

# **PUBLIC ORDER – AGREED DEFINITIVE GUIDELINES**

# **Riot**

**Public Order Act 1986 (section 1)**

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**Triable only on indictment**

**Maximum: 10 years' custody**

**Offence range: 3 – 9 years' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

<b>Culpability</b>	
A	<ul style="list-style-type: none"> <li>• Offender used or intended to use petrol bomb or incendiary device</li> <li>• Offender used or intended to use firearm or other highly dangerous weapon*</li> <li>• Offender was an instigator or carried out a leading role</li> <li>• Offenders actions escalated level of violence and/or disorder</li> </ul>
B	<ul style="list-style-type: none"> <li>• Any incident of riot not including category A factors</li> </ul>
<p><i>* The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The 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'.</i></p>	

<b>Harm</b>	
<p>The level of <b>harm</b> is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.</p>	
<b>Category 1</b>	<p><b>Multiple or extreme examples of the following:</b></p> <ul style="list-style-type: none"> <li>• Incident results in serious physical injury or very serious fear and/or distress</li> <li>• Incident causes serious disruption or severe detrimental impact to community</li> <li>• Incident causes loss of livelihood or substantial costs to businesses</li> <li>• Incident causes substantial costs to be incurred to public purse</li> <li>• Incident involves attacks on police or public servants</li> <li>• Incident results in extensive damage to property</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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
<b>Category 1</b>	<b>Starting point</b> 7 years' custody  <b>Category range</b> 6 – 9 years' custody	<b>Starting point</b> 6 years' custody  <b>Category range</b> 4 – 7 years' custody
<b>Category 2</b>	<b>Starting point</b> 6 years' custody  <b>Category range</b> 4 – 7 years' custody	<b>Starting point</b> 5 years' custody  <b>Category range</b> 3 – 6 years' custody

The **non-exhaustive** lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

**Care should be taken not to double count aggravating factors which were relevant to the culpability assessment, particularly in cases where culpability is assessed as high.**

### **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: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

#### **Other aggravating factors:**

Active and persistent participant

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Took steps to prevent emergency services from carrying out their duties

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Actively recruited other participants

Possession of weapon or article intended to injure

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Ignored warnings or exclusion notices

Offence committed while on licence or subject to post sentence supervision

Failure to comply with current court orders

### **Factors reducing seriousness or reflecting personal mitigation**

Low level involvement

No previous convictions or no relevant/recent convictions

Remorse

Age and/or lack of maturity

Mental disorder or learning disability

Good character and/or exemplary conduct

Sole or primary carer for dependent relatives

## **Other offences committed within incidents of riot**

Where sentencing other offences committed in the context of riot, the court should treat the context of the offending as a severely aggravating feature of any offence charged.

### **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**

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 (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.

## **Violent disorder**

### **Public Order Act 1986 (section 2)**

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**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 4 years 6 months' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

<b>Culpability</b>	
A	<p>Factors in Category B present <b>AND</b> any of;</p> <ul style="list-style-type: none"> <li>• Offender used or intended to use petrol bomb or incendiary device</li> <li>• Offender used or intended to use firearm or other highly dangerous weapon*</li> <li>• Offender was an instigator or carried out a leading role</li> <li>• Targeting of individual(s) by a group</li> </ul>
B	<ul style="list-style-type: none"> <li>• Offender participated in incident which involved widespread and/or large scale acts of violence on people and/or property</li> <li>• Offender participated in incident involving serious acts of violence</li> <li>• Offender participated in incident involving significant planning of unlawful activity</li> <li>• Offender participated in incident involving persistent and/or sustained unlawful activity</li> </ul>
C	<ul style="list-style-type: none"> <li>• Offence involved threats of violence only</li> <li>• Offence involved lower level of violence or activity than included in Category B</li> </ul>
<p><i>* The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The 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'.</i></p>	

<b>Harm</b> The level of <b>harm</b> is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Cases involving multiple or extreme category 2 factors</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Incident results in serious physical injury or serious fear and/or distress and/or disruption</li> <li>• Incident causes serious disruption or severe detrimental impact to community</li> <li>• Incident causes loss of livelihood or substantial costs to businesses</li> <li>• Incident causes substantial costs to be incurred to public purse</li> <li>• Incident results in attacks on police or public servants</li> <li>• Incident results in extensive damage to property</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Offence involved threats of violence only</li> <li>• Offence involved lower level of violence or activity than included in category 2</li> </ul>

