

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

26 July 2019
SC(19)JUL07 – Public Order
Sarah Munro & Rebecca Crane
Lisa Frost
0207 071 5784

1 ISSUE

1.1 This meeting requires sign off of the definitive guidelines for Public Order offences and consideration and approval of the final resource assessment.

2 RECOMMENDATION

2.1 The Council is asked to;

- consider revisions agreed to the draft Public Order guidelines;
- sign off the definitive versions of the guidelines and;
- note the resource impacts which will inform the final resource assessment.

3 CONSIDERATION

3.1 The Council have been considering responses to the consultation on the draft Public order guidelines since January 2019. This meeting requires sign off of the definitive versions of the guidelines.

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 as well as a summary of changes made to each guideline based on responses. Annex B includes the definitive guidelines illustrating post consultation changes. Annex C includes the expected resource impact for the guidelines.

Riot

3.3 The draft guideline which was subject to consultation is included at Annex A.

A summary of the decisions in relation to the content of the draft guideline is as follows;

- It was agreed that the riot guideline should reflect established principles¹ that the role played by an individual offender within riot offences will not be the main driver of an individual's sentence. Rather, it is the incident itself and the overall level and scale which is the predominant factor influencing sentences, with the offenders' individual role in the incident assessed to a lesser extent.
- While the incident itself does result in a 'baseline' sentence, cases illustrated that some individual behaviour – such as an organising or leading role, or throwing a petrol bomb or using a highly dangerous weapon such as a firearm - does inflate the sentence above this, so it was agreed such activity should attract the highest culpability categorisation.
- Only two culpability categories were included as it was agreed it is difficult to envisage, and no cases analysed identified, any case which would not be captured within the two categories proposed. All cases analysed were large scale and/or serious incidents, involved significant planning or were persistent and sustained, and it is likely that any offence charged as riot would include these characteristics.

Riot – summary of changes to draft guideline

Culpability factors

3.4 Respondents were asked if they preferred the list of descriptive factors at culpability B, or if one factor of 'any incident of riot' would be sufficient. The majority preferred the individual factor, and the factor was amended to 'any incident of riot not including category A factors'. Based on road testing findings and some issues with interpretation of the word 'ringleader' in a category A culpability factor this was amended to 'instigator'.

Harm factors

3.5 Based on a number of responses questioning whether any offence of riot would fall outside of the factors included in the draft category 1 harm factors, and road testing findings supporting this concern, the harm model was amended. A proposed alternative model suggested listing harm factors in category 2, with category 1 providing for cases where

¹ *R v Blackshaw (& others) [2011] EWCA Crim 2312; R v Caird [1970] 54 Cr. App. R 499 at 506*

multiple or extreme category 2 factors are present to reduce the likelihood of all cases being categorised at the highest level. However, the Council preferred a model which retained listed factors in category 1 headed with 'multiple or extreme examples of', with category 2 providing for all other cases.

Sentence levels

3.6 There was broad approval from consultation respondents of sentence levels, with very few dissenting views. No changes were therefore made to sentences.

Aggravating and Mitigating factors

3.15 Based on a number of respondents raising concerns that the aggravating factors included led to a high risk of double counting, the following wording was included at step two of the guideline; *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.*

Additional guidance – riot related offending

3.16 There was broad approval of the inclusion of guidance instructing courts that in sentencing offences committed in the context of a riot the context should be treated as a severely aggravating feature, although the Law Society suggested that the guidance should go further and explicitly reference how the sentence may be impacted. The Council did not wish to include the suggested wording, preferring the guidance to remain as originally drafted.

Question 1: Does the Council agree to sign off the definitive guideline for Riot?

Violent Disorder - summary of changes to draft guideline

3.17 A summary of the decisions in relation to the content of the draft guideline is as follows:

- Highest culpability cases are those where a factor in category B is present and also involve the more the serious activity listed at category A.
- Highest culpability also captures targeting of an individual by a group, as analysis of cases indicated such offences currently attract sentences in the range of 3-4 years pre-plea.

