

19 July 2019

Dear Members

## Meeting of the Sentencing Council – 26 July 2019

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 26 July 2019 at 9:45.

A security pass is not needed to gain access to this building and members can head straight to the meeting room. Once at the Queen's building, go to the lifts and the floor is 2M. Alternatively, call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

You will note that we have set aside slightly more time than normal for the lunch break to take photographs of members for our website. Also, the photographer will be taking some photos during the Council meeting directly after lunch.

### The agenda items for the Council meeting are:

- |                                      |             |
|--------------------------------------|-------------|
| ▪ Agenda                             | SC(19)JUL00 |
| ▪ Minutes of meeting held on 14 June | SC(19)JUN01 |
| ▪ Action Log                         | SC(19)JUL02 |
| ▪ Immigration and Modern Slavery     | SC(19)JUL03 |
| ▪ Attempted Murder                   | SC(19)JUL04 |
| ▪ Firearms                           | SC(19)JUL05 |
| ▪ Terrorism                          | SC(19)JUL06 |
| ▪ Public Order                       | SC(19)JUL07 |

Members can access papers via the members' area of the website. If you are unable to attend the meeting, we would welcome your comments in advance.

Best wishes



**Steve Wade**

Head of the Office of the Sentencing Council

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## COUNCIL MEETING AGENDA

**26 July 2019**  
**Royal Courts of Justice**  
**Queen's Building**

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|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2)           |
| 10:00 – 11:00 | Immigration and Modern Slavery - presented by Eleanor Nicholls (paper 3) |
| 11:00 – 12:00 | Attempted murder – presented by Lisa Frost (paper 4)                     |
| 12:00 – 13:00 | Firearms – presented by Ruth Pope (paper 5)                              |
| 13:00 – 13:45 | Lunch (extended for photos of members)                                   |
| 13:45 – 15:00 | Terrorism – presented by Vicky Hunt (paper 6)                            |
| 15:00 – 16:15 | Public Order – presented by Lisa Frost and Pamela Jooman (paper 7)       |

# Sentencing Council

## **COUNCIL MEETING AGENDA**

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## MEETING OF THE SENTENCING COUNCIL

14 JUNE 2019

## MINUTES

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Members present:

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

Representatives:

Assistant Commissioner Nick Ephgrave for the police,  
Sophie Marlow for the Lord Chief Justice (Legal and Policy Adviser to Sir Brian Leveson, Head of Criminal Justice)  
Phil Douglas for the Lord Chancellor (Director, Offender and Youth Justice Policy)

Members of Office in attendance:

Steve Wade (Head of Office)  
Mandy Banks  
Phil Hodgson  
Emma Marshall  
Eleanor Nicholls  
Ruth Pope  
Caroline Nauth-Misir

## **1. MINUTES OF LAST MEETING**

- 1.1 The minutes from the meeting of 10 May 2019 were agreed.

## **2. MATTERS ARISING**

- 2.1 The Chairman noted that the data collection currently taking place in magistrates' courts was achieving a good response rate which will be invaluable in the evaluation of the guidelines for *Bladed Articles and Offensive Weapons, Intimidatory Offences and Breach Offences*.

## **3. DISCUSSION ON EXPANDED EXPLANATIONS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 3.1 The Council considered the responses to consultation on the *Expanded Explanations in Sentencing Guidelines* which closed on 23 May 2019.
- 3.2 The Council noted that most of the responses were supportive of the project, and that several helpful suggestions for changes have been made.
- 3.3 The Council considered the points raised by consultees and agreed changes to the explanations including to the mitigating factors relating to age and immaturity, and carers of dependent relatives, and to the aggravating factors relating to abuse of trust, and offence committed as part of a group.

## **4. DISCUSSION ON RACE AND GENDER ANALYSIS – PRESENTED BY EMMA MARSHALL AND ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**

- 4.1 The Council was updated on the progress on work investigating the factors that influence sentences imposed in the Crown Court for drug offences. This discussion drew upon a recent analysis of a small sample of relevant sentencing transcripts. The Council then discussed further work needed in this area and links with the consultation on the revised *Drug Offences* guidelines due to be launched in the autumn.

## **5. DISCUSSION ON FUTURE VISION – PRESENTED BY EMMA MARSHALL, OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The Council was updated on progress for considering a future strategy/vision and priorities for the Council after it reaches its 10-year anniversary in April 2020. It was agreed that the Head of Office and team would meet with individual Council members to seek their views over the summer.

**6. DISCUSSION ON DRUGS – PRESENTED BY ELEANOR NICHOLLS AND CAROLINE NAUTH-MISIR, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council discussed some of the remaining areas of the revised guidelines on drug offences, including the guideline for the offence of “possessing a psychoactive substance in a custodial institution” for the first time.
- 6.2 Caroline Nauth-Misir then presented the expected resource impact of the guidelines. The Council noted these findings and agreed to sign off the guidelines for consultation in the autumn subject to further work on the resource impact, which would be circulated to Council members over the summer.

**7. DISCUSSION ON GENERAL GUIDELINE AND EXPANDED EXPLANATIONS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 The Council considered the responses to the remaining questions in the consultation. It was noted that there was strong support for the proposal to change the wording of the medium culpability factor in the *Fraud, Theft and Robbery* guidelines, and also for changes to ensure consistency of presentation across guidelines.
- 7.2 There was also strong support among consultees for treating the *General* guideline as an overarching guideline but with some dissenting voices. Following discussion, the Council agreed that as the *General* guideline and *Expanded Explanations* would be replacing the *SGC Seriousness Guideline*, the *General* guideline should be made available as an overarching guideline.
- 7.3 The Council agreed that both the *General* guideline and the *Expanded Explanations* should be published on 24 July and come into force on 1 October 2019.

**8. DISCUSSION ON BUSINESS PLAN AND ANNUAL REPORT – PRESENTED BY STEVE WADE AND PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL**

- 8.1 The Council was advised that the budget for 2019-20 has now been agreed and written confirmation of the delegated budget has now been received.
- 8.2 The Council discussed priorities over the coming few months. It was agreed that motoring offences should continue to be held back pending the Government commitment to bring forward legislation in this area. The Council agreed that guidelines relating to cybercrime, perverting the course of justice, and witness intimidation, should be added to the rolling three-year plan.

8.3 The Council also considered the Annual Report for 2018/19 and, with some minor amendments, was content for it to be submitted to the Lord Chancellor for laying before Parliament.



### ACTION AND ACTIVITY LOG – as at 19 July 2019

|  | Topic  | What  | Who                           | Actions to date   | Outcome  |
|--|--|---|-------------------------------|---|--|
| <b>SENTENCING COUNCIL MEETING 14 June 2019</b> |  |   |                               |   |  |
| 2  | <b>Vision for the Council post 2020</b>            | Arrange individual meetings with Council members to discuss issues associated with the Vision for the Council post 2020   | Emma Marshall                 | <b>ACTION ONGOING</b> – a number meetings have been arranged. Remaining meetings to be set up by end of August. |  |
| 3  | <b>General Guideline and expanded explanations</b> | Ruth to circulate amended versions of the guideline/ explanations for Council members to review wording of certain factors prior to finalising the definitive versions for publication on 24 July | Ruth Pope/<br>Council members |   | <b>ACTION CLOSED:</b> draft circulated and responses received. |
| 4  | <b>General Guideline and expanded explanations</b> | Resource assessment and consultation response document to be circulated to Council members for comments   | Ruth Pope/<br>Council members |   | <b>ACTION CLOSED:</b> draft circulated and responses received. |
| 5  | <b>Business plan</b>                               | Draft business plan to be circulated out of committee with a view to publishing over the summer.  | Steve Wade                    | <b>ACTION ONGOING:</b> Draft business plan to be circulated to members over the summer.                         |  |

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**Sentencing Council meeting:**  
**Paper number:**

**26 July 2019**  
**SC(19)JUL03 – Immigration and Modern  
Slavery**

**Lead Council member:**  
**Lead official:**

**Rosina Cottage**  
**Eleanor Nicholls**  
**020 7071 5799**

## **1 ISSUE**

1.1 This is the first full discussion on draft guidelines for Immigration offences and Modern Slavery Act 2015 (MSA) offences and covers the offences of slavery, servitude and forced labour (MSA s1) and human trafficking (MSA s2). This paper covers the main aspects of the guideline for these offences, including approach to assessment of culpability and harm and aggravating/mitigating factors. Sentence levels will be covered at the meeting in September.

## **2 RECOMMENDATION**

2.1 That the Council:

- agree the use of one guideline covering the s1 and s2 offences;
- agree the approach to assessing culpability and harm and the proposed factors;
- agree the proposed aggravating and mitigating factors; and
- agree to the additional text on cases where victims are unwilling or unable to give evidence.

## **3 CONSIDERATION**

### *Background and approach*

3.1 The MSA s1 and s2 offences each cover a wide range of offending behaviour. The s1 offences (s1(a) covering slavery/servitude and s1(b) covering forced labour) are in large part the same as the repealed offences which they replace – offences under the Coroners and Justice Act 2009 s71, the Asylum and Immigration (Treatment of Claimants) Act 2004 s4 and the Sexual Offences Act 2003 s59A. The most significant change is that the new offences have a statutory maximum penalty of life imprisonment (as opposed to 14 years), but in addition the Act includes additional provision on exploitation and makes explicit in statute (in s1(5)) the principle which had grown up in case law that the offence could be committed even in cases where the victim consents.

3.2 Numbers of offenders sentenced are low. In 2017 and 2018 combined, 10 offenders were sentenced for a s1 offence as a primary offence, and 19 for s2. In many of these cases, however, the offender was sentenced for multiple counts of the same offence, relating to multiple victims, or sentenced for a conspiracy offence, again covering multiple victims. It is interesting to note that all these offenders were sentenced to immediate custody, with the estimated average (mean) custodial sentence length (prior to any reduction for guilty plea) being 6.9 years for a s1 offence and 6.2 years for s2. There were also several cases in which the s2 offence was a secondary offence (the primary offence being a s1 offence, a drug trafficking offence, or a serious sexual offence such as rape).

3.3 In developing the guideline for these offences, I have used three main sources of information: guideline judgements in MSA cases and in cases under the previous legislation, particularly *R v Khan*, *R v Connors*, *R v Rooney*, and *R v Zielinski*<sup>1</sup>, transcripts of cases sentenced in 2017 and 2018, and discussions with others involved in prosecuting these offences or supporting victims, including the Home Office, the CPS, Barnardo's and the Salvation Army. We have also carried out some initial research with Crown Court judges to find out their views on key areas of the immigration and modern slavery offences. Finally, I have considered the factors used in the existing sentencing guideline for trafficking for sexual exploitation under s59A of the Sexual Offences Act 2003, one of the offences which has been repealed and replaced by the MSA s2 offence. Several judges in cases relating to other forms of exploitation under the MSA have used these factors, and others I have spoken to agree that they have broader relevance.

3.4 The offences under s1 and s2 are clearly different, but share the same maximum penalty (life imprisonment) and the approach to sentencing them in both the Crown Court and Court of Appeal has been very similar. The factors set out in *R v Khan*, a trafficking case under the Asylum and Immigration (Treatment of Claimants) Act 2004 s4, have been used in several forced labour cases since, under previous and current legislation. In *Khan*, the factors are based not just on the act of trafficking itself but on the offender's culpability for the subsequent forced labour, and the harm caused by it, since the offence encompasses the offender's intention that the victim be exploited. In addition, the offences are fairly often sentenced together, and in these cases judges seem to use the same factors for both offences.

3.5 Given these considerations, I propose to have one guideline covering both the s1 and s2 offences, with the same culpability and harm factors, and the same aggravating and mitigating factors at step 2. It may be that some factors are likely to be more relevant to

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<sup>1</sup> [2010] EWCA Crim 2880, [2013] EWCA Crim 324, [2019] EWCA Crim 681, and [2017] EWCA Crim 758

trafficking cases, and some more relevant to s1 offences, but if so, sentencers could use their judgement as to the extent to which any factor applied in the case before them, as of course they must do for all guidelines.

3.6 In developing the approaches to culpability and harm, and the aggravating/mitigating factors, I have worked on the basis that all types of these offences (whether it is domestic servitude, forced labour, trafficking for sexual exploitation, or some other type of case) should be capable of being assessed as high or low culpability, and high or low harm, depending on the facts of the case. It may be that some types of case (such as those involving large-scale trafficking for forced labour or prostitution) are more likely to be put into the top categories, but I have developed the guideline with the intention that in principle any type of case could feature in any category.

**Question 1: Does the Council agree that all types of s1 and s2 offences should be capable of being assessed within any category of culpability or harm?**

*Approach to culpability and culpability factors*

3.7 The guideline judgments and transcripts show that different types of culpability are taken into account. Some judges use the language of the Drug Offences guideline and consider role as of primary importance, others take into account a broader range of factors. Many factors could fall under either culpability or harm. In deciding where to put the factors, I have aimed at consistency with other guidelines as well as trying to ensure a focus on the victim in the harm factors. As the offences cover a very wide range of criminal behaviour, I have tried to keep the factors broad and of general applicability. The range of behaviour also means that there is a wide range of culpability and harm, from those who are directing a large organisation, using violence and threats on large numbers of victims over a long period of time, to those who are themselves coerced into the offending, who are only involved over a very short time (in one case involving a driver, a matter of minutes, though most cases are measured in weeks or months), and who perhaps inflict no physical harm and little psychological harm on their victim. Given the range of culpability and harm, I propose to give three levels for each. The proposed culpability factors are as follows:

|   |  |
|---|--|
| A | <ul style="list-style-type: none"> <li>• Directing or organising the offending</li> <li>• Expectation of substantial financial gain</li> <li>• High degree of planning/premeditation</li> <li>• Abuse of a significant degree of trust/responsibility</li> <li>• Use of violence</li> <li>• Victim’s movement physically restricted</li> </ul> |
| B | <ul style="list-style-type: none"> <li>• Operational or management role in the offending</li> <li>• Involves others in the offending whether by coercion, intimidation, exploitation, or reward</li> <li>• Expectation of significant financial gain</li> </ul>  |

|   |  |
|---|--|
|   | <ul style="list-style-type: none"> <li>• Some planning/premeditation</li> <li>• Threats of violence towards victim(s) or their families</li> <li>• Other cases falling between A and C because: <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The offender’s culpability falls between the factors as described in A and C</li> </ul> </li> </ul> |
| C | <ul style="list-style-type: none"> <li>• Engaged by pressure, coercion or intimidation</li> <li>• Performs limited function under direction</li> <li>• Limited understanding/knowledge of the offending</li> <li>• Expectation of limited financial gain</li> <li>• Little or no planning/premeditation</li> <li>• Absence of violence/threats of violence</li> </ul>  |

3.8 You will see that for several different aspects of culpability there are factors present in categories A, B and C. The first aspect is role, which covers several factors. These include some of the factors used in the drug offences guideline – “directing or organising the offending”, “expectation of substantial/significant/limited financial gain”, “operational or management role in the offending”, “involves others in the operation whether by coercion, intimidation, exploitation or reward”, “involved through coercion/intimidation”, “limited understanding/knowledge of the offending”, and “performs a limited function under direction”. These factors were given in the majority of cases analysed, and are also covered in *Khan*. Some factors are drafted slightly differently from those in other guidelines so as not to exclude those who are operating on their own. The majority of offenders sentenced for these offences to date have been offending in groups, whether or not they were sentenced together, but some offenders, particularly in domestic servitude cases operated alone, and some of these cases could be very serious.