**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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 4 year's custody  <b>Category range</b>  3 – 4 years 6 months	<b>Starting point</b> 3 year's custody  <b>Category range</b>  2 – 4 years	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years
<b>Category 2</b>	<b>Starting point</b> 3 year's custody  <b>Category range</b>  2 – 4 years	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years	<b>Starting point</b> 1 year's custody  <b>Category range</b>  HL CO- 2 yrs custody
<b>Category 3</b>	<b>Starting point</b> 2 year's custody  <b>Category range</b>  1 – 3 years	<b>Starting point</b> 1 year's custody  <b>Category range</b>  HL CO - 2 years	<b>Starting point</b> 26 weeks' custody  <b>Category range</b>  ML CO – 1 year

The non-exhaustive lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

**Care should be taken not to double count aggravating factors which were relevant to the culpability assessment, particularly in cases where culpability is assessed as high.**

### 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: religion, race, disability, sexual orientation or transgender identity

Offence committed whilst on bail

#### Other aggravating factors:

Active and persistent participant

Incitement of others

Offender masked or disguised to evade detection

Incident occurred in busy public area

Offender used weapon

Offender threw missiles/objects

Use of significant physical violence

Injury to animal carrying out public duty

Possession of weapon or article intended to injure

Attack by animal used or threatened in commission of offence

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed while on licence or subject to post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role

Remorse

Good character and/or exemplary conduct

Sole or primary carer for dependent relatives

Age and/or lack of maturity

Mental disorder or learning disability

### **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**

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 (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.

## **Affray**

**Public Order Act 1986 (section 3)**

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**Triable either way**

**Maximum: 3 years' custody**

**Offence range: Fine – 2 years 9 months' custody**

**This is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Use of a weapon to inflict violence</li> <li>• Use of serious or sustained violence</li> <li>• Intention to cause fear of very serious violence</li> </ul>
B	<ul style="list-style-type: none"> <li>• Threat of violence by any weapon (whether or not produced)</li> <li>• Threat or use of violence falling between levels in categories A and C</li> </ul>
C	<ul style="list-style-type: none"> <li>• Threat or use of minimal violence</li> <li>• The offender acted in self-defence or in fear of violence (where not amounting to a defence)</li> </ul>

**Harm**

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical injury to others</li> <li>• Serious fear/distress caused</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Harm falling between categories 1 and 3</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Little or no physical injury to others</li> <li>• Some fear/distress caused</li> </ul>

**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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 2 years</p> <p><b>Category range</b> 1 year 6 months - 2 years 9 months</p>	<p><b>Starting point</b> 1 year</p> <p><b>Category range</b> 26 weeks' - 1 year 6 months custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> 26 weeks' - 1 year 6 months' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>	<p><b>Starting point</b> HL CO</p> <p><b>Category range</b> LL CO – 9 months custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> ML CO - 1 year's custody</p>	<p><b>Starting point</b> HL CO</p> <p><b>Category range</b> LL CO – 36 weeks' custody</p>	<p><b>Starting point</b> ML CO</p> <p><b>Category range</b> Band C Fine - HL CO</p>

The non-exhaustive lists below include additional factual elements providing context to the offender's role in an offence and other factors relating to the offender.

First identify factors relating to the offender's role in the offence to identify whether any combination of these should result in an upward or downward adjustment from the sentence arrived at so far.

Other relevant aggravating and mitigating factors should then be considered to determine if further adjustment to the sentence is required.

### **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: religion, race, disability, sexual orientation or transgender identity
- Offence committed whilst on bail

#### **Other aggravating factors:**

Incident occurred in busy public area

Leading role where offending is part of group activity

Offender threw missiles/objects

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

Prolonged incident

Significant impact on public resources

Threats or violence directed towards public servants in the course of their duty

Injury to animal carrying out public duty

Commission of offence whilst under the influence of alcohol or drugs

Large number of persons affected

Offence committed while 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

Good character and/or exemplary conduct

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Significant degree of provocation

Low level involvement

Minor/peripheral role in group activity

No members of public present other than those participating in violence

Age and/or lack of maturity

Mental disorder or learning disability

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**

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.

## **Threatening behaviour – fear or provocation of violence**

**Public Order Act 1986 (section 4)**

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**Triable only 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))**

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**Triable either way**

**Maximum: 2 years' custody**

**The racially or religiously aggravated offence is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

**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 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.

<b>Culpability</b>		
<b>Harm</b>	<b>A</b>	<b>B</b>
<b>Category 1</b>	<p><b>Starting point</b> High level community order</p> <p><b>Range</b> Low Level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> Medium level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Discharge - Medium level community order</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 sentence arrived at so far.