- Group fights involving active and enthusiastic participation currently attract sentences in the region of 12-18 months, and are intended to be captured by middle and lower culpability categories. Category B factors relating to serious violence and persistent and sustained unlawful activity in a public place are intended to capture the most serious of these cases.
- A factor included at culpability A in the riot guideline relates to an offenders actions escalating the level of violence and disorder involved. It was agreed that this should only be included as an aggravating factor in the violent disorder guideline, as analysis of cases illustrated the potential for significant inflation of sentences for some violent disorder offences if this was included as a high culpability factor.
- As violent disorder can involve threats or minor violence it was suggested that Category C culpability should reflect these cases. The other factor agreed was 'offence involved lower level of violence or activity than included in Category B'.

Violent Disorder - summary of changes to draft guideline

Culpability factors

3.18 While there was similarity with the draft riot guideline factors and approach in assessing culpability in the highest categories of violent disorder, the changes made to the riot guideline were not made to violent disorder as the model provides for a broader range of offending. However, as road testing of violent disorder illustrated the point regarding interpretation of the factor specifying 'ringleader' this was also changed to instigator in the violent disorder guideline.

Harm factors

3.19 The draft guideline included two categories of harm. Following road testing findings which identified that nearly all cases achieved a high harm categorisation an additional harm category was included to provide for the most serious cases. The format initially proposed for Riot was agreed, and the lower harm category retained to provide for cases involving lower level violence or threats only.

Sentence levels

3.20 Draft guideline sentences were amended to reflect the additional harm category and an additional tier of sentences were included. This assisted in addressing concerns

highlighted in road testing and by some consultation respondents that sentences in the draft guideline were too low and did not adequately provide for the more serious offences. The resource assessment which accompanies the definitive guideline will confirm that the revised sentences are more in line with current sentencing practice.

Aggravating and Mitigating factors

3.21 In the draft guideline it was anticipated that use of an animal in an offence would be captured by the highly dangerous weapons factor. Based on responses that thought this was unlikely, an additional aggravating factor 'attack by animal used or threatened in commission of offence' was included.

3.22 Other factors remained unchanged but the Council agreed to include the additional wording agreed for the definitive riot guideline to remind sentencers to be alert to the risk of double counting any aggravating factors relevant to the culpability assessment.

Question 2: Does the Council agree to sign off the definitive guideline for violent disorder?

Affray

3.23 Broad principles which informed the development of the guideline were as follows;

- The principle that the sentence should relate to the overall incident and not the offender's individual role in an incident does not apply to the offence of affray as it does for riot and some cases of violent disorder. As the offence requires the use or threatening of unlawful violence, the factors agreed reflect gradations of this type of conduct.
- It was agreed in developing the guideline that harm in these offences will be fear/distress or physical injury, or both to varying degrees, which is reflected in factors.

Culpability factors

3.24 While a number of changes to factors were debated by the Council in considering responses to the draft guidelines, no changes to factors were made.

Harm

3.25 A change was made to the low level harm factor 'little or no fear/distress caused' as one respondent pointed out that it is unlikely affray would be charged in cases where minimal fear or distress is caused and little or no physical injury eventuates. The Council considered this and substituted 'little or no' with 'some' to qualify the fear/distress factor.

Aggravating and Mitigating factors

3.26 An additional mitigating factor 'significant degree of provocation' was included as one of the road testing scenarios identified this as a factor sentencers would wish to take into account. It was also agreed that the aggravating factor in violent disorder and riot 'injury to animal carrying out public duty' should be included in affray.

Sentences

3.27 No amendments were made to sentences.

Question 3: Does the Council agree to sign off the definitive guideline for affray?

S4, 4A & 5

3.28 These offences provide for a range of disorderly behaviour which vary in seriousness, although there is significant overlap between offences. Responses and changes to these guidelines were therefore considered simultaneously to ensure relativity of factors and sentences.