3.9 The next significant factor relates to planning and premeditation, which was cited in a large number of cases analysed. Distinctions were made between differing levels of planning, or (in the case of a conspiracy) involvement in only parts of the planning of the offence, so I have included this at several culpability levels, as we do in some other guidelines (such as Harassment and Stalking). Planning/premeditation in these offences covered a wide range of behaviour, both planning the practical aspects of the offending, and premeditation in terms of how to “groom” or entice a victim. This is a slightly separate feature from role, since an offender could be directing the offending but it may not involve much premeditation, and guideline cases cite this factor separately.

3.10 A third important aspect of culpability is the method used to exert control over the victim, which is such a crucial part of the offence. In *Khan*, “level and methods of control” was cited as a separate factor from “degree of harm” suffered by the victim. In general,

sentencers used a hierarchy of methods of control, with actual, physical violence at the top, threats of violence (made towards the victim or victim's family) in the middle, and other forms of control (such as giving misleading information about the consequences of reporting an offence to the police to make it more difficult for the victim to escape), at the bottom. Although this could be said to overlap with harm, the actual harm caused to the victim could be very great even with what might appear to be a lower level of control. For example, use of control through misleading information over a long period could cause long-term psychological harm to a victim (which was taken into account in the assessment of harm), but was generally viewed by sentencers as less culpable than physically or sexually assaulting a victim.

3.11 Related to this is the feature in category A only, "Victim's movement physically restricted". This aims to capture cases of actual slavery and servitude or forced labour cases in which a victim is locked into a building and is physically unable to escape. The other forms of restriction on movement are types of control included in the lower categories, and placing physical restriction of movement in the highest category fits with this approach of escalating seriousness in types and levels of control.

3.12 The final aspect of culpability which seems worthy of inclusion at step 1 is abuse of trust. This was a factor in cases involving child sexual exploitation (where the offender was the so-called "boyfriend" of the victim) as well as cases of forced labour and sexual exploitation in which the offender was known to the victim and trusted by them, perhaps as a family member or friend. The words "**significant degree** of trust" have been added to ensure that cases of lower culpability are not included in Category 1.

3.13 Several factors suggested themselves for inclusion at step 1, and which are included in other guidelines at this step, but which I have for various reasons included instead at step 2 as aggravating or mitigating factors; see paragraphs 3.21 to 3.28 below.

**Question 2: Is the Council content with the structure of the "Culpability" table and the factors therein? Are there any additional factors you would wish to see or factors which should be removed?**

3.14 The different types of exploitation covered by the s1 and s2 offences result in a wide range of types and levels of harm, from someone who is kept in servitude over many years, being physically and sexually assaulted, to someone who is a victim of forced labour under which his wages are taken and who feels some compulsion to stay in that position, but who is not otherwise harmed. All the types of exploitation can cover similar types of harm, broadly categorised as physical, psychological or financial. As these three types of harm can occur

in many different combinations and each can occur to varying degrees, I am proposing to include separate factors relating to each in the harm table, as follows:

|            |   |
|------------|---|
| Category 1 | <ul style="list-style-type: none"> <li>• Serious physical harm which has a substantial and/or long-term effect</li> <li>• Serious psychological harm which has a substantial and/or long-term effect</li> </ul>   |
| Category 2 | <ul style="list-style-type: none"> <li>• Some physical harm</li> <li>• Some psychological harm</li> <li>• Significant financial loss to the victim(s)</li> <li>• Exposure of victim(s) to additional risk of serious physical or psychological harm</li> <li>• Other cases falling between categories 1 and 3 because: <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The level of harm falls between the factors as described in categories 1 and 3</li> </ul> </li> </ul> |
| Category 3 | <ul style="list-style-type: none"> <li>• Limited physical harm</li> <li>• Limited psychological harm</li> <li>• Limited financial loss to the victim(s)</li> </ul>  |

3.15 For physical harm, I propose three levels, similar to those used in some violent offences, including child cruelty. Physical harm encompasses harm caused directly (for example, by assault) and indirectly (for example, through forcing the victim to live in dirty, unheated accommodation). As with violence against the person offences, it is difficult to describe the level of harm both broadly and accurately, but including substantial and long-term effect as an indicator of seriousness, as in other guidelines, was welcomed by those who support victims of modern slavery with whom I have discussed types and levels of harm.

3.16 For psychological harm, which is arguably the most important type of harm for this offence, similar wording is proposed in the three categories. In addition, and following discussion with organisations which support victims and with the CPS, the draft guideline contains the following text (similar to that used in the rape and child cruelty guidelines) above the harm table:

A finding that the psychological harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim (from, for example, a support worker) that serious psychological harm exists. It is important to be clear that the absence of such a finding **does not** imply that the psychological harm suffered by the victim is minor or trivial.

3.17 The third type of harm, financial, encompasses not just lost earnings (in forced labour cases where the offender takes all or most of a victim’s wages, often to pay back supposed “debts”) but also harm caused by the offender’s taking out credit cards and loans in the



victim's name and running up debts on his behalf. Financial loss is only included in the lower two categories of harm, on the basis that, even when the level of financial loss is high, it is not as serious as physical or psychological harm. This appears to be the approach taken in most of the cases analysed. If the level of financial harm, and gain to the offender is high overall, because of a large number of victims or long duration, that will be captured by other factors in culpability or aggravating factors at step 2.

3.18 The final harm feature relates to risk of harm. This can be very wide ranging. Examples from cases include risk of harm in a forced labour case by forcing victims to work on a building site without any protective equipment, risk of contracting sexually transmitted diseases in cases of forced prostitution, and risk of very serious harm/death in a trafficking case in which victims were trafficked over the dangerous Sahara route, to camps in Libya where one was raped and others at risk of rape or other assault, then moved across the Mediterranean in small boats, at risk of very serious harm or death. This was an important feature in several cases, so I have included it in Category 2.

3.19 Duration and number of victims were commonly cited in guideline and Crown Court cases as features of seriousness, and could be considered aspects of both culpability and harm. I had considered including them in harm, but have decided instead to cover them in other ways at step 2 as aggravating features. This is because, firstly, they could be considered as both culpability and harm and, secondly, including them at step one would give undue prominence to a feature which is more common in some types of offending, so would risk certain kinds of cases being considered incapable of inclusion in particular categories. For example, if "Large number of victims" were in Category 1 harm, and "Small number of victims" in category 3, it would risk domestic servitude cases always being considered less serious than large trafficking cases, regardless of other features of a particular case. At step 2, there will be more discretion to place appropriate weight on the factors as necessary.

3.20 In dividing the three main types of harm into serious, some and limited levels, it is probable that there are very few cases which would, with these features alone, be placed in category 3; the level of harm seen in almost all cases is higher than "limited". However, this is a very wide- ranging offence, and a new one for which not many offenders have yet been sentenced, and as there have been some cases with very limited harm, it seems appropriate to include them here for completeness.

**Question 3: Is the Council content with the structure of the "Harm" table and the factors therein? Should any factors be added or removed?**

### *Aggravating factors*

3.21 When considering aggravating factors, one difficulty is that many factors cited by judges are, at some level, inherent in the offences. These include some sort of deception of the victim (promising them a good job with decent wages, but in fact forcing them to work for very little money), and lack of respect for the victim or his/her welfare. Some of these factors I have chosen to include as aggravating, since there are situations where they apply more than others. But other factors, such as lack of respect for the victim, I have excluded as it is inherent in the offence and would apply in all cases. If there was some way in which such a factor applied particularly forcefully to a case, the judge could of course consider it as the list of aggravating factors is not exhaustive.

3.22 Aside from the statutory aggravating factors of previous convictions and offence committed on bail, the aggravating factors proposed are:

- A1 – Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years)
- A2 – Deliberate isolation of the victim, including steps taken to prevent the victim reporting the offence or obtaining assistance (above that which is inherent in the offence)
- A3 – Deliberate targeting of vulnerable victims
- A4 – Victim’s passport or identity documents removed
- A5 – Gratuitous degradation of victim
- A6 – Large-scale, sophisticated and/or commercial operation (where not taken into account at Step 1)

3.23 This is a relatively short list of factors, shorter, for example, than that given in the current trafficking for sexual exploitation guideline. However, that guideline covers a narrower range of offending so can give more specific factors. Factor A1, relating to duration, is frequently cited by judges as an aggravating feature. It may relate to an element of culpability or harm, as discussed above at 3.18, and the relevance may differ between types of exploitation so I have included it here at step 2. The explanatory text on length time is aimed to remind sentencers of what will normally apply in the context of these offences, but a shorter time is not necessarily a mitigating feature, which is why I have not included the mirrored factor under mitigating factors below.

3.24 Factor A2 could be said to be present in all offences, however, in some offences the offender has taken additional steps to isolate the victim, including physical isolation and moving the victim around so he/she does not develop local friendships or (in some cases) even know where he or she is. Where this feature is present in the offending to a higher than usual degree (short of actual physical restriction of movement, which is at step 1), it is appropriate to include as an aggravating feature. This could also include cases where the victim had been threatened or bribed with the aim of preventing their giving evidence.

3.25 Factor A3 is common to many guidelines, at step 1 or step 2, and victim vulnerability is an important feature of modern slavery offences. I considered including a “victim particularly vulnerable” factor, but as all victims of modern slavery are vulnerable in some way, this could be applied too broadly. Instead, I have included this “deliberate targeting of vulnerable victims” factor, which I have seen in some cases where the offender has made specific efforts to find and entice vulnerable victims, for example, travelling to a village in Romania where there were likely to be people with no employment prospects who would be more susceptible to promises of work in the UK.

3.26 Factor A4 is again cited in many cases. However, I have included it as it is an important feature of offending not present in all offences, and is one which is not explicitly included at step 1.

3.27 Factor A5 is included because although lack of respect for victims is inherent in the offence, there are some cases involving gratuitous degradation (apparently for the offender’s own pleasure) or gross lack of respect, which judges have highlighted as an aggravating feature. The drafting here is taken from that which we use in the assault guideline.

3.28 The last aggravating factor is included to capture some elements relating to the scale and sophistication of the operation which may be very relevant to an offence (including number of victims in cases where there is a single count of, say, conspiracy, rather than one count per victim) and are often cited in guideline and Crown Court cases as aggravating features. They are related to some aspects of role which I have included in the assessment of culpability, but if placed at step 1 these features would risk being applied to offenders involved in such operations even if the individual’s involvement was small and, conversely, would risk excluding from higher culpability/harm those offences which were not large-scale or sophisticated, but which may in other respects involve very high culpability or harm. Placing this factor here allows it to be taken into account, without these risks.

**Question 4: Does the Council agree with the aggravating factors set out above?  
Should any factors be added or removed, or moved to step 1?**

#### *Mitigating factors*

3.29 In both guideline cases and the more recent trafficking and forced labour cases, judges in general considered the offences so serious that personal mitigation carried little weight, and very few factors were cited other than, in some cases, some standard factors. I therefore propose the following mitigating factors:

M1 – No recent or relevant convictions  
M2 – Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)  
M3 – Remorse  
M4 – Sole/primary carer for dependent relatives  
M5 - Age/lack of maturity (where linked to the commission of the offence)  
M6 – Mental disorder or learning disability

3.30 Factors M1 and M3 to M6 are standard factors, and were cited in a small number of cases. Factor M2, relating to good character, uses the additional wording we have used in other guidelines for serious offences in which judges have been reluctant to take into account good character, and in which it can sometimes be used to facilitate or conceal an offence (an example of this is an offender's being a successful businessman allowing him to present employment in his business as an enticing prospect to potential victims).

**Question 5: Does the Council agree to the proposed mitigating factors? Are there any factors which should be removed/added, or moved to Step 1?**

*Additional text – cases where the victim is unwilling to give evidence*

3.31 Several of those I have spoken to, particularly the CPS and the organisations working with victims, have raised concerns about sentencing in cases where the victim (or one of the victims) is unwilling to give evidence, which may be through fear of reprisals against their family members, or because they are not yet able to talk openly about the harm they have suffered. In several cases, the victim was threatened or bribed with the aim of preventing their giving evidence. There are also cases in which different victims have been treated differently by the offenders, and some victims, who have not been treated as harshly, are willing to speak in defence of the offenders. Those I have spoken to have reminded me of the need to treat these cases no less seriously.

3.32 There are similarities here with domestic abuse cases in which a victim is unwilling, for similar reasons, to give evidence against his/her partner. I therefore propose that we include in this guideline some additional text on victim personal statements, similar to that used in the Overarching Principles on Domestic Abuse guideline:

A sentence imposed for a Modern Slavery Act offence should be determined by the seriousness of the offence, not solely by the expressed wishes of the victim. In particular, the absence of a Victim Personal Statement (VPS) should not be taken to indicate the absence of harm. A court should consider, where available, a VPS which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological.

3.33 As this relates to the assessment of seriousness at step 1 I propose to place this text near to the “Harm” table.

**Question 6: Is the Council content to add the additional text above, and with its position near the “Harm” table?**

3.31 At the beginning of the paper I set out reasons for developing just one guideline covering both the s1 and s2 offences, and have set out factors above which are applicable to both offences.

**Question 7: Having reviewed the approach and factors above, is the Council content to develop one guideline to cover both the MSA s1 and s2 offences?**

#### **4 IMPACT AND RISKS**

4.1 As this is the first full consideration of part of these new guidelines, detailed work on impact and risks is some way off, and will be completed for consultation next spring. By basing the guidelines on the existing cases, including those decided under predecessor legislation, we aim to reduce the risks of misinterpretation and unforeseen impacts on resources.

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**Slavery, servitude and forced or compulsory labour  
Modern Slavery Act 2015 s1**

**Human trafficking  
Modern Slavery Act 2015 s2**

Triable either way  
Maximum: Life imprisonment  
Offence range: TBC

**Culpability**

|   |  |
|---|--|
| A | <ul style="list-style-type: none"> <li>• Directing or organising offending</li> <li>• Expectation of substantial financial gain</li> <li>• High degree of planning/premeditation</li> <li>• Abuse of a significant degree of trust/responsibility</li> <li>• Use of violence</li> <li>• Victim’s movement physically restricted</li> </ul>   |
| B | <ul style="list-style-type: none"> <li>• Operational or management role in the offending</li> <li>• Involves others in the offending whether by coercion, intimidation, exploitation or reward</li> <li>• Expectation of significant financial gain</li> <li>• Some planning/premeditation</li> <li>• Threats of violence towards victim(s) or their families</li> <li>• Other cases falling between A and C because:                             <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The offender’s culpability falls between the factors as described in A and C</li> </ul> </li> </ul> |
| C | <ul style="list-style-type: none"> <li>• Engaged by pressure, coercion or intimidation</li> <li>• Performs limited function under direction</li> <li>• Limited understanding/knowledge of the offending</li> <li>• Expectation of limited financial gain</li> <li>• Little or no planning/premeditation</li> <li>• Absence of violence/threats of violence</li> </ul>  |

**Harm**

A finding that the psychological harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim (from, for example, a support worker) that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim is minor or trivial.

|            |   |
|------------|---|
| Category 1 | <ul style="list-style-type: none"> <li>• Serious physical harm which has a substantial and/or long-term effect</li> <li>• Serious psychological harm which has a substantial and/or long-term effect</li> </ul> |
| Category 2 | <ul style="list-style-type: none"> <li>• Some physical harm</li> </ul>  |

|            |   |
|------------|---|
|            | <ul style="list-style-type: none"> <li>• Some psychological harm</li> <li>• Significant financial loss to the victim(s)</li> <li>• Exposure of victim(s) to additional risk of serious physical or psychological harm</li> <li>• Other cases falling between categories 1 and 3 because:             <ul style="list-style-type: none"> <li>○ Factors in both high and lesser categories are present which balance each other out and/or</li> <li>○ The level of harm falls between the factors as described in categories 1 and 3</li> </ul> </li> </ul> |
| Category 3 | <ul style="list-style-type: none"> <li>• Limited physical harm</li> <li>• Limited psychological harm</li> <li>• Limited financial loss to the victim(s)</li> </ul>  |

A sentence imposed for a Modern Slavery Act offence should be determined by the seriousness of the offence, not solely by the expressed wishes of the victim. In particular, the absence of a Victim Personal Statement (VPS) should not be taken to indicate the absence of harm. A court should consider, where available, a VPS which will help it assess the immediate and possible long-term effects of the offence on the victim (and any children, where relevant) as well as the harm caused, whether physical or psychological.