### 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 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/drugs
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- Minor/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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 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
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> 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"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>	<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>

throughout local community or more widely.	
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> </ul>	Consider a more onerous penalty of the same type identified for the basic offence.

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 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 (RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY)**

##### **Dangerousness**

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

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Compensation and ancillary orders**

In all cases the court 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)**

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**Triable only summarily**

**Maximum: 6 months' 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))**

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**Triable either way**

**Maximum: 2 years' custody**

**The racially or religiously aggravated offence is a specified offence for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) 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**.

**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
- Substantial disturbance
- 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
<b>Category 1</b>	<p><b>Starting point</b> High level community order</p> <p><b>Range</b> Low Level community order - 26 weeks' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> Low level community order</p> <p><b>Range</b> Band C Fine – 12 weeks' custody</p>	<p><b>Starting point</b> Band C fine</p> <p><b>Range</b> Discharge - Low level community order</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 sentence arrived at so far.

### 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
- Failure to comply with current 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
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 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
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> 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"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>	<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>

throughout local community or more widely.	
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> </ul>	Consider a more onerous penalty of the same type identified for the basic offence.

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 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 (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)**

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**Triable only summarily**

**Maximum: Level 3 fine**

**Offence range: Discharge – Fine**

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

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**Triable only summarily**

**Maximum: Level 4 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**.

<b>Culpability</b> demonstrated by one or more of the following:	
<b>A - High culpability:</b>	
<ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Sustained incident</li> <li>• Use of force</li> <li>• Substantial disturbance</li> </ul>	
<b>B – Lesser culpability</b>	
<ul style="list-style-type: none"> <li>• All other cases</li> </ul>	

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

**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.

<b>Culpability</b>		
<b>Harm</b>	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> Band C fine  <b>Range</b> Band B – Band C fine	<b>Starting point</b> Band B fine  <b>Range</b> Band A – Band C fine
<b>Category 2</b>	<b>Starting point</b> Band B fine  <b>Range</b> Band A – Band C fine	<b>Starting point</b> Band A fine  <b>Range</b> Conditional discharge – Band B 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.

### 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
- Commission of offence whilst under the influence of alcohol/drugs
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- History of antagonising the victim
- Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)
- Offence committed whilst on licence or 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
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

<b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b>
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**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 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.

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ 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).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 2.5</p> <p>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>
<b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 2</p>

<ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some distress to the</li> <li>▪ victim or the victim's family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Discharge for basic offence: impose fine at mid-top of basic offence category range</p>
<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ 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).</li> </ul>	<p>Fine for basic offence: Multiply basic fine by 1.5</p> <p>Discharge for basic offence: impose fine at low-mid of basic offence category range</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.

### **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.

**Racial hatred offences**

**Public Order Act 1986**

**(sections 18-23(3))**

**Hatred against persons on religious grounds or grounds of sexual orientation Public Order Act 1986 (sections 29B-29G(3A)(3))**

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**Triable either way**

**Maximum: 7 years' custody**

**Offence range: Community order – 6 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** demonstrated by one or more of the following:

**A - High culpability:**

- Offender uses position of trust, authority or influence to stir up hatred
- Intention to incite serious violence
- Persistent activity

**B – Medium culpability**

- Factors in categories A and C not present

**C – Lesser culpability**

- Reckless as to whether hatred would be stirred up (applicable to racial hatred offences only)

**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**

- Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life
- Widespread dissemination of statement/publication/performance broadcast

**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	C
<b>CATEGORY 1</b>	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2 – 6 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 years' custody  <b>Category range</b> 1 – 3 years' custody
<b>CATEGORY 2</b>	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 4 years' custody	<b>Starting point</b> 1 years' custody  <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> HL CO  <b>Category range</b> LL CO – 1 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.

### Factors increasing seriousness

#### ***Statutory aggravating factors:***

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

#### ***Other aggravating factors:***

- Planning of event or campaign designed to stir up hatred
- Timing of incident – particularly sensitive social climate
- Vulnerable/impressionable audience
- Significant volume of publications published or disseminated (where not taken into account at Step One)
- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- 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

- Minor/peripheral role in group activity
- Previous good character
- No previous convictions **or** no relevant/recent convictions
- Offender took steps to limit dissemination
- Remorse
- Age and/or lack of maturity
- Mental disorder or learning disability
- 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**

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**STEP FIVE**

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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.