Culpability factors

3.29 An additional high culpability factor of 'substantial disturbance' was included for the s4A and s5 guidelines, as the MA highlighted that the factor is currently included in the existing MCSG s5 guideline and such offences may not be captured by the factor 'sustained incident'. No other changes were made to culpability factors.

Harm factors

3.30 A harm factor in the s4 draft guideline was 'fear of immediate violence to multiple persons present.' This factor was amended to remove the word 'immediate' as this is within

the statutory definition of the offence and it was agreed is therefore superfluous. No other changes were made to harm factors in the s4, s4A and s5 guidelines.

Sentences

3.31 The most significant changes to the draft guidelines were to sentences. In the draft guideline the highest s4A starting point had been decreased from the existing MCSG starting point of a 12 week custodial sentence to a high level community order, to provide for relativity with more serious s4 offences. In developing s4 sentences for the draft guideline, 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. The revised common assault guideline was developed after the draft s4 sentences were developed, and the existing non-custodial starting point of a high level community order for the most serious common assault offences was maintained. The Council therefore reconsidered the starting point for s4 offences, and agreed that these should not be higher than for common assault and should be the same and attract a high level community order starting point. A2 and B1 starting points were revised down to a medium level community order. The starting point of a s4A offence was not revised down further and both the s4 and s4A offence now include a high level community order starting point at the highest category of seriousness.

3.32 This could be a contentious point with some stakeholders, particularly sentencers, when the definitive guideline is published. In particular there is a risk that the Council may appear to have been influenced by the current political consideration of short term custodial sentences. To mitigate this risk the consultation response document will note the relativity required with common assault sentences, and will be clear that the Council has had its own policy for some time regarding avoiding including very short term custodial sentences as starting points in guidelines. It will also highlight that the category range ensures that custodial sentences are available for the court to impose where appropriate.

Racially aggravated approach in s4, s4A and s5

3.33 The approach to assessing racial aggravation was significantly revised in the definitive versions of the guideline for s4 and s4A offences. This was largely due to road testing findings that the inclusion of sentence tables and relative starting points resulted in much higher sentences than many sentencers felt comfortable with. Some respondents also thought the approach was overly complex.

3.34 The Council therefore agreed to use the uplift approach in the definitive guidelines which sentencers are familiar with and which was tested in development of the arson and criminal damage guidelines. A slightly adapted uplift approach was already included for the s5 offence as the limited statutory maximum sentence of a fine meant that the additional sentencing table approach was not suitable for this offence. The uplift model agreed for s5 offences is also slightly different given the limited penalties available for basic and aggravated offences². The consultation response document will clarify that two racially and religiously aggravated approaches were tested at the same time, and sentencers were found to prefer the less complex uplift approach with which they are already familiar.

Question 4: Does the Council agree to sign off the definitive guidelines for s4, s4A and s5 offences?

Stirring up hatred

3.35 The Council considered responses to the stirring up hatred offences at the May 2019 meeting, and a number of changes were made.

Culpability factors

3.36 The wording of the first high culpability factor was slightly amended to read ‘offender uses position of trust, authority or influence to stir up hatred’ instead of the draft version of ‘offender in position of trust, authority or influence and abuses their position to stir up hatred’.

3.37 The lesser culpability factor ‘reckless as to whether hatred would be stirred up’ was qualified with (racial hatred offences only), as the other offences must be intended and cannot be committed recklessly.

Harm factors

3.38 Extensive debate took place regarding the second high harm factor relating to ‘widespread dissemination’. In the draft guideline the factor was worded as ‘Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced’. The difficulty with proving the second limb of the factor was raised by some respondents and discussed, and it was agreed the factor should be limited to reading ‘widespread dissemination’. Some respondents had also objected to this factor

² As only a fine can be imposed for a s5 Public Order offence, the sentence uplift guidance includes how the penalty should be calculated as it is not possible to impose another sentence type as in the other aggravated offences which are not limited to a financial disposal.

being included citing the potential for this to capture social media posts which unintentionally 'go viral'. The Council debated this point and other potential wording but ultimately decided that given the nature of the offences harm would be greater where dissemination was widespread.

