

**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.

<b>Harm</b>	
To assess the level of harm caused by the offence, the court must consider;	
<ul style="list-style-type: none"><li>• The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm</li><li>• Where in that range of injuries the injury caused falls</li></ul>	
<b>Category 1</b>	High level of physical or psychological harm
<b>Category 2</b>	Medium level of physical or psychological harm
<b>Category 3</b>	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
<b>Harm 1</b>	<p><b>Starting point</b> 2 years</p> <p><b>Category Range</b> 1 year– 3 years 6 months</p>	<p><b>Starting point</b> 1 year</p> <p><b>Category Range</b> 26 weeks – 2 years</p>	<p><b>Starting point</b> 26 weeks</p> <p><b>Category Range</b> High Level Community Order - 1 year 6 months</p>
<b>Harm 2</b>	<p><b>Starting point</b> 1 year</p> <p><b>Category Range</b> 26 weeks – 2 years</p>	<p><b>Starting point</b> 26 weeks</p> <p><b>Category Range</b> High Level Community Order - 1 year 6 months</p>	<p><b>Starting point</b> High Level Community Order</p> <p><b>Category Range</b> Low Level Community Order – 26 weeks</p>
<b>Harm 3</b>	<p><b>Starting point</b> 26 weeks</p> <p><b>Category Range</b> High Level Community Order - 1 year 6 months</p>	<p><b>Starting point</b> High Level Community Order</p> <p><b>Category Range</b> Low Level Community Order – 26 weeks</p>	<p><b>Starting point</b> Medium Level Community Order</p> <p><b>Category Range</b> 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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