## **Step 2**

### **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**

A1 – Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years)

A2 – Deliberate isolation of the victim, including steps taken to prevent the victim reporting the offence or obtaining assistance (above that which is inherent in the offence)

A3 – Deliberate targeting of vulnerable victims

A4 – Victim’s passport or identity documents removed

A5 – Gratuitous degradation of victim

A6 – Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)

### **Mitigating factors**

M1 – No recent or relevant convictions

M2 – Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

M3 – Remorse

M4 – Sole/primary carer for dependent relatives

M5 - Age/lack of maturity (where linked to the commission of the offence)

M6 – Mental disorder or learning disability



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

**26 July 2019**  
**SC(19)JUL04 – Attempted Murder**  
**Julian Goose**  
**Lisa Frost**  
**0207 071 5784**

## **1 ISSUE**

1.1 This meeting requires consideration of a revised draft guideline for the offence of Attempted Murder.

## **2 RECOMMENDATION**

2.1 That the Council:

- considers culpability and harm factors and;
- agrees sentences and guidance on life and extended sentences to be included in the revised guideline.

## **3 CONSIDERATION**

3.1 At the May meeting the Council agreed a number of points relating to a revised Attempted Murder guideline. These were that culpability factors should be descriptive and not follow the approach in the existing guideline of culpability categorisations specifically referencing schedule 21 paragraphs, that the harm model should reflect the broad potential harm in the offence and that the sentencing table should not include life sentences but should include guidance on when life sentences may be appropriate.

3.2 Approval of a draft which can be tested at the Serious Crime Seminar in September is sought, and feedback from the event will then be available for consideration by the Council at the October meeting.

## Culpability factors

3.3 The existing SGC Attempted Murder guideline is included at Annex A. The guideline provides for an offence which, had the charge have been murder falling within para 4 or 5 of Schedule 21, to be assessed at category 1 seriousness. Category 2 then provides for other planned attempts to kill and category 3 other spontaneous attempts to kill. Starting points vary according to the level of harm found. Annex B includes a copy of schedule 21 to illustrate offences falling within category 1. As was noted at the last meeting the existing guideline does not provide for the 25 minimum term for a murder involving a weapon taken to the scene, which was introduced after the guideline was developed.

3.4 At the May meeting the Council agreed the approach to assessing culpability should include descriptive factors rather than following the approach in the existing guideline of categories reflecting schedule 21 offences. Culpability factors have been developed and tested against a range of cases and are included at Annex C for consideration by the Council. Annex D includes a proposed draft guideline.

3.5 Very high culpability factors include factors which reflect schedule 21 offences, such as offences involving firearms or explosives and attempted murder of police or prison officers. As discussed at the last meeting, the factors in this category are broader than the schedule, to provide for an appropriate seriousness assessment. This may also address concerns that existing sentences are too low, given the existing guideline is more restrictive in respect of offence categorisation.

### **Question 1: Does the Council agree with the very high culpability factors included?**

3.6 A high culpability category is included to reflect the addition of minimum terms for knives and other weapons taken to a scene in a murder offence, and this category also provides for offences involving some planning.

### **Question 2: Does the Council agree with the very high culpability factors included?**

3.7 Medium culpability includes offences involving weapons not included in category A or B, and offences where there is a lack of premeditation. In revising the assault guidelines lack of premeditation was not included as a lesser culpability factor, as it was thought a spontaneous offence could be as serious as a planned assault. However, in attempted murder it is thought planning, or a lack of, is highly relevant to the culpability of the offender given the intent to kill present in the offence. The existing guideline distinguishes between planned and spontaneous offences and the distinction has been relevant in analysis of cases.

### **Question 3: Does the Council agree with the medium culpability factors included?**

3.8 At the previous meeting discussion took place as to whether the guideline should reflect the partial defences applicable to murder, given that in an attempt death of the victim was the intended outcome. The Council suggested consideration should be given to whether any academic research has been undertaken in this area. Officials have been unable to identify any published research or papers, but discussion with an academic has confirmed that partial defences and the potential for a lesser sentence to be imposed where a death occurs is an area that has been noted as worthy of consideration in attempted murder offences.

3.9 The Council considered this matter in developing the s18 GBH guideline, and agreed the lesser culpability category should provide for culpability to be balanced against other factors in appropriate cases. Lesser culpability therefore includes the same factors agreed for the s18 GBH guideline, with the exception of 'no weapon used'. This has not been included in the attempted murder guideline to avoid offences involving strangulation or suffocation being captured when this may not be appropriate. A further slight difference is in the wording of the mental disability factor, which has been taken from the manslaughter guideline. However, this does not include maturity as a factor reducing responsibility at step one as this is provided for at step two; the factor is intended to capture diminished responsibility type cases.

### **Question 4: Does the Council agree with the lesser culpability factors included?**

3.10 No specific balancing factor has been included in any category, but the wording at the top of the culpability assessment mirrors the wording included in the manslaughter guideline to avoid overly restricting the discretion of sentencers in applying appropriate weight to factors which may be present in an offence.

### **Question 5: Does the Council agree with the approach to assessing culpability and that the wording included in Manslaughter on how to undertake the culpability assessment should be included?**

3.11 There is a further type of offence to consider which relates to 'mercy killings' and how these should be dealt with in the revised guideline. These cases are likely to involve planning, which if substantial would be assessed as category A. The existing guideline states on page 4 at point 10 that the guideline '*is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.*'

3.12 Mercy killings were also considered in developing the manslaughter guideline, and are provided for by the diminished responsibility guideline by a mitigating factor 'belief by the offender that the killing was an act of mercy'. The diminished responsibility guideline does not include a standard culpability assessment, with step one instead requiring the court to assess the level of responsibility retained by the offender. The difficulty with an attempted murder offence being provided for with a mitigating factor is that the reduction in sentence is not likely to have a significant impact on the sentence, given the planning which may be present in an offence. The effect on the sentence of a factor at step one or as mitigation was considered in GBH in relation to the abused offender factor, and it was agreed the guideline should provide for such an offence at step one to ensure an overall proportionate sentence. The Council are therefore asked to consider if the revised guideline should follow the approach in the existing guideline and specifically exclude attempted mercy killings from its scope, or whether the mitigating factor in the diminished responsibility guideline should be included at step one. This is a controversial issue but is likely to be raised in consultation.

**Question 6: How, if at all, does the Council wish to address attempted mercy killings in the revised guideline?**

#### Harm Factors

3.13 The existing guideline provides for three levels of harm within each offence category. These are serious and or long term physical or psychological harm; some physical or psychological harm and; little or no physical or psychological harm.

3.14 It was agreed at the last meeting that the harm model should include the factor agreed for the highest level of harm in GBH offences, as this is descriptive of offences where death almost occurs or a life changing injury is inflicted. It was agreed that the factors in the other categories would need to reflect the broad potential range of harm in an attempted murder. Category 2 harm therefore captures cases involving serious injuries not included in category 1, and category 3 provides for cases involving lower levels of harm.

3.15 Annex C includes the harm factors developed. Consideration was given to including four categories of harm, but as discussed at the May meeting while little or no physical harm may be present in an offence, any victim who has been subject of an attempt on their life suffers some psychological harm, so a little or no harm category would likely be redundant.

**Question 7: Does the Council agree with the harm factors included?**

## Sentences

3.16 Statistics illustrating current sentence volumes and the estimated pre-guilty plea distribution of sentences were considered at the May meeting and are included again below. It was noted that considerably fewer indeterminate sentences were imposed post 2012 (with the exception of a 'spike' in 2016), which is likely to be attributable to LASPO<sup>1</sup> and the removal of IPP<sup>2</sup> provisions, so the indeterminate sentences from 2013 onwards represent life sentences:

| <b>Sentence length band</b>                               | 2011      | 2012      | 2013      | 2014      | 2015      | 2016      | 2017      |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| 6 years or less   | 3%        | 5%        | 6%        | 2%        | 0%        | 0%        | 0%        |
| Between 6 and 12 years                                    | 10%       | 3%        | 13%       | 11%       | 5%        | 6%        | 13%       |
| Between 12 and 18 years                                   | 27%       | 20%       | 29%       | 40%       | 39%       | 29%       | 23%       |
| More than 18 years  | 16%       | 32%       | 37%       | 18%       | 34%       | 26%       | 37%       |
| Indeterminate   | 44%       | 41%       | 15%       | 29%       | 22%       | 38%       | 27%       |
| <b>Number of offenders sentenced to immediate custody</b> | <b>79</b> | <b>66</b> | <b>52</b> | <b>55</b> | <b>77</b> | <b>68</b> | <b>70</b> |

3.17 The Council were asked to confirm if any principles should be applied to sentence development. Consideration was given to views of attempted murder sentences which were noted when developing the Manslaughter guideline, which gave some indication that attempted murder sentences are currently considered to be too low in comparison to sentences for murder. It was noted in particular that there is considerable disparity between a para 4 or 5 type offence where death results which would attract life and a minimum custodial term of 30 years, whereas a similar facts attempted murder would result in a starting point of a 30 year determinate sentence, with only 15 or 20 years custody served depending on whether the offender is assessed as dangerous.

3.18 It was agreed that attempted murder starting points should be higher to reflect the many cases where death is intended but avoided by sheer luck or skilled medical intervention. It was also agreed that sentences for offences involving lesser culpability should reflect similar circumstances murder offences where a partial defence is available to reduce the charge to manslaughter.

3.19 Sentences have been developed taking all of these factors into account. The very high and high culpability categories include sentences which seek to more properly reflect offence seriousness based on relevant factors. Sentences involving lesser culpability are the

<sup>1</sup> Legal Aid and Punishment of Offenders Act 2012

<sup>2</sup> Indeterminate sentences for public protection

same as sentences in the lowest category of the Manslaughter loss of control guideline which are as follows;

| <b>A</b>                                   | <b>B</b>                                  | <b>C</b>                                  |
|--|---|---|
| <b>Starting point</b><br>14 years' custody | <b>Starting point</b><br>8 years' custody | <b>Starting point</b><br>5 years' custody |
| <b>Category range</b><br>10-20 years       | <b>Category range</b><br>5-12 years       | <b>Category range</b><br>3-6 years        |

This is to ensure the sentence for a similar facts loss of control manslaughter case is not lower than a case where death does not occur and the charge is attempted murder.

3.20 A case list has been provided at Annex D to provide context to proposed sentences. A comparison of the imposed sentence and the starting point which would be achieved with the draft guideline is included, although the revised sentence does not take into account aggravating and mitigating factors.

**Question 8: Does the Council agree with proposed sentences?**

Life and extended sentences guidance

3.21 At the May meeting the Council considered whether life sentences should be included in the sentencing table for attempted murder, as they are in the Terrorism guideline. It was agreed that life sentences should not be included as starting points, but that appropriate guidance should be given on life and extended sentences at step one and step two of the guideline. The Council noted that any guidance should reflect guidance included in the Manslaughter and Terrorism guidelines and Court of Appeal guidance in *Burinskas*<sup>3</sup>, the guideline judgment which set out the structure of considering life and extended sentences in relevant cases.

3.22 The wording included at step one of the manslaughter guideline has been used to highlight cases where a life or extended sentence may be appropriate. As in Other Council guidelines, consideration of extended and life sentences is presented at Step 5.

3.23 As in manslaughter, any determinate sentence starting point would be used to identify the minimum term if a life or extended sentence is imposed.

**Question 9: Is the Council content with the presentation of information relating to extended and life sentences at step one of the guideline?**

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<sup>3</sup> *Attorney General's Reference (No.27 of 2013) (R v Burinskas)* [2014] EWCA Crim 334

3.24 In Terrorism, where life sentences are included in the sentence table, guidance on extended and life sentences is included at step two and reads as follows;

**Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).**

It is not thought this wording is necessary at step two of the attempted murder guideline as life sentences are not included in the sentence table and reference to step 5 has been included at step one as in the manslaughter guideline.

3.25 There is additional wording and an additional step six in Terrorism which is also relevant to attempted murder offences committed in the context of terrorism. This is provided for by s236A CJA 2003, which provides for special custodial sentences to be imposed for offenders of particular concern. While this will apply to a very small proportion of (if any) cases, it is thought the guideline should reference it for the courts attention given the potential for it to be otherwise overlooked. The wording could read as follows;

**Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003, the court must consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).**

Step six would read as follows;

### **Step 6 – Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

**Question 10: Does the Council wish to include the additional wording relating to offenders of particular concern at step two and to include step six in the revised guideline?**

Aggravating and mitigating factors

3.26 The aggravating and mitigating factors include relevant factors included in the s18 GBH guideline and one aggravating factor from manslaughter; 'actions after the event (including but not limited to attempts to cover up/conceal evidence)'.

**Question 11: Does the Council agree with the aggravating and mitigating factors included?**

**4 IMPACT /RISKS**

4.1 It will be important to ensure revisions to the existing guideline ensure sentences achieve relativity with similar fact murder sentences, to reflect the principles in Appleby that offences involving death should attract the highest sentences. However, reflecting the very high level of intent in the offence of attempted murder is also important, and ensuring sentences reflect the gravity and any impact upon victims.

4.2 It is intended that views and feedback from Judges on an early version of the revised guideline will be obtained at the Serious Crime Seminar in September. The Council will then be able to consider any findings prior to sign off of the guideline in the Autumn.





Sentencing Guidelines Council

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# **Attempted Murder**

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**Definitive Guideline**



## FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to relevant guidelines. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after **27 July 2009**.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice (published June 2007) on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council.

The advice and this guideline are available on [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.



Chairman of the Council  
July 2009



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## Introduction

1. This guideline covers the single offence of attempted murder. The Council has published a separate definitive guideline for offences of assault which do not result in the death of the victim.<sup>1</sup>
2. There are critical differences between murder and attempted murder; not only is the intended result not achieved but also, for attempted murder, there must have been an intention to kill whereas a charge of murder may arise where the intention was to inflict grievous bodily harm. These differences are reflected in the approach set out below which supersedes previous guidance from the Court of Appeal in *Ford*<sup>2</sup> and other judgments.

## A. Assessing seriousness

### (i) Culpability and harm

3. The culpability of the offender is the initial factor in determining the seriousness of an offence. It is an essential element of the offence of attempted murder that the offender had an intention to kill; accordingly an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. In common with all offences against the person, this offence has the potential to contain an imbalance between culpability and harm.<sup>3</sup>
5. Where the degree of harm actually caused to the victim of an attempted murder is negligible, it is inevitable that this will impact on the overall assessment of offence seriousness.
6. However, although the degree of (or lack of) physical or psychological harm suffered by a victim may generally influence sentence, the statutory definition of harm encompasses not only the harm actually caused by an offence but also any harm that the offence was intended to cause or might foreseeably have caused; since the offence can only be committed where there is an intention to kill, an offence of attempted murder will always involve, in principle, the most serious level of harm.

