighbours intervened and pulled him off. V sustained extensive cuts and bruises, including swelling to his head and eyes, and a nasty cut to his face requiring 5 stitches. D is of previous good character and pleaded guilty on the day of trial.

 Higher sentence using the current guideline

Draft guideline								Current guideline			
Judge	Harm model	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
10T	1	B – Prolonged assault (A), weapon used (B)	1	1 year	None	Good character	10 months	14.5 months	Greater harm & higher culpability Category 1	A – None M – Good character	
11F	1	A – Prolonged assault	2	1 year	Use of weapon	Excessive self-defence, good character	12 months	15 months	Greater harm & higher culpability Category 1	A – None M – Good character, excessive self defence	
13F	1	A – Prolonged assault	2	26 weeks	Weapon, own home	Remorse, good character	4 months	12 months	Greater harm & higher culpability Category 1	A – None M – Good character, did not take weapon	
14D	1	B – Weapon used	1/2	15 months	None	Good character	12 months	15 months	Greater harm & higher culpability Category 1	A – Location M – Good character	

ANNEX A

22R	1	B – Prolonged assault (A), weapon used (B), self-defence (C)	2	26 weeks	Revenge, victims own home	Good character, absence of premeditation	12 months	12 months	Lesser harm & lesser culpability Category 2	A – Location M – No previous convictions, isolated incident good character
5K	2	B – Prolonged assault (A), self-defence (C)	2	26 weeks	None	No previous convictions, significant degree of provocation	9 months	15 months	Greater harm & higher culpability Category 1	A – None M – Provocation
8J	2	A – Prolonged assault	2	12 months	None	Good character, remorse, significant degree of provocation	12 months	12 months	Greater harm & higher culpability Category 1	A – None M – No previous convictions, remorse, good character
17H	2	A – Prolonged assault (A), weapon used (B)	2	14 months	None	Good character, some degree of provocation	13 months	18 months	Greater harm & higher culpability Category 1	A – Location M – None
19B	2	A – Prolonged assault and highly dangerous weapon	2	12 months	None	Good character (& mentions they have to live next door to each other)	5 months	9 months	Middle harm & middle culpability Category 1	A – None M – No previous convictions, good character, isolated incident
21K	2	B – Prolonged assault (A), use of weapon (B)	1	12 months	None	Good character, no previous convictions, potential provocation	12 months	18 months	Greater harm & higher culpability Category 1	A – None M – Good character

ANNEX A

GBH s20 Scenarios

GBH s20 scenario one: pub

D was out with friends at a pub having a game of pool. V and his friends were nearby waiting for the table to become available. D overheard V complaining about the ‘black bastards hogging the pool table’. At first D ignored it, but after it continued for some time and V made the comments louder, D confronted him telling him to shut his mouth. V squared up to D and said ‘come on then nigger if you want some’. D lost his temper and hit V around the head with the pool cue he was holding, causing V to fall back and hit his head on the corner of the pool table. V was rendered unconscious, and on examination in hospital was found to have suffered multiple subarachnoid haemorrhages. Medical evidence confirms that as a result of the injuries sustained V suffers ongoing severe headaches and has been left with epilepsy and is not able to drive, and has therefore had to give up his job as a delivery driver. D is full of remorse and devastated at the injuries caused to V. D is of previous good character and pleaded guilty at the first opportunity.

Higher sentence using the current guideline

Draft guideline							Current guideline		
Judge	Culpability	Harm	Starting point	Aggravating factor/s	Mitigating factor/s	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
3D	B - Use of a weapon	1	2 years	None	Remorse, good character, significant degree of provocation	12-15 months	2 years	Greater harm & higher culpability Category 1	A – Location M – No previous convictions, good character, remorse, single blow, isolated incident
4S	B - Use of a weapon	1	2 years	None	Significant degree of provocation, remorse, no previous convictions	18 months	2.5 years	Greater harm & middle culpability Bottom of category 1	A – Ongoing effect M – Remorse, no previous convictions
5W	B - Use of a weapon	1	2 years	None	Remorse, good character, significant degree of provocation	15 months (potential to suspend)	18 months	Greater harm & middle culpability Category 1/2	A – Presence of others, location