Sentences

3.39 The lowest category of offence starting point was revised from a 6 month custodial sentence to a high level community order, to reflect the fact that these will be reckless offences where a low level of harm is present.

3.40 The other category ranges have been reviewed in light of this amendment and it is proposed that the bottom of the B2 and C1 ranges should be reduced to 6 months custody, as currently all but the highest and lowest category ranges start with 1 years' custody.

Question 5: Does the Council agree to revise the bottom of the B2 and C1 category ranges to 6 months custody?

Aggravating and mitigating factors

3.41 A mitigating factor of 'offender took steps to limit dissemination' was included.

Question 6: Does the Council agree to sign off the definitive guideline for stirring up hatred offences?

3.42 One final point was not raised as a consultation response, but in email correspondence with the Home Office football policing unit. They asked whether it would be possible for the guidelines to ensure courts comply with their legislative obligation to consider imposing football banning orders in appropriate cases, as there is a view that these are underutilised. Section 14A of the Football Spectators Act 1989 provides;

(1) This section applies where a person (the "offender") is convicted of a relevant offence.

(2) If the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches, it must make such an order in respect of the offender.

(3) If the court is not so satisfied, it must in open court state that fact and give its reasons.

Given that the legislation compels the court to consider these orders in appropriate cases, it is thought it may be helpful for step seven of the violent disorder and affray guidelines and step six of the disorderly behaviour guidelines to read as follows;

STEP SIX/SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. In particular, where the offender is convicted of a relevant offence within Schedule 1 of the Football Spectators Act 1989, the court must consider whether a Football Banning Order should be made pursuant to s14A Football Spectators Act 1989.

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing, s7](#)

3.43 Information on what constitutes a ‘relevant offence’ are provided in the links to the Magistrates’ Courts Explanatory Materials and the Crown Court Compendium

Question 7: Does the Council wish to include specific reference to Football Banning Orders in the step relating to compensation and ancillary orders of all relevant guidelines?

Equality and Diversity issues

3.44 No specific issues were raised relating to equality and diversity in the draft guidelines, other than a high number of responses already considered by the Council which thought the guidelines were intended to restrict free speech and undermine the rights of specific groups to express views. The consultation document will be clear that the guidelines apply to specific criminal offences created by Parliament and do not undermine principles of lawful free speech.

4 ISSUES

4.1 There is currently no existing guidance available for some offences within these draft guidelines, although there is guidance contained within MCSG for the offence of affray and for s4, s4A and s5 offences. Consultation responses broadly welcomed the development of guidelines for the range of public order offences.

5 RISKS

5.1 The definitive guideline resource impact does not anticipate any substantial inflationary or deflationary impacts of the guideline.

As noted earlier in this paper there are some reputational risks associated with decisions to reduce starting points for some offences, and with misunderstanding by a number of respondents as to the basis of some of the guidelines. The consultation response document will provide clear and robust rationales to potential areas of criticism. This will be circulated to the Council for comments and views.



Draft guidelines

Riot Public Order Act 1986 (section 1)

Triable only on indictment
Maximum: 10 years' custody

Offence range: 3 years' – 9 years' custody

This 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**.

Culpability demonstrated by one or more of the following:

A	<p>Factors in Category B present AND any of;</p> <ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was a ringleader or carried out a leading role • Offenders actions escalated level of violence and/or disorder
B	<ul style="list-style-type: none"> • Offender participated in incident which caused widespread and/or large scale acts of violence on people and/or property • Offender participated in incident involving significant planning of unlawful activity • Offender participated in incident involving persistent and/or sustained unlawful activity in a public place

* *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’.*

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.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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
Category 1	Starting point 7 years' custody	Starting point 6 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody
Category 2	Starting point 6 years' custody	Starting point 5 years' custody
	Category range 4 – 7 years' custody	Category range 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.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

Relevant 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:

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

History of failing to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Low level involvement

No previous convictions

Remorse

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

Previous good character

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

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

Blank page

Violent disorder

Public Order Act 1986 (section 2)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 4 years' custody

This 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**.