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<sup>1</sup> *Assault and other offences against the person*, published 20 February 2008, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>2</sup> [2005] EWCA Crim 1358

<sup>3</sup> see *Overarching Principles: Seriousness*, para. 1.17, published 16 December 2004, [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

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**(ii) Aggravating and mitigating factors**

7. The most serious offences of attempted murder will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”. For ease of reference, these provisions are reproduced at [Annex A](#).
8. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. These factors are included in the guideline at page 7.
9. The *Seriousness* guideline<sup>4</sup> sets out aggravating and mitigating factors that are applicable to a wide range of cases; an extract is provided at [Annex B](#). Some are already reflected in the factors referred to above. Care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor. An additional statutory aggravating factor has been introduced by the Counter-Terrorism Act 2008 for prescribed offences which include attempted murder.<sup>5</sup>
10. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy. Whilst the approach to assessing the seriousness of the offence may be similar, there are likely to be other factors present (relating to the offence and the offender) that would have to be taken into account and reflected in the sentence.

**B. Ancillary orders****Compensation orders**

11. A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned. There is no limit to the amount of compensation that may be awarded in the Crown Court.

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<sup>4</sup> *Overarching Principles: Seriousness*, paras. 1.20–1.27 published on 16 December 2004; [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk)

<sup>5</sup> s.30 and schedule 2. If a court determines that the offence has a terrorist connection, it must treat that as an aggravating factor, and state in open court that the offence was so aggravated.

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### C. Sentencing ranges and starting points

12. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. The starting points and ranges are based upon an adult “*first time offender*” who has been **convicted after a trial**. Within the guidelines, a “*first time offender*” is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
13. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.
14. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the offence) to reach a **provisional sentence**.
15. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
16. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
17. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence below the range given.
18. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.
19. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

## D. Factors to take into consideration

1. Attempted murder is a serious offence for the purposes of the provisions in the Criminal Justice Act 2003<sup>6</sup> for dealing with dangerous offenders. When sentencing an offender convicted of this offence, in many circumstances a court may need to consider imposing a discretionary life sentence or one of the sentences for public protection prescribed in the Act.
2. The starting points and ranges are based upon a first time adult offender convicted after a trial (see paragraphs 12–19 above). They will be relevant when imposing a determinate sentence and when fixing any minimum term that may be necessary. When setting the minimum term to be served within an indeterminate sentence, in accordance with normal practice that term will usually be half the equivalent determinate sentence.<sup>7</sup>
3. Attempted murder requires an intention to kill. Accordingly, an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. The level of injury or harm sustained by the victim as well as any harm that the offence was intended to cause or might foreseeably have caused, must be taken into account and reflected in the sentence imposed.
5. The degree of harm will vary greatly. Where there is low harm and high culpability, culpability is more significant.<sup>8</sup> Even in cases where a low level of injury (or no injury) has been caused, an offence of attempted murder will be extremely serious.
6. The most serious offences will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”: see [Annex A](#).
7. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.
8. When assessing the seriousness of an offence, the court should also refer to the list of general aggravating and mitigating factors in the Council guideline on *Seriousness* (see [Annex B](#)). Care should be taken to ensure there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor.

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<sup>6</sup> Sections 224–230 as amended

<sup>7</sup> *R v Szczerba* [2002] 2 Cr App R (S) 86

<sup>8</sup> *Overarching Principles: Seriousness*, para. 1.19, published on 16 December 2004; [www.sentencing.guidelines.gov.uk](http://www.sentencing.guidelines.gov.uk)

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## Attempted Murder

### Criminal Attempts Act 1981 (section 1(1))

#### THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

**Maximum penalty: Life imprisonment**

| Nature of offence  | Starting point   | Sentencing range  |
|--|--|---|
| <p><b>Level 1</b><br/><i>The most serious offences including those which (if the charge had been murder) would come within para. 4 or para. 5 of schedule 21 to the Criminal Justice Act 2003</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul> | <p><b>30 years custody</b><br/><b>20 years custody</b><br/><b>15 years custody</b></p> | <p><b>27–35 years custody</b><br/><b>17–25 years custody</b><br/><b>12–20 years custody</b></p> |
| <p><b>Level 2</b><br/><i>Other planned attempt to kill</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>  | <p><b>20 years custody</b><br/><b>15 years custody</b><br/><b>10 years custody</b></p> | <p><b>17–25 years custody</b><br/><b>12–20 years custody</b><br/><b>7–15 years custody</b></p>  |
| <p><b>Level 3</b><br/><i>Other spontaneous attempt to kill</i></p> <ul style="list-style-type: none"> <li>• Serious and long term physical or psychological harm</li> <li>• Some physical or psychological harm</li> <li>• Little or no physical or psychological harm</li> </ul>  | <p><b>15 years custody</b><br/><b>12 years custody</b><br/><b>9 years custody</b></p>  | <p><b>12–20 years custody</b><br/><b>9–17 years custody</b><br/><b>6–14 years custody</b></p>   |

| Specific aggravating factors   | Specific mitigating factors   |
|--|---|
| <p>(a) the fact that the victim was particularly vulnerable, for example, because of age or disability</p> <p>(b) mental or physical suffering inflicted on the victim</p> <p>(c) the abuse of a position of trust</p> <p>(d) the use of duress or threats against another person to facilitate the commission of the offence</p> <p>(e) the fact that the victim was providing a public service or performing a public duty</p> | <p>(a) the fact that the offender suffered from any mental disorder or mental disability which lowered his degree of culpability</p> <p>(b) the fact that the offender was provoked (for example, by prolonged stress)</p> <p>(c) the fact that the offender acted to any extent in self-defence</p> <p>(d) the age of the offender</p> |

**The presence of one or more aggravating features will indicate a more severe sentence within the suggested range and, if the aggravating feature(s) are exceptionally serious, the case will move up to the next level.**

**Annex A: Extract from the Criminal Justice Act 2003, schedule 21\*****Determination of minimum term in relation to mandatory life sentence****Starting points**

## 4 (1) If—

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
- (b) the offender was aged 21 or over when he committed the offence, the appropriate starting point is a whole life order.

## (2) Cases that would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of two or more persons, where each murder involves any of the following—
  - (i) a substantial degree of premeditation or planning,
  - (ii) the abduction of the victim, or
  - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (c) a murder done for the purpose of advancing a political, religious or ideological cause, or
- (d) a murder by an offender previously convicted of murder.

## 5 (1) If—

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
- (b) the offender was aged 18 or over when he committed the offence, the appropriate starting point, in determining the minimum term, is 30 years.

## (2) Cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of a police officer or prison officer in the course of his duty,
- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,
- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, or
- (h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

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\* As at June 2009

**Annex B: General aggravating and mitigating factors identified in the Council guideline *Overarching Principles: Seriousness***

**The factors below apply to a wide range of offences.**

**Not all will be relevant to attempted murder.**

**Factors indicating higher culpability:**

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

**Factors indicating a more than usually serious degree of harm:**

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

**Factors indicating significantly lower culpability:**

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

**Personal mitigation**

Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.







## Criminal Justice Act 2003 c. 44

### Schedule 21 DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE

#### Interpretation

This version in force from: **December 18, 2003 to present**

#### 1

In this Schedule—

*“child”* means a person under 18 years;

*“mandatory life sentence”* means a life sentence passed in circumstances where the sentence is fixed by law;

*“minimum term”*, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under [section 269\(2\)](#);

*“whole life order”* means an order under [subsection \(4\) of section 269](#).

Status:  Law In Force

#### 2

[Section 28](#) of the [Crime and Disorder Act 1998 \(c. 37\)](#) (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of [sections 29 to 32](#) of that Act.

This version in force from: **December 3, 2012 to present**

#### [3

For the purposes of this Schedule—

(a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(i\)](#) or [\(b\)\(i\)](#);

(b) an offence is aggravated by disability if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(ii\)](#) or [\(b\)\(ii\)](#);

(c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(iii\)](#) or [\(b\)\(iii\)](#).

#### Starting points

This version in force from: **April 13, 2015 to present**

#### 4

(1) If—

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) the murder of two or more persons, where each murder involves any of the following—

- (i) a substantial degree of premeditation or planning,
- (ii) the abduction of the victim, or
- (iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

[(ba) the murder of a police officer or prison officer in the course of his or her duty,]<sup>1</sup>

(c) a murder done for the purpose of advancing a political, religious [, racial]<sup>2</sup> or ideological cause, or

(d) a murder by an offender previously convicted of murder.

## 5

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when he committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within [paragraph 4\(1\)](#)) would normally fall within sub-paragraph (1)(a) include—

[...] <sup>1</sup>

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is racially or religiously aggravated or aggravated by sexual orientation [, disability or transgender identity]<sup>2</sup>, or

(h) a murder falling within [paragraph 4\(2\)](#) committed by an offender who was aged under 21 when he committed the offence.

This version in force from: **March 2, 2010 to present**

**[5A.—**

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) or [5\(1\)](#),

(b) the offence falls within sub-paragraph (2), and

(c) the offender was aged 18 or over when the offender committed the offence,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—

(a) commit any offence, or

(b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.] <sup>1</sup>

This version in force from: **March 2, 2010 to present**

**6**

If the offender was aged 18 or over when he committed the offence and the case does not fall [within [paragraph 4\(1\)](#), [5\(1\)](#) or [5A\(1\)](#)] <sup>1</sup>, the appropriate starting point, in determining the minimum term, is 15 years.

This version in force from: **December 18, 2003 to present**

**7**

If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

**Aggravating and mitigating factors**

This version in force from: **December 18, 2003 to present**

**8**

Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

**9**

Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

This version in force from: **March 2, 2010 to present**

**10**

Aggravating factors (additional to those mentioned in [[paragraph 4\(2\)](#), [5\(2\)](#) and [5A\(2\)](#)] <sup>1</sup>) that may be relevant to the offence of murder include—

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

This version in force from: **October 4, 2010 to present**

**11**

Mitigating factors that may be relevant to the offence of murder include—

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within [section 2\(1\)](#) of the [Homicide Act 1957 \(c. 11\)](#)), lowered his degree of culpability,
- (d) the fact that the offender was provoked (for example, by prolonged stress) [...] <sup>1</sup>
- (e) the fact that the offender acted to any extent in self-defence [ or in fear of violence] <sup>2</sup>
- (f) a belief by the offender that the murder was an act of mercy, and
- (g) the age of the offender.

This version in force from: **October 31, 2009 to present**

**12**

Nothing in this Schedule restricts the application of—

- (a) [section 143\(2\)](#) (previous convictions),
- (b) [section 143\(3\)](#) (bail), or
- (c) [section 144](#) (guilty plea) [,] <sup>1</sup>  
[or of [section 238\(1\)\(b\) or \(c\)](#) or [239](#) of the [Armed Forces Act 2006](#).  
] <sup>1</sup>

| Case name and reference                  | Facts  | Offence category and sentence   | Revised guideline categorisation and starting point   |
|--|--|---|---|
| AG Reference Bowen [2018] EWCA Crim 1682 | <p>Described as horrific and shocking case. Victim (V) was neighbour of offender and his partner, spent the evening with them and became concerned offender's partner, L, was having a fit. Offender became angry and accused her of interfering. V returned home but wanted to go to the offender's flat to check on L and also to get her phone back, so she went back with her partner for a second time. V went into the offender's flat. In the interim the offender had gone outside to a garden shed and had obtained petrol in a container, he then came back brandishing the petrol container and there was then a conversation between the three adults as to whether the offender would "do it"; that is to say, attack V with the petrol (she at that stage not anticipating that he would). He then walked up to V, poured the petrol over her body and ignited the fuel with a cigarette lighter. The offender then watched her burn without helping at all whilst he smoked a cigarette. V's partner was outside and with neighbours gained entry to flat upon hearing V screaming; her clothes and flesh were still burning and she was screaming in agony. Offender fled scene and went to sister's house and washed his clothes. Injuries wholly life changing. A series of major surgical procedures had to be performed on V's upper body to deal with the immediate effect of the burns. Those involved removing burnt skin and flesh from affected areas. She remained in the Burns Intensive Care Unit for a month. Major treatment required to her eyelid regions, her face and nasal regions, her ear regions, her neck regions, her breast regions and her hands. She lost the most part of her ears, some of her fingers have had to be amputated and the likelihood of any movement of her hands is minimal. Psychological evidence set out the effects of the trauma that V has suffered and will continue to suffer. Pressure garments need to be worn and a face mask for almost the entire period of the day and night for approximately 2 years for burns scarring. There will be further skin graft operations needed. She remains in constant high levels of pain with the pain being very difficult to manage.</p> | <p>1<sup>st</sup> instance judge found to be a cat 2 att murder case, with SP of 24 years. 20% discount given for early G plea, so SP reduced to 19 years plus 5 years extended sentence. C of A found unduly lenient, and should have been a category 1 case. Case involved sadistic conduct and C of A mentioned weapon (petrol) taken to scene, although noted latter not provided for by existing guideline. Said as cat 1 case life sentence should have been considered, and notional determinate should have been 24 years. Substituted sentence for life with minimum term of 12 years.</p> | <p>A1 if sadistic conduct most prominent culpability factor, B2 if weapon taken to scene. SP 35/30 years – if life 17.5/15 year minimum term.</p> |

|   |  |   |   |
|---|--|---|---|
| <p>Ryan<br/>[2014] EWCA<br/>Crim 1351</p> | <p>Drugs dispute between the applicant and the victim and there had been a build-up of threat and counter threat between them. A fight was arranged when the applicant attended with a firearm capable of firing shotgun pellets and the victim had a large dog and a baseball bat. A co-accused was involved on the applicant's side and he was armed with a baton and a knife. However he tried to diffuse the situation and the applicant had the leading role. The confrontation developed rapidly and the victim set his dog onto the applicant. At that point the applicant fired the gun at the victim but missed. He then pursued him and caught him at close quarters when he discharged the weapon into his body. The victim had 70 puncture wounds and about 100 pellets in his stomach, his liver and gall bladder. He would have died without skilled medical intervention and had to undergo a number of operations over a period of months. The applicant had a number of previous convictions involving drugs, weapons and public order offences. It was argued the offence should have been in a lower category and there was too great a disparity with the sentence of six years imposed on the co-accused for possessing a firearm with intent to endanger life.</p> <p>CACD: There were a number of aggravating features putting the offence well within level 1 of the guidelines. The only mitigation was a degree of provocation. If the offence had resulted in death the starting point for the minimum term would have been 30 years. The sentence was fully justified and there was nothing in the disparity argument.</p> | <p>1<sup>st</sup> instance – Cat 1 -<br/>30 year SP.<br/>CACD: upheld</p>       | <p>A1 – (firearm, victim nearly died) 35 years determinate</p>  |
| <p>Deer [2013]<br/>EWCA Crim<br/>1010</p> | <p>The applicant and the victim had a relationship but by the time she gave birth to his son they had separated. The relationship had been dominated by his controlling and violent behaviour. Whilst she was pregnant the police attended five incidents involving violence by him towards her. The applicant was on bail for committing an assault upon her when he committed the present offence. This occurred when she visited his house to discuss the child and he punched her heavily to the face and used a Taser to her back. When she was on the floor he placed a cord around her neck and tightened it until she lost consciousness. He repeated the strangulation on two further</p>   | <p>1<sup>st</sup> instance – 15 year<br/>SP, imposed IPP 8<br/>year minimum</p> | <p>C1/2 (use of weapon other than cat A or B, planning not mentioned. High or Medium level of harm: 25/20 year SP</p> |

