

Annex E

Section 4 – threatening behaviour – fear or provocation of violence

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 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:

- 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

Annex E

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	<p>Starting point 12 weeks' custody</p> <p>Range Medium Level community order - 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>
Category 2	<p>Starting point High level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Range Discharge - medium level community order</p>

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.

Annex E

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<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.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<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.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION
<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).

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;

Annex E

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

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.

Annex E

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: sex, disability, sexual orientation or transgender identity

Other aggravating factors:

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Leading role in group
- 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/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

- Peripheral role in 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

Annex E

Blank page