ANNEX A

						given the racism)			M – Single blow, isolated incident, good character, remorse
7J	B/C - Use of weapon (B) and excessive self-defence (C)	1	1 year 9 months	None	Provocation, good character, remorse, self defence	12 months	2 years	Greater harm & higher culpability Category 1	A – Location, ongoing effect, presence of alcohol M – Good character, remorse, single blow
11C	B - Use of weapon	1	2 years	None	Remorse, good character, provocation	18 months	2.5 years	Greater harm & higher culpability Category 1	A – None M – racial provocation

GBH s20 scenario two: engagement party

V was with her partner, D at an engagement party. D had a history of being jealous and had previous convictions for behaving violently towards V. V was at the bar speaking to an old school friend when D approached her and dragged her by the arm and told her he wanted a word with her outside. He dragged her outside and she was asking him to stop as he was causing a scene. He threw her against a wall and shouted in her face that he had seen her flirting and she was ‘making him look like a cunt.’ She tried to push him away and go back inside, and he grabbed her by the throat and hit her across the head with the bottle of beer he was holding. The bottle broke and caused bruising to her ear and a deep 3 cm wound to her head which required stitches. D pleaded guilty on the day of trial.

 Higher sentence using the current guideline

Draft guideline							Current guideline			
Judge	Culpability	Harm	Starting point	Aggravating factor/s	Mitigating factor/s	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
6C	B - Use of a weapon	3	36 weeks	Previous convictions, history of violence	None	15 months	2 years	Lesser harm & higher culpability Category 2	A – Previous convictions M – None	
8S	B - Use of a weapon	3	36 weeks	History of violence, previous convictions, possibly victim vulnerable	None	18 months	2 years and 8 months	Middle harm & higher culpability Category 2	A – Previous convictions M – None	

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9P	A - vulnerable victim (A), use of weapon (B)	3	1 year and 6 months	Previous convictions/history of violence	None	2 years	2.5 years	Greater harm & higher culpability Bottom of category 1	A – Previous convictions M – None
10K	A/B - vulnerable victim (A), use of a weapon (B)	3	1 year 6 months	Previous convictions	None	2 years	2.5 years	Border of greater harm & higher culpability Category 2	A – Previous convictions M – None
12M	A - vulnerable victim, use of a HD weapon	2	2 years	Previous convictions, history of violence, abuse of position of trust, revenge, steps taken to prevent, alcohol	None	2.5 years	3 years	Greater harm & higher culpability Category 1	A – Previous convictions, timing, presence of others, alcohol, abuse of position of trust, steps taken to prevent reporting M - None

ANNEX A

GBH s18 scenarios

GBH s18 scenario one: domestic abuse

V had a history of domestic abuse against D while drunk, and had put her in hospital on a number of occasions with serious injuries including broken bones, facial fractures, lost teeth and severe bruising. D always refused to give evidence against V and proceedings were dropped as a result. One night V returned home from the pub and went into the bedroom and woke D and demanded sex. D said she needed to use the bathroom and locked herself in there hoping V would fall asleep. She waited 10 minutes before coming out and heard him snoring. D then went to the kitchen and got a large knife which she took to bed with her in case D woke. She went into the bedroom and V stirred, causing her to fear he would wake. Terrified at the prospect he would beat her upon waking or want sex, D took the knife and stabbed D 10 times to the upper body. He had multiple stab wounds to his neck, penetration of a lung, and a perforated kidney and liver. His life was in danger but surgeons managed to save him. D was originally charged with attempted murder but a plea to a s18 was accepted. She has two teenage children with V and is extremely remorseful, and says she wishes she had sought help and escaped the marriage long ago, and doesn't know what possessed her to act as she did. Character references say that D is mild mannered and quiet, and express shock at her actions.