|                                |  |  |   |
|--------------------------------|--|--|---|
|                                | <p>occasions and when she tried to escape, he attacked her with a baseball bat. When a friend arrived at the house it appeared the victim was dead. She suffered multiple lacerations to the back of the head, multiple bruises to the face and body, and signs of strangulation. Her hands were grossly swollen and three fingers were fractured. The applicant had no previous convictions for violence but in a pre-sentence report and a psychiatric report was assessed as being dangerous to women. It was not argued an indeterminate sentence was not appropriate but that the specified term was excessive. The judge put the case at the very top of level 3 and gave 20% credit for the plea as it was entered at a late stage.</p> <p>CACD: The question for the judge was not whether she could envisage worse level 3 offences, but whether, having taken account of the aggravating and mitigating factors, the offence fell at or near the top of the category. Application refused.</p> |  |   |
| Hardacre [2011] EWCA Crim 2791 | <p>The applicant and victim lived on the third floor of an apartment block. During an argument, he threw her over the balcony. She was found on the pavement unconscious having suffered a severe brain injury, fractures of the pelvis and lower spine, and had strangulation marks on her neck. She was in hospital for over 3 months. The applicant had a previous conviction for assaulting an ex-girlfriend who had ended their relationship because of his violent behaviour. The applicant entered a guilty plea on the day of the trial.</p> <p>The Judge sentenced on the basis of it being a spontaneous attempt to kill with long term serious harm. He took a 15 year starting point and gave a 10% deduction for the late guilty plea.</p> <p>CACD: The judge's approach was correct.</p>   | SP 15 yrs, 10% credit for plea – 13.5 yrs                      | C1 – medium (no premeditation), high level of harm<br>SP 20 years |
| WADE [2012] EWCA Crim 2605     | <p>The victim was the appellant's ex-wife and although they were divorced they remained close. She became seriously ill with a blood clot and the appellant looked after her but her condition deteriorated. Both had alcohol issues. The victim had episodes when she defecated and urinated in the bed and the appellant had to clear up the mess. The appellant was at the end of his tether and tried to smother her.</p>  | Exceptional case 2 years 6 months reduced to 16 mths on appeal | C3 10 year SP   |

|   |  |   |   |
|---|--|---|---|
|   | <p>Paramedics found her lying in urine and faeces and the appellant told them he had tried to kill her. A couple of days later there was an argument when the police were called and he admitted to them he had tried to kill her a few days before. The appellant pleaded guilty on the basis he was under a great deal of pressure as the main carer for his wife and due to her alcohol consumption her behaviour had become more difficult. She was drunk and had defecated so he snapped and put a quilt over her head but then came to his senses. The appellant was only prosecuted because of what he said to the police.</p> <p>The Judge recognised this was an exceptional case though the situation was not akin to a mercy killing. However he said it is difficult to imagine any case of attempted murder which would fall below the custody threshold.</p> <p>CACD: The judge was correct to say a custodial sentence was inevitable and what the appellant did to his wife cannot ever be the way out of a situation such as he faced. However the sentence of two and half years imprisonment was excessive and a proper sentence following trial would have been 2 years imprisonment. The appellant was entitled to the fullest credit for the plea of guilty and given the time spent in custody could be released immediately.</p> |   |   |
| Transcript 70 – John Way (1 <sup>st</sup> instance) | <p>Arrived, uninvited, at his estranged wife’s address who was now married to V. They were packing to move and 2 removal men were there. His ex-partner was in the house, but V was in the garage. D entered the house; by this time had armed himself with a 6-inch bladed knife from his car (was up a sleeve). His ex-partner asked what he was doing there and asked that he leave; D refused and asked where V was. V came in and D attacked him immediately; stabbed him with a downwards motion four times around the chest. D is larger and heavier than V so carried on despite a removal man and his ex-partner trying to intervene. His ex-partner was also injured, sustaining 2 cuts to her hand. V fell to the floor, bleeding heavily. D drove off. Ongoing trauma (ex-wife feels guilty about her husband; her children are having nightmares, the punches to her head have aggravated an old injury causing her headaches, earache and blurred</p>  | <p>GP on the day of trial</p> <p>Level 2 – SP=15 years</p> <p>Final sentence =14 years (16 years pre GP).</p> | <p>B2 – (knife taken to scene, medium harm)</p> <p>25 years determinate</p> |



|  |  |   |  |
|--|--|---|--|
|  | <p>vision, anxiety). V is still physically scarred, he has difficulty lifting – has had a major negative impact on his work and income as a self-employed person. Has pins and needles in hand, a tight chest, shortness of breath, flashbacks, lack of confidence and anxiety. Judge considered: D armed himself in a pre-mediated fashion. D had been violent towards V some months before – assaulted him (punched him in the face). Received a caution and later a harassment warning. Had written letters to family members showing he intended to harm V in a manner likely to lead to his incarceration. Was unprovoked and premeditated involving a weapon. Sustained attack. Culpability is very high. Agg-was under a caution and harassment warning. Mit-was depressed and stressed (night sedation did not work, was drinking and anti-depressants did not work – although there did appear to be a time when D was a bit better). Until this was a man of good character, has made progress in prison, appreciates the severity of his actions</p>  |   |  |
| <p>Transcript 68 – Glyn Sullivan (1<sup>st</sup> instance)</p> | <p>Entered on his own, or with someone else, V's house to burgle it. V was 66 and in poor health; a well-respected member of the community. Had few valuables at home. Even if with another person, D took the lead and was responsible for the injuries on V – placed a cord around his neck, repeatedly hit him with many objects (including an iron, his walking stick, fists and feet), and used a knife – used as torture to try and find out where his valuables were. Was after valuables to buy drugs. Inflicted terrible injuries – graphic photos in court. Numerous injuries to head, including lacerations, incised wounds, extensive facial bruising to face and scalp, fractures of cheekbones and left lateral orbit and orbital floor and sub-arachnoid haemorrhage in brain and right subdural haemorrhage on surface of the brain. Depth of wounds with the knife cannot be assessed, but consistent with prodding with the tip. Also, extensive injuries to the torso and arms and hands. Also injuries representing restraint and defence.</p> <p>Ransacked the house and left V for dead and lay there for 24 hours before being discovered. When D left the flat was indifferent as to</p> | <p>Had it been murder, the SP would have been 30 years.<br/>SP therefore 20 years.</p> <p>Dangerousness found.<br/>Final sentence=life imprisonment with minimum term of 11 years</p> | <p>A2 – offence involved sadistic conduct (torture), medium harm<br/>SP (determinate) 30 years (if life min term 15 years)</p> |

|  |  |   |   |
|--|--|---|---|
|  | <p>whether V was alive or dead. In interview D said he “didn’t give a shit about him”.</p> <p>Has precons, but is an absence of violence.</p> <p>No long-term physical or psychological injury – V had made a good recovery</p> <p>Agg – carried out in pursuance of a burglary and robbery; was planned; V was particularly vulnerable because of age and health; prolonged attack; use of weapons</p>  |   |   |
| Transcript 13 – Aweis, Aweis and Hersi                   | <p>3 d’s acting together and with others unknown made a determined attempt to kill V during a planned attack from which he had no possibility of escape. They did so not only using force of numbers, but also a variety of weapons the most lethal of which was a loaded gun from which one bullet was fired, pointed at V’s head but narrowly missing. Further attempt then made to shoot V dead. Gun misfired and live round ejected and found outside of shop later on. If successfully shot would have killed V. Attackers then set about V with feet and fists, some using hammers to deliver repeated blows to V’s head, ferocious assault. Injuries not described but Judge said “it is only through good fortune and despite the determined efforts of his attackers that victim survived with his life”.</p> | <p>Aweis &amp; Aweis – planning but no evidence either used weapon, 20 years each.</p> <p>Hersi – CCTV showed him raining down blows savagely, went armed and ready with a weapon and used without hesitation being one of first to get ‘stuck in’. No dangerousness finding. 23 years custody.</p> | <p>Aweis &amp; Aweis B2/3 if sentenced on basis of planning only, Medium or low level of harm 25/20 SP</p> <p>Hersi A2/3 – Use of firearm; planning, assume medium/low level harm 30/25 year SP</p> |
| Transcript 34 – Julia Knight (1 <sup>st</sup> instance). | <p>D had close relationship with V, her mother – visited 2/3 x a week and regularly telephoned. 15 years ago mother was found to have leukaemia and 3 years’ ago, health deteriorated. Had a fall at home and fractured spine; had a heart attack and suffered fibrosis of the lungs; developed pseudogout which affected mobility; had subarachnoid haemorrhage. Found it hard to cope and was probably discharged from hospital too early. Suffered another fall and readmitted to hospital. D visited to discover the hospital were thinking of discharging her again. D went to work, accessed internet records about insulin and records of patients with diabetes. Printed</p>   | <p>Level 2, with some elements of level 3. Convicted after trial – 14 years</p>   | <p>A3 – Substantial planning (obtained prescription, forged signature of doctor.) Assumed harm 3. SP 25 years.</p>  |

|  |  |   |   |
|--|--|---|---|
|  | <p>prescription for insulin and forged a doctor's signature. Took a syringe from work. Went to hospital and injected mother in the stomach (had taken steps to avoid arousing suspicion in mother). Effect was fast but staff managed to stabilise mother.</p> <p>Is context for choice of insulin – after becoming depressed after her marriage breakdown, D injected herself with insulin to kill herself – so had knowledge of the effects of injecting insulin into someone without diabetes (had been told was the best way to commit suicide in a painless way).</p> <p>Failed to admit offence – suspicion initially fell on nursing staff and mother's partner. Finally admitted it, but said intention was never to do serious harm and certainly not to kill. Judge recognises effect of a prison sentence on V will be devastating – is of good character, with no precons or cautions etc. Was nurse for most of adult life, well regarded. Defence says was an act of immense stupidity; D under stress and concerned for mother's treatment. Agg – mother's age (80s), unwell and vulnerable. Abused position of trust – daughter and nurse.</p> |   |   |
| <p>Transcript 45 – Jacqueline Patrick (1<sup>st</sup> instance).</p> | <p>Concerted, planned, persistent attempt to poison husband with antifreeze. Intention that its effects would be disguised as an adverse reaction to medication/a suicide attempt. D married to V for nearly 30 years – first attempt in the October. Daughter encouraged her. Deleted text messages showed D mixed illicit painkillers/ prescription medication with V's drink to overdose him. May have also used antifreeze. V was admitted to hospital for 8 days – no blood samples taken but there was kidney damage and high levels of ibuprofen. Further text messages show planning and more poison being given. On Xmas Day was a family argument and V spent most of his time alone; D put anti-freeze into a bottle of liqueur; V probably drank 2.5 glasses. D called ambulance on Boxing Day saying his kidney condition had flared up (setting up false pre-existing condition). Paramedics found a fabricated typed DNR note. D went into a coma;</p>  | <p>Sentenced for 2 att murders. GP at PCMH – 25% discount.</p> <p>Higher end of Level 2 for either of counts – but totality of offending is equivalent to Level 1/top end of 2</p> <p>For each count 15 years' concurrent</p> | <p>A1 – substantial degree of planning/premeditation. High harm as life threatening injuries. SP 35 years (in region of 26 years custody after 25% discount for plea)</p> |

|   |   |   |   |
|---|---|---|---|
|   | <p>ethylene glycol found in blood (100ml is fatal) – did not regain consciousness for 10 days and slim chances of survival at first. D could not speak for some time after leaving hospital, neck was swollen, severe pains in legs; took over 3 months to walk properly. Another 3 months to walk with a stick. Cried all the time. Had a catheter for a month, was a renal outpatient for a year, in constant pain and discomfort. Problems sleeping, lost 3 stone in weight. Has recovered a lot but less able to move than before; is exhausted, with little motivation.</p> <p>Mitigation: Good character; unhappy marriage; has done some volunteer work after the offences.</p>  |   |   |
| <p>Transcript 48 – Zack Davies (1<sup>st</sup> instance).</p> | <p>A planned racially motivated attack which followed from D seeking out racist and extremist literature and images. Extreme racist and right-wing views. Evidence of internet searches and postings (incl. for material related to Isis and Taliban beheadings and mutilations). V tried to defend himself and there was intervention of a bystander – otherwise victims would have been killed in front of many shoppers at lunchtime. Used a machete and hammer (also had a small lock knife). Other weapons found in room as well – Stanley knife, lock knife, hammer. When arrested spoke of violent thoughts and thoughts about killing people (had intended to behead V for public sympathy and spoke of plans to behead mother’s partner). Had told a family member to watch the news – “something big was about to happen”. Had been expelled from school for carrying a knife and for the last 10 years regularly carried a knife. Played violent video games. Re: offence, armed himself, intending to go and attack mother’s partner in Post Office – he wasn’t there and came across V, followed him and attacked him inside Tesco’s, chasing him through aisles. Blows to back of head, shouting “white power”, “justice for whites”, “remember Lee Rigby”. V ended up on floor, D standing over him – raised machete above head and struck down in slashing motion. V managed to get away; D followed. A bystander stood in front of D blocking his path, persuading him to put weapons down. Sustained attack using weapons – horrific injuries to V. Major injury to left hand (almost</p> | <p>Doctors/ psychiatrists disagree on type of disorder he has/ whether suitable for a hospital order. Judge doesn’t think is appropriate – thinks knew full well what he was doing</p> <p>Level 1 -If had been a murder would have been 30 years SP<br/>Discretionary life sentence – minimum term 14 years</p> | <p>A1/2 Racially motivated, serious injuries but not clear if level 1 harm. SP 35/30 (17.5-15 in custody if life)</p> |

|   |   |  |                  |
|---|---|--|------------------|
|   | <p>severed); 2 wounds to back of head, further wounds to back and side of foot; recovering well and expected to return to work soon but was hospitalised and unable to work for 9 months.</p> <p>Agg – planned attack; armed himself with 3 weapons; initial plan was to attack someone else but when he couldn't find him attacked V; had been planning to commit such an atrocity for some time; also sustained attacked, struck in front of others (including elderly and young), causing panic to others; racially motivated attack – V says the racist attack has had an effect on his family and the wider Sikh community; injuries have meant V has been unable to pursue his career for 9 months</p> <p>Mit – age (26), no precons (although admitted to carrying a knife); admitted alternative offence of wounding</p>  |  |                  |
| Transcript case 8 – Fox (1 <sup>st</sup> instance). | <p>Attack on former partner, described as frenzied attack of dreadful ferocity. Said intent was of short duration and formed only shortly before attack. Used scissors, said didn't bring to scene and judge dealt with on that basis. Lay in wait in her garden, then entered her home and used terrifying violence, stabbing repeatedly with a pair of scissors about the neck and head aiming for her eyes, threatening to blind her to kill her and her children who were upstairs. She tried to crawl away and he dragged her back, stabbing her again and again. She sustained 12 stab wounds to the head and neck and further injuries to arms, legs and torso. Would certainly have died if not for the skill of surgeons. Injuries caused a stroke and she is now wheelchair bound and paralysed to left side. She said the life she knew has been taken from her. Victim deaf and without speech so uses sign language, and now struggles to communicate as left arm does not work. She is only 26. Agg; Pre cons for violence. Sustained and brutal attack. Victim particularly vulnerable; she was deaf so did not hear him entering her home so was unprepared to take defensive action. Threats to blind her and kill her children. Attack in her own home in</p> | <p>Makes hospital order with limitation direction under s45a as HO not sufficient to punish. Extended sentence for public protection. 25 years. Plea on first day of trial, 20% discount as was waiting for a report before pleading. Reduced to 20 for plea. Further five on licence, so 25 years (20 custodial and 5 on licence)</p> | C1 – SP 25 years |