Culpability demonstrated by one or more of the following

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

* *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’.*

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.

Category 1	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident results in attacks on police or public servants • Incident results in extensive damage to property
Category 2	<ul style="list-style-type: none"> • Cases where a lower level of harm is present than in category 1

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
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 4 years' custody	Category range 1 – 3 years' custody	Category range High level community order – 2 years
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year 6 months' 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.

In cases where a number of aggravating factors are present, it may be appropriate to either move up a culpability category or move outside the identified category range.

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:

Active and persistent participant

Offender's actions escalated level of violence and/or disorder

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

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

History of failing to comply with court orders

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role

Remorse

Previous good character

Sole or primary carer for dependent relatives

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

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.

Blank page

Affray

Public Order Act 1986 (section 3)

Triable either way
Maximum: 3 years' custody

Offence range: Band C fine – 2 years' 6 months' custody

This 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**.

Culpability demonstrated by one or more of the following:

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

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.

Category 1	<ul style="list-style-type: none"> • Serious physical injury to others • Very serious fear/distress caused
Category 2	<ul style="list-style-type: none"> • Harm falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Little or no physical injury to others • Minimal fear/distress 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 1 years' custody	Starting point 26 weeks' custody
	Category range 1 year 6 months' – 2 years 6 months' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 years' custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody
Category 3	Starting point 26 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 36 weeks' custody	Category range Band C fine – High level community order

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

History of failing to comply with court orders

Prolonged incident

Planning

Significant impact on public resources

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

Large number of persons affected

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Previous good character

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role where offending is part of group activity

No members of public present other than those participating in violence

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**

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.

Blank page

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	<ul style="list-style-type: none"> • Targeting of individual(s) by a group • Sustained incident • Use of substantial force • Production of weapon • Missiles thrown
B – Lesser culpability	<ul style="list-style-type: none"> • 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	<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

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

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.

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))

Triable either way
Maximum: 7 years' custody

Offence range: Fine – 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	<ul style="list-style-type: none"> • Offender in position of trust, authority or influence and abuses their position to stir up hatred • Intention to incite serious violence • Persistent activity
B – Medium culpability	<ul style="list-style-type: none"> • Other cases falling between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Reckless as to whether hatred would be stirred up

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"> • Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life • Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced
Category 2	<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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 6 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 3 years' custody	Category range High level community order – 2 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 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

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

History of failure to comply with court orders

Factors reducing seriousness or reflecting personal mitigation

Peripheral role in group activity

Previous good character

No previous convictions or no relevant/recent convictions

Remorse

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

Mental disorder or learning disability where linked 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.

Blank page

PUBLIC ORDER – AGREED DEFINITIVE GUIDELINES

Riot

Public Order Act 1986 (section 1)

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**.

Culpability	
A	<ul style="list-style-type: none"> • Offender used or intended to use petrol bomb or incendiary device • Offender used or intended to use firearm or other highly dangerous weapon* • Offender was an instigator or carried out a leading role • Offenders actions escalated level of violence and/or disorder
B	<ul style="list-style-type: none"> • Any incident of riot not including category A factors
<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>	

Harm	
<p>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.</p>	
Category 1	<p>Multiple or extreme examples of the following:</p> <ul style="list-style-type: none"> • Incident results in serious physical injury or very serious fear and/or distress • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident involves attacks on police or public servants • Incident results in extensive damage to property
Category 2	<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.

Harm	Culpability	
	A	B
Category 1	Starting point 7 years' custody Category range 6 – 9 years' custody	Starting point 6 years' custody Category range 4 – 7 years' custody
Category 2	Starting point 6 years' custody Category range 4 – 7 years' custody	Starting point 5 years' custody Category range 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)

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**.