 Version one

 Version two

Draft guidelines										Current guideline		
Judge	Culpability v1	Culpability v2	Harm	Starting point v1	Starting point v2	Aggravating	Mitigating	Final sentence v1	Final sentence v2	Final sentence (pre- GP)	Guideline categorisation	Aggravating/ mitigating
3C (V2 first)	C – response factor	A – prolonged assault	1	4 years	12 years	V1 = None V2 = None	V1 = None V2 = no previous convictions, remorse, history of violence, carer	4 years	8 years (judge would move out of A to B)	8 years	Greater harm & higher culpability Category 1	A – None M – Remorse, good character, isolated incident.
4S (V2 first)	B – response factor &	A – HD weapon	1	7 years	12 years	V1 = None V2 = None	V1 = No previous convictions, remorse,	6 years	10 years	7 years	Greater harm & middle culpability Category 1/2	A – None M – No previous convictions, remorse, good character,

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	HD weapon						good character V2 = No previous convictions, remorse, good character, history of violence, carer					isolated incident, sole/primary carer
5P (V1 first)	B – response factor & HD weapon	A – HD weapon	1	6 years	12 years	V1 = None	V1 = No previous convictions, remorse, provocation V2 = No previous convictions, remorse, provocation, history of violence	6 years	8 years	5 years	Greater harm & middle culpability Category 2	A – None M – No previous convictions, good character
6K (V1 first)	B – response factor & HD weapon	A – HD weapon	1	7 years	12 years	V1 = None	V1 = No previous convictions, remorse, carer V2 = No previous convictions, remorse, history or	4.5 years	6 years (judge would move outside cat range)	5 years	Greater harm & middle culpability Category 2	A – None M – No previous convictions, remorse

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							significant violence.					
7M (V2 first)	B – response factor & HD weapon	A – premeditation, prolonged & HD weapon	1	7 years	12 years	V1 = Victim vulnerable V2 = victim vulnerable	V1 = Good character V2 = History of violence, good character	8 years	10 years	10 years	Greater harm and higher culpability Category 1	A – Location, timing M – Remorse, good character, past history of violence by victim towards offender

GBH s18 scenario two: boiling water

V was D’s supervisor at work and disciplined D for his poor attitude and attendance. D was given a final warning and told he would be let go if he did not improve. D was extremely angry, and was overheard telling colleagues V was “going to fucking proper get it”. V was in the office porter cabin doing paperwork one day when D entered to make tea for his colleagues. D boiled the kettle and was seen to add a large amount of sugar to the kettle containing the boiling water, before approaching V and tipping it over his head. D locked the door to prevent V escaping, and stood by as V ran screaming around the porter cabin in agony and would not let him access the sink to put cold water on his face. Colleagues had to break the door down to assist V, and V was left with severe burns and permanent scarring to his face. One of his eyelids permanently drooped and he was left devastated and depressed at his appearance. D admits the offence but is not remorseful, saying V was a cunt and deserved it. D has previous convictions for violent disorder and ABH, but these were 3 years ago.

 Higher sentence using the current guideline

Draft guideline							Current guideline			
Judge	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
3T	A - Use of HD weapon, planning, prolonged, revenge	2	7 years	Preventing medical assistance,	None	9 years	14 years	Greater harm & higher culpability Category 1	A – Previous convictions M - None	

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				previous conviction					
5F	A - Planning/premeditation, revenge	2	7 years	Previous convictions	None	7 years 6 months	9 years but judge has to take this down from 12.	Greater harm & higher culpability Category 1	A – Previous convictions M – None
7F	A - Use of HD weapon, premeditation, revenge	2	10 years	Vulnerable victim	None	10 years	13-15 years	Greater harm & higher culpability Category 1	A – Location M – None
9D	A - Planning, prolonged, revenge	1	14 years	Steps taken to prevent, previous convictions	None	15 years	15 years	Greater harm & higher culpability Category 1	A – Ongoing effect, steps taken to prevent, previous convictions M – None
12R	A - Use of HD weapon, premeditation, revenge	2	7 years	Previous convictions, steps taken to prevent assistance	None	8 years	13-14 years	Greater harm & higher culpability Category 1	A – Previous convictions, location, ongoing effect M – None