## ANNEX C

|  |   |   |   |
|--|---|---|---|
|  | <p>presence of others (new boyfriend) and children upstairs. Use of a weapon and planning. Culp extremely high.</p> <p>Has personality disorder but not mental disorder. Considered Vowles and nature of mental disorder, the extent to which it is attributable to the offence. Judge finds mental disorder does not diminish culp. Long term impact on V. V little mitigation</p>   |   |   |
| <p>Transcript case 1 – Harris Bennett (1<sup>st</sup> instance).</p> | <p>Minor incident in a shop, offender felt 'slighted' and summoned a gunman who arrived within minutes and shot victim outside shop. First shot deflected and bullet bounced off of a van, victim ran and was chased by offender and gunman and shot in the back. He was terribly injured, shot went through his back and exited his chest. He has been left paralysed from waist down, lost a lung and has spinal damage. He has a young family he cannot care for; judge says his grief cannot be understated. Gun used. No imbalance between culp and harm – both extremely high.</p> <p>Not being gunman does not mitigate, able to summon a gunman to side within minutes. Acted as if it was his area and he was in charge. No pre cons.</p>  | <p>Final sentence 30 years</p>  | <p>A1 – SP 35 years</p>   |
| <p>Transcript case 5 – MacMillan</p>                                 | <p>Offender drunk and attacked innocent man in street. Took a stone from a wall, large sharp edged and made of concrete. Plainly a potentially deadly weapon. Followed victim shouting and swearing at him aggressively holding stone in a raised position above head. V pleading with him and offering no threat whatsoever. V began crying and he taunted him. Brought stone over his head and struck V on head. Blow delivered with full force and immediately sent V to ground and rendered him unconscious. Struck him again, swinging the stone like a golf club and striking V in head with full force. Intent was to kill V. Believing that he had succeeded he then ran from scene. Injuries of upmost gravity. He suffered multiple skull and facial fractures, a traumatic brain injury involving bruising on the brain, and bleeding over the brain. Required surgery and was comatose for a month. Brain injury has left him with difficulties with balance, coordination, hearing loss and double vision. Has cognitive problems including confusion,</p> | <p>10% credit for plea on day of trial.</p> <p>Dangerousness found. SP 19 years, 17 years after discount for plea. Extended sentence imposed of 22 years (17 custody, 5 extended licence)</p> | <p>C1 – weapon not in cat A or B, lack of premeditation. High harm. SP 25 years</p> |

|                             |  |   |   |
|-----------------------------|--|---|---|
|                             | <p>poor memory and poor problem solving skills. Mobility impacted and needs a wheelchair or two sticks and a carer. Cannot bath or dress himself. His life will never be the same again. Expectation is that he will continue to suffer significant cognitive, neurological and physical problems. Aggravating; ferocious attack on unarmed and helpless man. Followed victim and struck two blows in circumstances when paused to consider actions. Not a sudden explosion of anger but a cold and calculated intent to kill. Happened in public at midday (location and timing). Under influence of alcohol and drugs. Injuries profound. Pre cons for wounding and possession of weapons. On licence at time of offence.</p> <p>Mitigation – age, 25. Pleaded G on day of trial.</p>  |   |   |
| Transcript case 6 - Poselay | <p>Offender was ex neighbour of V and suspected him of stealing a laptop from his bedsit some 6 months previously. Issue over whether offender took knife to scene or picked knife up at the scene, as would affect sentence. Judge was sceptical picked up at scene in communal kitchen but no evidence he took it so dealt with him on basis that he did not take (as in Kelly) but picked it up with intention of using it later, so some premeditation. V preparing his dinner and offered some to offender, they then spent evening watching TV together. At end of eve offender brought up issue of laptop, V denied stealing. Offender became angry and says returned his plate to kitchen and this is when he picked up knife. Upon leaving he stabbed victim at door a number of times, first in the back and then approximately 8 further times, penetrating wounds to chest, collapsed lung, lacerated kidney and spleen, stabbed to armpit and lacerations to arms and wrists (defensive). Life was in serious danger. Good recovery from physical injuries, but judge notes lasting psychological impact. Aggravating – fled the scene, discarded the knife and not recovered, burned clothes to hide evidence. Ran from police when they arrived. Pre cons, offence committed during currency of SSO. Knife used and victim stabbed in his own home. Persistent attack. Mitigation G plea but trial still necessary as he said not a S18 (intent had to be put to jury).<br/>Cat 2B -planned attempt to kill</p> | <p>G plea but only 10% discount because trial not avoided<br/>SP 15 years, would be 18 with aggravating but provides for discount and imposes 16 years – 13 years custody 3 years extended licence.<br/>Dangerousness found. Smiled at times during trial, doesn't regard what he did as excessive.</p> | <p>On cusp of B/C – some premeditation (B), weapon not in A or B used (C) Harm 1. SP if top end of C/bottom of B 25 years. 10% discount for plea – 22.5</p> |

|                             |  |   |   |
|-----------------------------|--|---|---|
| Transcript case 6 - Webster | <p>Att murder of ex partner and mother of his three children. Couple estranged and she was in Sctoland with children, but brought them down to have a few family days together. Planned family day out, she was late he went in pub. Argument started when she arrived. He threw a glass which smashed and shards went into hair of victim and one of children. She took children to a friends and ignored his messages. Knew that her and children were staying at a friends house, went there in morning and carried attack out knowing children and others would witness. She came out to speak to him and he attacked her, first with knife taken to scene then with a glass. Knife broke during attack such was ferocity, so he continued kicking and punching V. Neighbour stopped it and victim went inside, he kicked the door in to get to her again, taking broken glass from front door to use as a weapon. Friend took children and jumped out of window, everyone petrified. Inflicted 22 stab wounds, three to side of her face, multiple to her neck, four to shoulder, one to chest wall and defensive injuries. Cat 1. Planned, knife taken to scene, sustained and vicious. Some blows aimed at her neck. Left with lifelong scars, fracture to orbit of eye and possibility of blood clot and injury to vein in neck. Pre cons for attacking another woman (ABH reduced from GBH/Att murder) and other convictions for violence. Also DV related. Impact on children. Offence committed on bail for assault against victim and criminal damage. Mitigating; mental disorder as diagnosed with paranoid schizophrenia.</p> | <p>Considered Vowles, but also circumstances of offence and did not think hospital order appropriate so imposed HO with limitation direction under s45a. 25 year SP aggravated up to 27, reduced by 8 for mitigating and one extra for remorse. Final sentence 18 years. No dangerousness finding but considered.</p> | <p>B (weapon taken to scene, planning) Harm cat 1 or 2 (not specified if injuries life threatening or ongoing impact).<br/>SP 30/25 years</p> |
| Transcript case 33 –        | <p>V had been D's partner for 6 mths. Attended Halloween party and D described by witnesses as acting strangely; returned home, having consumed alcohol, and embarked on unprovoked, murderous, frenzied and sustained attack on V – attempted to butcher her to death with a meat cleaver, deliberately targeting her neck shouting "I'm going to cut your fucking throat. I'm going to shred your throat". Continued until thought had killed her. Injuries - horrific, including a severe gaping wound around neck from ear to ear, the tissues, tendons and muscle tissue being exposed. Multiple lacerations to face, chest and arms as she tried to fight D off. Judge said but for the intervention of the skilled medical personnel, there can be no doubt that she would have died - V's survival miraculous. V cannot not use right arm and there is an</p>  | <p>GP – late plea, 10%<br/>Says seriousness warrants a life sentence<br/><br/>If passed determinate sentence would have started at Level 3 and after taking account of agg and mit would have come to 20</p>  | <p>C – weapon not in cat A or B. Harm 1 – life threatening injuries<br/><br/>SP – 25 years. Life minimum 12.5</p>                             |



ANNEX C

|  |   |  |  |
|--|---|--|--|
|  | <p>ongoing effect on her mental health. V's daughter witnessed and has nightmares and is scared to cut her food up. Aggravated by being in the presence of V's daughter, previous convictions (reckless arson in respect of a previous partner – received 6 years for this and this offence was whilst on licence for this).<br/>Mitigation: remorse; also mentions personal mitigation but doesn't say what this is.</p> | <p>years; After plea=18 years. So life with minimum term=9 years</p> |  |
|--|---|--|--|

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**STEP ONE****Determining the offence category**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors

**For offences involving an extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.**

**Culpability demonstrated by one or more of the following:**

|                           |  |
|---------------------------|--|
| A – Very High culpability | <ul style="list-style-type: none"> <li>• Substantial degree of premeditation or planning of murder</li> <li>• Abduction of the victim with intent to murder</li> <li>• Attempted murder of a child</li> <li>• Offence motivated by or involves sexual or sadistic conduct</li> <li>• Offence involves the use of a firearm or explosive</li> <li>• Offence committed for financial gain</li> <li>• Attempted murder of a police officer or prison officer in the course of their duty</li> <li>• Offence committed for the purpose of advancing a political, religious, racial or ideological cause</li> <li>• Offence intended to obstruct or interfere with the course of justice</li> <li>• Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity</li> </ul> |
| B- High culpability       | <ul style="list-style-type: none"> <li>• Offender took a knife or other weapon to the scene intending to and using that knife or other weapon in committing the offence</li> <li>• Some planning or premeditation of murder</li> </ul>   |
| C - Medium culpability    | <ul style="list-style-type: none"> <li>• Use of weapon not in category A or B</li> <li>• Lack of premeditation</li> </ul>  |
| D- Lesser culpability     | <ul style="list-style-type: none"> <li>• Excessive self defence</li> <li>• Offender acted in response to prolonged or extreme violence or abuse by victim</li> <li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li> </ul>  |

| <b>Harm</b>       |   |
|-------------------|---|
| <b>Category 1</b> | Particularly grave or life-threatening injury caused<br><br>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment<br><br>Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work |
| <b>Category 2</b> | Serious physical or psychological harm not in category 1  |
| <b>Category 3</b> | All other cases   |

**STEP TWO**

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

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

| HARM          | CULPABILITY   |   |   |   |
|---------------|---|---|---|---|
|               | A   | B   | C   | D   |
| <b>Harm 1</b> | <b>Starting point</b><br>35 years<br><br><b>Category Range</b><br>30 - 40 | <b>Starting point</b><br>30<br><br><b>Category Range</b><br>25-35 | <b>Starting point</b><br>25<br><br><b>Category Range</b><br>20-30 | <b>Starting point</b><br>14<br><br><b>Category Range</b><br>10-20 |
| <b>Harm 2</b> | <b>Starting point</b><br>30 years<br><br><b>Category Range</b><br>25-35   | <b>Starting point</b><br>25<br><br><b>Category Range</b><br>20-30 | <b>Starting point</b><br>20<br><br><b>Category Range</b><br>15-25 | <b>Starting point</b><br>8<br><br><b>Category Range</b><br>5-12   |
| <b>Harm 3</b> | <b>Starting point</b><br>25<br><br><b>Category Range</b><br>20-30         | <b>Starting point</b><br>20<br><br><b>Category Range</b><br>15-25 | <b>Starting point</b><br>10<br><br><b>Category Range</b><br>7-15  | <b>Starting point</b><br>5<br><br><b>Category Range</b><br>3-6    |

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline*.

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

### Factors increasing seriousness

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

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

Offence committed whilst on bail

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

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

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

Offence committed in prison

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Victim vulnerable

Revenge attack

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Steps taken to prevent the victim from seeking or receiving medical assistance,

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

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

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

**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 a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX**

**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.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail**

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



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

**26 July 2019**  
**SC(19)JUL05 - Firearms**  
**Maura McGowan**  
**Ruth Pope**  
**0207 071 5781**

## **1 ISSUE**

1.1 This is the final consideration of the firearms guidelines prior to consultation in late September. Sentence levels were considered by the Firearms Working Group in May and those levels have been used to inform the resource impact analysis.

1.2 The consultation document will be circulated to Council members for comment in early September.

## **2 RECOMMENDATION**

2.1 It is recommended that the Council:

- Agrees the content of each of the eight guidelines
- Agrees the sentence levels in each guideline, taking into account the analysis undertaken to assess the potential resource impact of the guidelines
- Considers whether there are any equality and diversity issues that should be addressed in the consultation.

## **3 CONSIDERATION**

### *Legislative changes*

3.1 The Offensive Weapons Act 2019 received Royal Assent on 16 May 2019. As anticipated the Act prohibits two further items: rapid firing rifles<sup>1</sup> and bump stock devices.<sup>2</sup> Both items will eventually be subject to the minimum term.

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<sup>1</sup> Certain chambered weapons from which cartridge cases are extracted by propellant gas. These fire at a rate that is significantly greater than a conventional bolt-action rifle, making them closer to self-loading rifles, which are already prohibited.

<sup>2</sup> A bump stock device is an attachment that increases the rate of fire, so that a semi-automatic weapon can fire almost as quickly as an automatic weapon.

3.2 The implementation of the firearms provisions is being phased, to allow time for people to surrender their weapons and claim compensation ahead of the prohibition on possession taking effect. Consequently, the prohibition of rapid-firing rifles and bump stocks came into force on Royal Assent but only to the extent that it prohibits the manufacture, sale, transfer or acquisition of such items. It is expected that when the prohibition on possession comes into force, the section applying the minimum term provisions to the items will also come into force. The draft guidelines will reflect the position at the time of the launch of the consultation and an explanation of expected changes will be included in the consultation document.

3.3 The Council needs to decide how it will categorise the rapid firing rifles and bump stocks in the guideline for possession of a prohibited weapon (at Annex A). It is proposed that rapid firing rifles (s5(1)(ag)) should be a type 1 weapon. There may be an argument for bump stocks (s5(1)(ba)) to go in type 2 (along with air weapons, disguised firearms, and ammunition), given they are an attachment rather than a full weapon, but the Council may consider that these too should be in type 1.

**Question 1: How should the new items be categorised once the prohibition on possession is in force?**

*Drafting changes approved by the Firearms Working Group*

3.4 There are changes to the wording in the possession of a prohibited weapon guideline (Annex A):

- The two stages of culpability are no longer referred to as A and B to avoid confusion with the culpability categorisation (this change has also been made to the possession without a certificate guideline, Annex B; possession by person prohibited guideline, Annex C; and carrying in a public place, annex D). They are now titled:
  - Culpability – Type of weapon
  - Culpability – Other culpability factors;
- at Culpability – Type of weapon, the highlighted wording above the table has been added;
- at Culpability – Other culpability factors, the highlighted wording in medium culpability has been added;

- at harm categories 1 and 3, there is additional wording to explicitly include risk of psychological as well as physical harm. The change to the harm wording has been made across all guidelines.

3.5 In Annexes F and G the type of weapon is not considered at step one and so there are aggravating factors relating to the weapon type at step two. The wording in brackets in aggravating factor A4 is designed to avoid double counting – e.g. where the guideline would otherwise have led to a 3 year starting point but this has been increased to 5 years because the minimum term provisions apply, the aggravating factor should not be used to increase it further. However, if the guideline led to a starting point of 6 years, it would be appropriate to increase further for the fact that the weapon was prohibited.

## **Question 2: Does the Council agree to these drafting changes?**

### *Sentence levels*

3.6 The following section of the paper sets out revisions made to sentence levels for guideline 1, and levels for guidelines 2-4 and 8 which have not yet been considered and suggests revisions to guideline 6. In addition, this section includes findings from analysis undertaken to assess the potential resource impact of the guidelines, based on current sentence levels and suggests some further changes. This is followed by an overview of the sentence levels across the eight guidelines.