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

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.	
Category 1	<ul style="list-style-type: none"> • Cases involving multiple or extreme category 2 factors
Category 2	<ul style="list-style-type: none"> • Incident results in serious physical injury or serious fear and/or distress and/or disruption • Incident causes serious disruption or severe detrimental impact to community • Incident causes loss of livelihood or substantial costs to businesses • Incident causes substantial costs to be incurred to public purse • Incident results in attacks on police or public servants • Incident results in extensive damage to property
Category 3	<ul style="list-style-type: none"> • Offence involved threats of violence only • Offence involved lower level of violence or activity than included in category 2

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
Category 1	Starting point 4 year's custody Category range 3 – 4 years 6 months	Starting point 3 year's custody Category range 2 – 4 years	Starting point 2 year's custody Category range 1 – 3 years
Category 2	Starting point 3 year's custody Category range 2 – 4 years	Starting point 2 year's custody Category range 1 – 3 years	Starting point 1 year's custody Category range HL CO- 2 yrs custody
Category 3	Starting point 2 year's custody Category range 1 – 3 years	Starting point 1 year's custody Category range HL CO - 2 years	Starting point 26 weeks' custody Category range 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)

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**.

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

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.

Category 1	<ul style="list-style-type: none"> • Serious physical injury to others • Serious fear/distress caused
Category 2	<ul style="list-style-type: none"> • Harm falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Little or no physical injury to others • Some fear/distress 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 from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

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))

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.

Culpability		
Harm	A	B
Category 1	<p>Starting point High level community order</p> <p>Range Low Level community order - 26 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>
Category 2	<p>Starting point Medium 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>

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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

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 	<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.	
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). 	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)

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))

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
Category 1	<p>Starting point High level community order</p> <p>Range Low Level community order - 26 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>
Category 2	<p>Starting point Low level community order</p> <p>Range Band C Fine – 12 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Range 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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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

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 	<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.	
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). 	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)

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))

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**.

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 • Substantial disturbance 	
B – Lesser culpability	
<ul style="list-style-type: none"> • 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	<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

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.

Culpability		
Harm	A	B
Category 1	Starting point Band C fine Range Band B – Band C fine	Starting point Band B fine Range Band A – Band C fine
Category 2	Starting point Band B fine Range Band A – Band C fine	Starting point Band A fine Range 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

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 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	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>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>
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>Fine for basic offence: Multiply basic fine by 2</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. 	<p>Discharge for basic offence: impose fine at mid-top of basic offence category range</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>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))

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
CATEGORY 1	Starting point 3 years' custody Category range 2 – 6 years' custody	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 years' custody Category range 1 – 3 years' custody
CATEGORY 2	Starting point 2 years' custody Category range 1 – 4 years' custody	Starting point 1 years' custody Category range 1 – 3 years' custody	Starting point HL CO Category range 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

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.

**Sentencing Council meeting:
Paper number:**

**26 July 2019
Annex C – Public Order Offences
Resource Impact
Sarah Munro & Rebecca Crane
Lisa Frost and Pamela Jooman
020 7071 5784/5774**

**Lead Council members:
Lead officials:**

1 ISSUE

1.1 This paper details the expected resource impact of the definitive public order guideline, using the guidelines agreed post consultation at January - May Council meetings. This has drawn on analysis of updated sentencing statistics, results from a road testing exercise and analysis of Crown Court sentencing transcripts.

2 RECOMMENDATION

2.1 That the Council:

- considers the resource impact for these offences; and
- confirms it is content to sign off these guidelines bearing in mind the expected resource impact.

3 CONSIDERATION

3.1 A summary of the expected impact of the guidelines is provided below for each offence.

Riot

3.2 Riot is a very low volume offence, with 30 offenders sentenced over the past decade. The sentencing ranges in the guideline have been based on a number of transcripts of sentencing remarks and therefore it is not anticipated that there will be any impact on prison and probation resources.

Violent disorder

3.3 For violent disorder, the road testing found that some judges felt sentences in the draft guideline were too low, and that the guideline should provide more adequately for the most serious offences. Therefore, for the definitive guideline, an additional higher harm category ('category 1') was included, with higher sentences than in the draft guideline (for example, the starting point for a category 1A offence in the draft guideline was three years, while the starting point for a category 1A offence in the definitive guideline is four years).