GBH s18 scenario three: drunk ex

V and his female companion were walking through the town centre after a night out when they encountered D, who was drunk. The female and D had formerly been in a relationship. D instigated a fight with V, and headbutted him causing V to fall to the floor. Whilst V was lying on the floor, D, who was wearing trainers, kicked him to the head three times. Witnesses described the kicks "as taking a conversion in a rugby match", each involving the offender taking a few steps back before each kick. D then ran away and went to a night club leaving V unconscious. V was taken to hospital and found to have a number of injuries - a laceration under his left eye that required 18 stitches, a laceration above his left eyebrow that required gluing, cuts and grazes to his

ANNEX A

left elbow, a bruised ear and a bruised head. When reviewed in hospital six weeks later he was still experiencing numbness to the left side of his face due to nerve damage caused by the assault and the numbness lasted for some three months. D pleads guilty. He has no previous convictions, is in employment and has a number of good character references.

 Higher sentence using the current guideline

Draft guideline							Current guideline		
Judge	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
4T	B - Potentially prolonged (A), use of weapon (B)	3	3 years	None	Good character, no previous convictions	2 years and 6 months	9 years	Greater harm & higher culpability Category 1	A – None M – None
6F	A - Prolonged assault	3	4 years	Intention to cause more harm, influence of alcohol	Good character, no previous convictions	4 years and 6 months	9 years	Greater harm & higher culpability Category 1	A – Domestic violence, alcohol, revenge M – No previous convictions
8F	B - Use of weapon	2	4 years	Three kicks, influence of alcohol, night time	No previous convictions, good character, in work	4 years	10 years	Greater harm & higher culpability Category 1	A – None M – Good character
10D	A/B -Prolonged (A), use of weapon (B)	3	6 years	Alcohol	Good character	5 years	7 years	Lesser harm & higher culpability Category 2	A – Presence of others, alcohol, M – Good character
12R	A/B -Prolonged (A), use of weapon (B)	3	4 years	Presence of others	Good character	3 years	6 years	Lesser harm & higher culpability Category 2	A – Location, presence of others, alcohol M – No previous convictions

STEP ONE**Determining the offence category**

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

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

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

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or 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

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
To assess the level of harm caused by the offence, the court must consider;	
<ul style="list-style-type: none">• The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm• Where in that range of injuries the injury caused falls	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline ‘Overarching Principles: Domestic Abuse’ and any aggravating features appropriately reflected in the sentence.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 2 years</p> <p>Category Range 1 year– 3 years 6 months</p>	<p>Starting point 1 year</p> <p>Category Range 26 weeks – 2 years</p>	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>
Harm 2	<p>Starting point 1 year</p> <p>Category Range 26 weeks – 2 years</p>	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks</p>
Harm 3	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks</p>	<p>Starting point Medium Level Community Order</p> <p>Category Range Band B Fine – 16 weeks 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

1) Has the custody threshold been passed?

2) If so, is it unavoidable that a custodial sentence be imposed?

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

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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 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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

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

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or 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

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases of GBH will involve 'really serious harm', which can be physical or psychological. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline ‘Overarching Principles: Domestic Abuse’ and any aggravating features appropriately reflected in the sentence.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 3 years</p> <p>Category Range 2 years– 4 years</p>	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>
Harm 2	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>
Harm 3	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks 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 starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

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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 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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

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

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault
- Revenge

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability 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

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 12 years</p> <p>Category Range 10-16</p>	<p>Starting point 7 years</p> <p>Category Range 6-10</p>	<p>Starting point 4</p> <p>Category Range 3-7</p>
Harm 2	<p>Starting point 7 years</p> <p>Category Range 6-10</p>	<p>Starting point 4</p> <p>Category Range 3-7</p>	<p>Starting point 3</p> <p>Category Range 2 years 6 months-5</p>
Harm 3	<p>Starting point 4</p> <p>Category Range 3-7</p>	<p>Starting point 3</p> <p>Category Range 2 years 6 months-5</p>	<p>Starting point 2 years 6 months</p> <p>Category Range 2-4</p>

Note: The table is for a single offence against a single victim. 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*.

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 starting point. 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 of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

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

Offence committed in prison

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon (where not taken into account at step one)

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

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

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