3.7 Data on sentence levels, including volumes, outcomes, pre-guilty plea average custodial sentence lengths (ACSLs), and pre-guilty plea sentence lengths, updated with 2018 figures, are at **Annex I**.

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

3.8 The guideline has two tables, one for cases subject to the 5-year minimum term (table 1) and one for cases not subject to the minimum term (table 2).

3.9 An analysis of transcripts of Crown Court judges' sentencing remarks for cases involving hand guns (5(1A)(aba) offences) to assess the potential impact of the guideline suggested that in some cases the guideline would result in higher sentences than are currently being imposed. These are the highest volume prohibited weapons to which the 5 year minimum term applies and fall into Type 1 in the 'Culpability – Type of weapon' table. All of the (30) cases analysed were assessed as either high or medium culpability and most were either harm category 1 or 2. For those assessed as medium culpability the draft guideline tended to result in higher sentences than that actually imposed.

3.10 As can be seen from the table below, for type 1 weapons high and medium culpability are both categorised as culpability A. This means that the guideline fails to distinguish between these cases.

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

3.11 A suggested way to address this is to change type 1/ medium culpability to category B. This would provide a distinction between the high and medium culpability and reduce the danger of the guideline inflating sentences for medium culpability cases.

3.12 The transcript analysis also drew attention to the fact that very few firearms cases involve just one offence and it is therefore difficult to compare the actual sentences imposed with the theoretical sentence resulting from the guideline. Those offenders who received the highest sentences tended to have been convicted of multiple offences. In those cases the sentences were sometimes above the top of the range for the guideline (9 years).

3.13 Two possible approaches to address this would be to add some wording relating to the need to consider totality and/or increase the top of the range for A1 to 9 years 6 months. The range of sentences available in table 1 is very restricted by the statutory minimum and maximum which could justify the top of the range approaching the statutory maximum. The following wording relating to totality could be added above or below the sentence table:

The sentences in the table are for a single offence. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the Offences Taken into Consideration and Totality guideline and step six of this guideline.

3.14 It should be noted, however, that there are aggravating factors (A5 and A10) relating to multiple offences and therefore the Council may consider further reference to totality to be unnecessary.

3.15 Following recent changes to CPS charging practice, which is likely to lead to more disguised firearms now being charged under section 5(1)(b) rather than section 5(1A)(a), an analysis of Crown Court judges' sentencing remarks was undertaken to assess whether the draft guideline is likely to result in any changes to sentence levels for these offences.

3.16 The analysis of this small sample of cases indicated that if cases involving a disguised stun gun are charged under 5(1)(b) rather than 5(1A)(a), and sentencers follow the current guideline (and sentence levels in Table 2), the guideline will result in substantially lower sentences for disguised stun guns in those cases where exceptional circumstances were found (so that the five year minimum sentence did not apply).

3.17 This is to be expected, to some extent, given that the majority of offenders sentenced for 5(1A)(a) offences are currently sentenced to immediate custody, whereas those cases now charged as 5(1)(b) would be placed within culpability B or C, and most are likely to fall within harm 2 or 3 and only B2 has custody in the range.

3.18 If the Council wishes to align the guideline more closely with current sentencing practice, the culpability category for type 3 weapons and medium culpability could be changed from category C to category B. This would still result in some lower sentences than are currently being imposed, but that is unavoidable if sentence levels for 'normal' 5(1)(b) cases are not to be inflated, given the change in charging practice.

3.19 The working group decided to set the starting points of A3, B2 and C1 in table 2 to 1 year's custody. Compared with other firearms offences, the offences falling under this table have relatively low rates of immediate custody, at 17%, and fairly high rates of suspended sentence (26%) and community orders (30%). A further 18% of offenders received fines and 8% received conditional discharges. The estimated median pre-guilty plea custodial length was 1 year 2 months for these non-minimum term cases.

3.20 It is expected that the vast majority of table 2 cases will fall into culpability B or C as most will be type 3 weapons and there will be very few type 2 weapons that could fall into culpability A. The relevant boxes covering custody are therefore B1, B2 and C1. The ranges across B1, B2 and C1 will cover around 90% of current custodial sentence levels, with the small proportion of cases that are higher expected to be covered by the cases falling into culpability A.

3.21 Currently half of immediate custodial cases fall below 1 year 2 months. An analysis of transcripts of Crown Court judges' sentencing remarks was undertaken for 5(1)(b) offences, to assess the potential impact of the guideline. This analysis indicated that in some cases

the guideline might result in higher sentences than currently, in other cases sentences would be lower, and some sentences would remain the same. In particular, there was no strong evidence that having a 1 year starting point in B2 and C1 would cause an inflationary impact.

**Question 3: Does the Council wish to amend the culpability categories as suggested at 3.10 and 3.18 above?**

**Question 4: Does the Council wish to add a reference to totality and/or increase the top of the range to 9 years 6 months?**

**Question 5: Is the Council content to consult on the sentence levels in guideline 1?**

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

3.22 The offences covered have a maximum penalty of 5 years' custody. The aggravated form of the offence (possession of a shortened shotgun or a thing converted into a firearm) has a maximum of 7 years. In 2018 there were around 140 offenders sentenced, including 8 for the aggravated form (around 6% of total cases). In 2018 for all cases, immediate custody was the outcome in 43% of cases, with 20% receiving suspended sentences. A further 13% received a community order, while 13% received a fine, and 8% a conditional discharge. For custodial sentences, the estimated median pre-guilty plea length was 2 years 7 months.

3.23 The sentence levels have been drafted on the basis that most cases will fall into culpability B and C. Most cases will involve type 2 weapons and few are expected to involve high culpability factors. In the top box A1, the top of the range has been set at 4 years 6 months as 10% of immediate custody cases in 2018 received 5 years' custody or more. The top of the range could be set at 5 years but it is usual to leave some headroom and there may have been other factors such as concurrent sentences that increased these cases to the maximum sentence.

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

3.25 Community orders are currently within the range for 5 out of 9 boxes (albeit only at the bottom of the range for A3, B2 and C1). This has the potential to increase rates of community orders, but seems preferable to restricting these boxes to custody only. Discharge has been used as the bottom of the range for both C2 and C3 to reflect the relatively high proportion of discharges for this offence.

3.26 Transcript analysis found that the most common category for the non-aggravated offence was B2, with a 1 year starting point. When using the draft guideline to re-sentence transcripts, all of the B2 cases analysed had sentences which were either the same or broadly similar to the original sentence, indicating that the 1 year starting point is about right.

3.27 The analysis did however find that some cases in A2/B1 (with a 2 year starting point) resulted in a lower sentence using the draft guideline, when compared with the actual sentence given. It is therefore suggested that the starting point in these categories is increased to 2 years 6 months, with a range from 1 year to 3 years 6 months. The starting point for A1 could be increased to 3 years 6 months with a range of 2 years 6 months to 4 years 6 months. In 2018, 50% of custodial sentences for the offences covered by this guideline were 3 years or higher, so the increased sentence levels will better reflect current sentencing practice. If these changes are agreed the sentence table would look like this:

| Harm              | Culpability   |   |   |
|-------------------|---|---|---|
|                   | A   | B   | C   |
| <b>Category 1</b> | <b>Starting point</b><br>3 years 6 months' custody<br><b>Category range</b><br>2 years 6 months – 4 years 6 months' custody | <b>Starting point</b><br>2 years 6 months' custody<br><b>Category range</b><br>1 – 3 years 6 months' custody        | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody |
| <b>Category 2</b> | <b>Starting point</b><br>2 years 6 months' custody<br><b>Category range</b><br>1 – 3 years 6 months' custody                | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Discharge – 6 months' custody     |
| <b>Category 3</b> | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody         | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band A fine – 6 months' custody   | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine                            |

3.28 Further transcript analysis will be conducted to look at how the aggravated form of the offence is sentenced and if any problems are identified these will be raised out of committee before the consultation launch in September.

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

3.29 This is quite a low volume offence with around 60 offenders sentenced in 2018. Like the possession without a certificate guideline, the maximum penalty is 5 years' custody. Slightly more offenders received immediate custody, but sentences were shorter: in 2018, immediate custody was the outcome in 52% of cases, with 28% receiving suspended

sentences. A further 11% received a community order, while 5% received a fine, and 2% a discharge. For custodial sentences, the estimated median pre-guilty plea length was 1 year 4 months (compared with 2 years 7 months for possession without a certificate).

3.30 The sentence table is aligned to that of the possession without a certificate guideline. The top of box A1 has been set at 4 years; there were only 2 custodial sentences falling above 4 years in 2018 (6% of custodial sentences), compared with the possession without a certificate guideline which had 16%. The only other difference between the two guidelines is in C2 where the bottom of the range is a band A fine in the possession by a person prohibited guideline, to reflect the lower use of discharges for this offence.

3.31 Although the median sentence length is shorter, this is largely because the weapons involved in possession by person prohibited offending may include air weapons and other less serious weapons, compared with the possession without a certificate guideline.

3.32 In the possession by person prohibited guideline, possession of type 1 weapons (those prohibited under s5) will rarely be charged as this offence. Type 2 weapons could be similar across the two guidelines. Type 3 is relatively common in the possession by person prohibited guideline but less so in the possession without a certificate guideline. The consequence of this is that offending in the possession without a certificate guideline is more likely to fall into A1, A2 and B1 than the offending in guideline 3 which is likely to fall chiefly into B2 or C2.

3.33 Further transcript analysis will be conducted for the offences covered by guideline 2 and 3 before the finalisation of the resource assessment to check whether there are issues with the following:

- The 'firearms discharged' factor in high culpability in guideline 2
- Cases involving a custodian for guideline 2 including whether these cases apply to particular demographics.
- Cases where the person prosecuted has provided the weapon to the person prohibited in guideline 3

3.34 If issues are identified, these will be raised out of committee before the consultation launch in September.

**Question 5: Does the Council wish to consult on the revised sentence levels in guideline 2?**



## **Question 6: Is the Council content to consult on the sentence levels in guideline 3?**

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

3.35 This offence covers a person having with them (a) a loaded shotgun; (b) an air weapon (whether loaded or not); (c) any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm; or (d) an imitation firearm. It carries a maximum penalty of 7 years' custody, 12 months' custody for imitation firearms or 6 months' custody for air weapons. There were around 200 offenders sentenced in 2018. This was mainly for imitation firearms (54% of cases) and air weapons (36%).

3.36 This offence had much lower rates of immediate custody, compared with possession without a certificate and possession by person prohibited, and higher levels of community orders. In 2018, 21% of offenders received immediate custody, 17% received suspended sentences, 39% community orders, 17% fines and 3% conditional discharge. The estimated median pre-guilty plea sentence length was 9 months, significantly shorter than that for possession without a certificate (2 years 7 months) and possession by person prohibited (1 year 4 months).

3.37 This offence is subject to the minimum term, so the guideline will carry the usual guidance on this at step three, however it appears that this offence is only very rarely charged for weapons subject to the minimum term. The majority of sentences (95%) were less than 5 years in 2018. Very few of these offences involve firearms or shotguns, and it is likely that cases involving prohibited weapons are charged under other offences such as possession of a prohibited weapon or a possession with intent offence, which have higher maximum penalties. Since the application of the minimum term is expected to be rare, it was considered unnecessary to include separate tables for minimum term and non-minimum term cases.

3.38 As noted above, many of the cases under this offence involve imitation firearms, which have a lower maximum penalty of 12 months or air weapons which have a maximum of 6 months' custody. Imitation firearms and air weapons are type 3 weapons so would fall under culpability B or C. Only box B1 includes a range that goes above 12 months and C1 and B2 include a range that goes above 6 months. The differing maximum penalties have been addressed in the table through an asterisk in boxes B1, C1 and B2, highlighting the shorter maximum for imitation firearms and air weapons.

3.39 Although custody is in the range for six of the nine boxes in the table only three of them have a custodial starting point. This reflects the relatively high use of community orders for this offence (39% of cases).

3.40 The majority of these offences are sentenced in magistrates' courts but we do have some transcripts from the Crown Court which will be analysed to check that the guideline reflects current practice before the finalisation of the resource assessment. We plan to road test this guideline with magistrates during consultation.

#### **Question 7: Is the Council content to consult on the sentence levels in guideline 4?**

*Sentence levels – possession with intent to endanger life (Guideline 5/Annex E)*

3.41 The Council has previously considered and agreed the sentence levels for this offence subject to further testing against transcripts. Only one sentence table is used, because although the offence can be committed with a weapon that is not subject to the statutory minimum sentence, in fact, sentencing data show that sentences infrequently fall below five years (there were 6 such cases in 2018).

3.42 The offence is relatively low volume (around 60 cases in 2018), it has a maximum penalty of life imprisonment. All offenders sentenced received immediate custody. The ACSL for this offence is the highest of all the firearms offences being covered (with the exception of 5(2A) offences), at a median of 12 years pre-guilty plea.

3.43 Transcript analysis was undertaken to look specifically at the effect of the factor 'firearm discharged', in high culpability. This analysis found that in some cases involving group offending, where the offender played a 'significant role' (medium culpability factor) but the firearm was discharged (high culpability), there was a risk that the guideline would result in higher sentences for those offenders, if the case was placed in high culpability. The wording above the culpability table instructs the court to 'balance these characteristics to reach a fair assessment of the offender's culpability'. Views are sought as to whether this is an issue that could lead to inconsistent or inappropriate classification of culpability. If so, it could be explored in road testing.

3.44 Transcript analysis was also undertaken on section 16 offences more generally, and this did not identify any issues with sentence levels.

#### **Question 8: Is the Council content to consult on the sentence levels in guideline 5?**

**Question 9: Should the balancing of culpability factors be specifically addressed in road testing?**

*Sentence levels – Possession with intent to cause fear of violence (Guideline 6/Annex F)*

3.45 This offence can be committed with an imitation firearm or a genuine firearm. The sentences for imitation firearms are, on average, lower as might be expected. Around 44% of the imitation firearms offences in 2018 received a pre-guilty plea sentence length of 2 years or less, compared with 16% for firearms. The estimated median ACSL for imitations was 2 years 3 months compared with 4 years 6 months for firearms. There appear to be few, if any, cases that would fall into high harm for imitations and the majority would appear to be either medium or low culpability. However, there is significant overlap between the firearm and imitation firearm tables, to recognise that higher-end cases involving imitation firearms can be as serious as offences involving a genuine firearm in some instances. The Firearms Working Group agreed that to achieve proportionate outcomes the sentence levels from category 2 and category 3 in the firearms table should be copied across to category 1 and category 2 respectively in the imitation firearm table.

3.46 This has left a slight anomaly in that the starting point and range for A3 is higher than that for C2 (and B2) – meaning that culpability is weighted more highly than harm, but the starting point for C2 is higher than B3 – meaning that harm is weighted more highly than culpability. As has been noted above, there are very few high harm cases and not many high culpability cases, so it might make sense to change A3 to align with C1 and B2. It might also be sensible to change B3 to align with C2 to maintain the proportionality with table 1.

3.47 Transcript analysis was undertaken to look specifically at the effect of the factor ‘firearm discharged’, in high culpability. This did not identify any particular issues for these offences, however this may be due to the limited information available in these transcripts.

**Question 10: Does the Council wish to make the suggested changes to the sentence levels in guideline 6 and consult on these levels?**

*Sentence levels – Possession with intent to resist arrest/commit indictable or Sch 1 offence (Guideline 7/Annex G)*

3.48 These offences all carry a maximum of life imprisonment. The majority of cases (81%) received immediate custody in 2018. The estimated median ACSL (pre-guilty plea) was 8 years for offences involving a firearm, and 5 years for those involving an imitation firearm. As the volumes are relatively low these figures should be treated with caution.