3.4 The draft guideline was developed using the latest available sentencing statistics at the time (these were for 2016). Since guideline development, statistics have become available for 2017 and 2018. These show that sentences are now higher than they were during the early stages of guideline development. For example, the table below illustrates that an estimated 26% of immediate custodial sentences imposed in 2017 were above 3 years (pre guilty plea), compared to 13% in 2016:

Sentence length band ¹	Number of offenders sentenced		Proportion of offenders sentenced	
	2016	2017	2016	2017
Up to and including 1 year	38	18	16%	10%
1 to 2	108	55	46%	32%
2 to 3	58	55	25%	32%
3 to 4	24	27	10%	16%
4 to 5	8	17	3%	10%
Total	236	172	100%	100%

3.5 A review of transcripts of sentencing remarks, and the latest available sentencing statistics, suggest that the definitive guideline is reflective of current sentencing practice, and therefore it is not expected to have an impact on prison or probation resources.

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

Affray

3.6 The sentencing ranges for the affray guideline were set with current sentencing practice in mind, and the road testing found that sentencing was generally similar under the existing guideline and under the draft guideline. Sentence levels in the definitive guideline are the same as in the draft guideline, and therefore it is not expected to have an impact on prison or probation resources.

S4 - Threatening behaviour

3.7 At the April Council meeting, it was agreed that the starting point for the highest level of offending for threatening behaviour would be reduced from 12 weeks (the starting point in the draft guideline and in the existing guideline) to a high level community order. This was changed in view of the relativity of this offence to common assault - the starting point for the highest level of offending in the draft common assault guideline is a high level community order. Some of the other starting points and lower ends of the category ranges are also lower than in the existing guideline.

3.8 The table below illustrates the current sentencing distribution for threatening behaviour; around 30 per cent of offenders received a custodial sentence in 2017:

Threatening behaviour – sentence distribution

Year	Absolute & Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with¹	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%

3.9 It is possible that the decrease to sentence levels in the guideline could lead to a decrease in sentencing severity for threatening behaviour, whereby some individuals who currently receive a custodial sentence may now receive a community order.

3.10 It is difficult to quantify the magnitude of this impact, because there is limited information available about current sentencing practice (as this is a summary only offence it is usually sentenced at magistrates' courts, where transcripts of sentencing

remarks are not available) and therefore it is difficult to estimate how sentences may be impacted by the change.

3.11 If it is assumed that no more than a third of offenders who are currently given immediate custodial sentences will now receive community orders, then there may be a reduction in the requirement for prison places by up to 30 prison places. However, it is expected that many of the offenders who currently receive immediate custodial sentences will continue to receive such sentences given that the upper end of the sentencing range for the highest level of offending is the same as under the existing guideline (at 26 weeks' custody), and it is possible that much of the decrease in sentencing severity could come from offenders who currently receive suspended sentence orders now receiving community orders. Therefore there is an upper estimate that the guideline will not have an impact on the requirement for prison places, and a lower estimate that the guideline could lead to a reduction in the requirement for up to 30 prison places.

S4A - Disorderly behaviour with intent

3.12 Similarly to the offence of threatening behaviour, the starting point for the highest level of offending for the definitive guideline (high level community order) is lower than the starting point under the current guideline (12 weeks' custody). The starting points and most sentence ranges are unchanged compared to the draft guideline.

3.13 The table below illustrates the current sentencing distribution for disorderly behaviour with intent; around 18 per cent of offenders received a custodial sentence in 2017:

Disorderly behaviour with intent – sentence distribution

Year	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with¹
2013	0%	17%	38%	26%	6%	9%	4%
2014	0%	18%	40%	23%	6%	8%	4%
2015	0%	18%	38%	25%	7%	9%	3%
2016	0%	15%	39%	25%	7%	10%	3%
2017	0%	15%	40%	24%	7%	11%	3%

3.14 Again, it is possible that the reduction in the starting point for this offence could lead to a reduction in the proportion of offenders receiving a custodial sentence, and an increase in the proportion receiving a community order.

3.15 Again, if it is assumed that no more than a third of offenders who are currently given immediate custodial sentences will now receive community orders, then there may be a reduction in the requirement for prison places by up to 10 places. However, as with the offence of threatening behaviour, it is expected that many of the offenders who currently receive immediate custodial sentences will continue to receive such sentences given that the upper end of the sentencing range for the highest level of offending is the same as under the existing guideline (at 26 weeks' custody), so much of the decrease in sentencing severity could come from offenders who currently receive suspended sentence orders now receiving community orders. Therefore there is an upper estimate that the guideline will not have an impact on the requirement for prison places, and a lower estimate that the guideline could lead to a reduction in the requirement for up to 10 prison places.

Racially or religiously aggravated threatening behaviour and racially or religiously aggravated disorderly behaviour with intent

3.16 For these offences, the road testing found that a large majority of magistrates felt that the sentences arrived at under the draft guideline were too high. It was decided instead to use the less prescriptive uplift approach that was agreed for the Arson and Criminal Damage guideline.

3.17 The uplift approach has previously been road tested for Arson and Criminal Damage, and the research found that there remains a risk that the guideline could result in slightly higher sentences.

3.18 It is therefore anticipated that the guideline could cause an increase to sentencing severity. As a higher estimate, if the number of offenders sentenced to immediate custody increased by around 50 per cent, then there would be a requirement for up to 30 additional prison places. However, as noted above, the starting point for the highest level of offending under the definitive guideline is lower than the starting point under the current guideline. It is possible that this change may offset the potential increases to sentencing due to the uplift approach, and therefore there is a lower estimate that the guideline will not have an impact on the

requirement for prison places, and an upper estimate that the guideline could lead to a requirement for up to 30 additional prison places.

S5 - Disorderly behaviour and racially or religiously aggravated disorderly behaviour

3.19 The maximum sentence for these offences is a fine, and therefore the guideline will not have an impact on prison and probation resources.

3.20 For the offence of disorderly behaviour, the definitive guideline introduces a new higher category of offending with a higher level of fine than in the existing MCSG guidance (a Band C fine). The guideline may therefore increase fine values for this offence. Also, because a fine is included for all levels of offending for racially or religiously aggravated disorderly behaviour - whereas data suggests that around 14 per cent of offenders sentenced for this offence received an absolute or conditional discharge in 2017 (after any reduction for guilty plea) – it is also possible that the draft guideline could increase the number of offenders sentenced to a fine for this offence.

Stirring up racial or religious hatred, or hatred towards sexual orientation

3.21 Fewer than 10 offenders per year were sentenced for this offence over the period 2008-2017, however in the latest year has been an increase, with 23 offenders sentenced in 2018:

Number of offenders sentenced for stirring up racial or religious hatred, or hatred towards sexual orientation, 2008-2018²

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
11	8	9	5	3	4	6	10	3	7	23

3.22 The sentencing ranges in the guideline have been based on a number of transcripts of sentencing remarks for these offences, and therefore the guideline is not expected to have an impact on prison or probation resources.

Question 1: Does the Council have any comments on these findings?

² These figures should be treated with caution due to potential data quality issues for this offence.

4 RISKS

4.1 Two main risks have been identified:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

4.2 Inaccuracies in the Council's assessment of the impact of the guideline could cause unintended changes in sentencing practice when the new guideline comes into effect.

4.3 This risk has been mitigated by testing the guideline with sentencers during the consultation phase, inviting views on the guideline, and the collection and analysis of sentencing information. By comparing sentence outcomes to those that may have resulted from the draft guideline, it has been possible to detect and amend problematic areas of the guideline. However, there were limitations on the extent of the testing and analysis, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guidelines as intended

4.4 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

4.5 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period have also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

4.6 The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

Blank page