3.49 As with guideline 6, there are separate tables for firearms and imitation firearms, and overlap between the levels for the two tables. Because of low volumes, it is more difficult to identify appropriate sentence levels for the tables, particularly across two tables. Data covering the last five years has been used to increase the data on which to base sentence levels. These levels have been developed with some regard to the sentence table in the [robbery guideline \(street and less sophisticated commercial\)](#) as many s17(1) and s18 offences are sentenced alongside robbery using the robbery guideline. Based on transcripts, courts often impose the same sentence (concurrent) for the robbery and the possession of firearm with intent offence. Broadly, the imitation firearm levels are similar to the robbery guideline and the firearm levels are slightly higher.

3.50 Transcript analysis was undertaken to look specifically at the effect of the factor 'firearm discharged', in high culpability. This analysis did not identify any particular issues for these offences, although it was challenging to sentence these offences using the draft guideline because they were often sentenced alongside other offences.

**Question 11: Is the Council content to consult on the sentence levels in guideline 7?**

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

3.51 The manufacture and transfer offences carry a maximum penalty of life imprisonment but as the dangerousness provisions do not apply life sentences are unlikely in practice. The offences are very low volume with 10 cases in 2018. All offenders sentenced in 2018 received immediate custody. In 2018 the estimated median pre-guilty plea sentence length was 9 years for sell/transfer offences. For manufacture offences, just five offenders have been sentenced since 2016. The ACSL for these offences was 19 years 7 months (when looking at all offenders sentenced since 2016).

3.52 The sentence levels have been informed by sentencing data and the decision of the Court of Appeal in *Stephenson*:

- For the leader of the enterprise, a starting point of 25 years prior to discount for plea (not to be taken as a maximum), with a materially greater sentence appropriate for previous convictions involving firearms. Those engaged in criminal enterprise under the leader should receive sentences reflecting the sentence for the leader (before any discount for plea), depending on the role they played;
- For the purchasers, sentences in the region of 15 years, with a significantly higher sentence required if any previous convictions for firearms;

- For those who assisted in transactions, sentences of not less than 8 years; sentences materially greater were required in cases where the assistance was significant; in the present case the sentences should have ranged from 8 - 12 years, depending on the role they played and any previous association with guns.

3.53 The Working group considered that the proposed sentence levels were generally in line with the judgment in *Stephenson* but decided that the top of the range should be increased to 28 years to allow for the very serious cases.

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

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

3.56 The Working Group was content that sentence levels for this offence would be higher than for possession with intent to endanger life (guideline 5/ Annex E) as this offence often involves a larger scale of offending and potentially far greater harm.

**Question 12: Is the Council content to consult on the sentence levels in guideline 8?**

*Sentence levels – comparison*

3.57 The table below sets out the sentence ranges, selected boxes from the sentence tables and current median sentence lengths for each guideline.

**Question 13: Is the Council content with the overall relativity of sentence levels across the guidelines?**

| <b>GUIDELINE</b>                                    | <b>STAT MAX</b>                                       | <b>RANGE</b>   | <b>TOP BOX (A1)</b>   | <b>MIDDLE BOX (B2)</b>   | <b>BOTTOM BOX (C3)</b>   | <b>MEDIAN SENTENCE LENGTH PRE-GP (2018)</b> |
|---|---|--|---|--|--|---|
| <b>1 – Possession of prohibited weapon*</b>         | 10 years  | <u>Table 1 Minimum term cases</u><br>5 – 9 years             | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>7 – 9 years' custody          | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5 – 7 years' custody                                   | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>5 – 6 years' custody             | 7 years                                     |
|   |   | <u>Table 2 Non-minimum term cases</u><br>Discharge – 5 years | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2 – 5 years' custody          | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody          | <b>Starting point</b><br>Band C fine<br><b>Category range</b><br>Discharge – Low level community order | 1 year 2 months                             |
| <b>2 – Possession without certificate</b>           | 5 years<br>(7 years aggravated form)                  | Discharge – 4 years<br>6 months                              | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2 – 4 years 6 months' custody | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody          | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine               | 2 years 7 months                            |
| <b>3 – Possession by person prohibited</b>          | 5 years   | Discharge – 4 years  | <b>Starting point</b><br>3 years custody<br><b>Category range</b><br>2 – 4 years' custody           | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 year's custody          | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine               | 1 year 4 months                             |
| <b>4 – Carrying in a public place*</b>              | 7 years<br>(6 & 12 months air weapons and imitations) | Discharge – 4 years  | <b>Starting point</b><br>2 years custody<br><b>Category range</b><br>1 – 4 years' custody           | <b>Starting point</b><br>High level community order<br><b>Category range</b><br>Low level community order – 1 year's custody | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine               | 9 months                                    |
| <b>5 – Possession with intent to endanger life*</b> | Life  | 4 – 22 years   | <b>Starting point</b><br>18 years' custody<br><b>Category range</b><br>16 – 22 years' custody       | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 12 years' custody                                 | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>4 – 7 years' custody             | 12 years                                    |

|   |      |   |   |  |  |  |
|---|------|---|---|--|--|--|
| <b>6 – Possession with intent to cause fear of violence*</b>  | Life | <u>Table 1 Firearms</u><br>6 months – 9 years                               | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>7 – 9 years' custody    | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>2 – 6 years' custody   | <b>Starting point</b><br>1 year 6 months' custody<br><b>Category range</b><br>6 months – 2 years' custody              | 4 years 6 months   |
|   |      | <u>Table 2 Imitation firearms</u><br>Medium level community order – 8 years | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>4 – 8 years' custody    | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody   | <b>Starting point</b><br>6 months' custody<br><b>Category range</b><br>Medium level community order – 1 year's custody | 2 years 3 months   |
| <b>7 – Possession with intent* – other offences (intent to resist arrest, intent to commit an indictable/ Schedule 1 offence)</b> | Life | <u>Table 1 Firearms</u><br>1 – 16 years                                     | <b>Starting point</b><br>12 years' custody<br><b>Category range</b><br>10 – 16 years' custody | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody   | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                             | 8 years  |
|   |      | <u>Table 2 Imitation firearms</u><br>High level community order – 12 years  | <b>Starting point</b><br>9 years' custody<br><b>Category range</b><br>6 – 12 years' custody   | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>3 – 7 years' custody   | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 3 years' custody    | 5 years  |
| <b>8 – Transfer/ Manufacture*</b>   | Life | 5 – 28 years  | <b>Starting point</b><br>20 years' custody<br><b>Category range</b><br>16 – 26 years' custody | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 14 years' custody | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5 – 8 years' custody                             | 9 years (transfer)<br>19 years 7 months (manufacture) <sup>3</sup> |

\* Minimum term may apply.

<sup>3</sup> The ACSL for manufacture offences covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

## **4 RISKS AND IMPACT**

4.1 As noted in the section above, there are various aspects of the guidelines which are being examined using transcript analysis over the coming weeks. If this analysis indicates any potential issues with the guidelines, these will be circulated to Council members outside of Council meetings.

4.2 Once any issues are resolved the resource assessment and consultation document will be drafted and circulated for comment before the consultation launch at the end of September.

4.3 The consultation document will contain information on demographic makeup (specifically age, race and sex) of offenders for firearms offences.

4.4 Broadly speaking convictions for firearms offences are most likely to be committed by white males under the age of 40. However, when compared with the demographics of the population as a whole, there is a significant over-representation of BAME offenders. The proportion of BAME offenders is also higher for firearms offences than for all offences. There is a large over-representation of young adults compared to the population as a whole and to a lesser extent compared to offenders across all offences.

4.5 In 2018, for possession offences to which the mandatory minimum applies, 41% of offenders were BAME and 53% were under 30. Females were much less likely to be convicted of these offences (only about 1 in 20 offenders sentenced were female) and about 50% of females who were convicted received a sentence less than the minimum term.

4.6 What this means is that if the guidelines increase sentences for these offences generally, there is a risk that the increase may fall disproportionately on young offenders and BAME offenders.

4.7 Looking at offenders who received sentences below the minimum term for possession offences reveals that 38% of White offenders received a sentence less than the minimum term whereas the figures for Black and Asian offenders were 18% and 21% respectively.

4.8 The Council is already committed to taking steps to address concerns around equality and diversity across all guidelines. As this consultation will be published before the drug offences consultation which will include the analysis on race and gender and the plan of action to be taken as a result, it will allude to that plan but will not give details.



4.9 Road testing will be conducted with Crown Court judges, district judges and magistrates alongside testing of the drugs guideline, over the summer and early autumn, the finding from which will be reported back to the Council when the consultation responses are considered in early 2020.

**Question 14: Are there any particular equality and diversity issues that should be addressed in the consultation?**

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# Firearms – Possession of prohibited weapon

## **Possession, purchase or acquisition of a prohibited weapon or ammunition**

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

Indictable only:

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

Triable either way:

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

Maximum: 10 years' custody

Offence range: Discharge – 9 years' custody

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

**STEP ONE**  
**Determining the offence category**

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

**Culpability – Type of weapon**

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

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

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

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

**Culpability – Other culpability factors**

The court should weigh all the factors set out below in determining the offender’s culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

|  |
|--|
| <b>Culpability</b> demonstrated by one or more of the following:   |
| <b>High culpability:</b> <ul style="list-style-type: none"> <li>• Firearm discharged</li> <li>• Firearm loaded</li> <li>• Firearm/ammunition used or intended for use for criminal purpose</li> </ul>  |
| <b>Medium culpability:</b> <ul style="list-style-type: none"> <li>• Firearm/ammunition produced (where not at High culpability)</li> <li>• Firearm held with compatible ammunition or stun gun that is charged</li> <li>• Firearm/ammunition intended for use (where not at High culpability)</li> </ul> |
| <b>Lower culpability:</b> <ul style="list-style-type: none"> <li>• No use or intention to use</li> </ul>   |

**Culpability category**

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

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

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

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

| <b>STEP TWO</b>   |   |   |   |
|---|---|---|---|
| <b>Starting point and category range</b>  |   |   |   |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.  |   |   |   |
| Table 1 should be used if the offence is subject to statutory minimum sentencing provisions, unless there are exceptional circumstances. Table 2 should be used for all other cases. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances. |   |   |   |
| <b>TABLE 1</b>  | <b>Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))</b> |   |   |
| <b>Harm</b>   | <b>Culpability</b>  |   |   |
|   | <b>A</b>  | <b>B</b>  | <b>C</b>  |
| <b>Category 1</b>   | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>7-9 years' custody  | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>6-8 years' custody          | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5-7 years' custody          |
| <b>Category 2</b>   | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>6-8 years' custody  | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5-7 years' custody          | <b>Starting point</b><br>5 years 6 months' custody<br><b>Category range</b><br>5-7 years' custody |
| <b>Category 3</b>   | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5-7 years' custody  | <b>Starting point</b><br>5 years 6 months' custody<br><b>Category range</b><br>5-7 years' custody | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>5 – 6 years' custody        |

| <b>TABLE 2</b>    | <b>Offences not subject to the statutory minimum sentence</b>   |  |  |
|-------------------|---|--|--|
| <b>Harm</b>       | <b>Culpability</b>  |  |  |
|                   | <b>A</b>  | <b>B</b>   | <b>C</b>   |
| <b>Category 1</b> | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2 – 5 years' custody                          | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                                 | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody        |
| <b>Category 2</b> | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                          | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody        | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band D fine – High level community order |
| <b>Category 3</b> | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band D fine – High level community order | <b>Starting point</b><br>Band C fine<br><b>Category range</b><br>Discharge – Low level community order                     |

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

### Factors increasing seriousness

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

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

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

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

### Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. No knowledge or suspicion that firearm/ammunition is prohibited
- M6. Held on behalf of another through coercion, intimidation, or exploitation
- M7. Voluntary surrender of firearm/ammunition



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

**STEP THREE**  
**Minimum Term**

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

Applicability

2. The minimum terms provisions apply when sentencing:
  - an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
  - certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

**Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.
 either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.

8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
  - One or more lower culpability factors
  - The type of weapon or ammunition falling under type 2 or 3
  - One or more mitigating factors
  - A plea of guilty

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**
14. The court may find it useful to refer to the range of sentences under culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in STEP TWO above. The court should impose a sentence that is appropriate to the individual case.

**Sentencing offenders aged under 18 [DROPDOWN BOX]**

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

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Reduction for guilty pleas**

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

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

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Ancillary orders**

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

**Forfeiture and destruction of firearms and cancellation of certificate**

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 of Part II to Schedule 6 of the Firearms Act 1968.

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail (tagged curfew)**

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

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## **Firearms – Possession without certificate**

### **Possession, purchase or acquisition of a firearm without a certificate**

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

### **Possession, purchase or acquisition of ammunition without a certificate**

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

### **Possession, purchase or acquisition of a shotgun without a certificate**

Firearms Act 1968 (section 2(1))

Triable either way

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

Offence range: Discharge – 4 years 6 months' custody

**STEP ONE**  
**Determining the offence category**

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

**Culpability – Type of weapon**

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

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

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

**Other culpability factors**

The court should weigh all the factors set out below in determining the offender’s culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

**Culpability** demonstrated by one or more of the following:

**High culpability:**

- Firearm discharged, other than for lawful purpose
- Firearm loaded
- Firearm/ammunition used or intended for use for criminal purpose

**Medium culpability:**

- Firearm/ammunition produced (where not at High culpability)
- Firearm held with compatible ammunition
- Firearm/ammunition used or intended for use (where not at High culpability)

**Lower culpability:**

- No use or intention to use

**Culpability category**

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

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

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

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

| <b>STEP TWO</b>   |   |   |   |
|---|---|---|---|
| <b>Starting point and category range</b>  |   |   |   |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.  |   |   |   |
| <b>The table below refers to offences for which the maximum sentence is five years. Where the offence is aggravated under section 4(4) (i.e. the weapon is a converted firearm or shortened shotgun), the maximum penalty is seven years and sentencers should consider increasing the sentences shown.</b> |   |   |   |
| <b>Harm</b>   | <b>Culpability</b>  |   |   |
|   | <b>A</b>  | <b>B</b>  | <b>C</b>  |
| <b>Category 1</b>   | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2 – 4 years 6 months' custody                 | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                          | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody |
| <b>Category 2</b>   | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                          | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Discharge – 6 months' custody     |
| <b>Category 3</b>   | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community order – 2 years' custody | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band A fine – 6 months' custody   | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine                            |

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

### **Factors increasing seriousness**

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

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

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

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



- A5. Firearm/ammunition kept with multiple weapons and/or substantial quantity of ammunition (See step five on totality when sentencing more than one offence)
- A6. Offence was committed as part of a group (except where already taken into account at step one)
- A7. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A8. Abuse of position as registered firearms dealer or certificate holder
- A9. Possession continued after certificate refused or revoked
- A10. Poor record of firearms compliance
- A11. Commission of offence whilst under the influence of alcohol or drugs
- A12. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step five on totality when sentencing more than one offence)
- A13. Failure to comply with current court orders
- A14. Offence committed on licence or post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

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

**STEP THREE**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

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

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

**STEP FIVE**

**Totality principle**

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

**STEP SIX**

**Ancillary orders**

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

***Forfeiture and destruction of firearms and cancellation of certificate***

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP SEVEN**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail**

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

## **Firearms – Possession by person prohibited**

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

Firearms Act 1968 (section 21(4))

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

**STEP ONE**  
**Determining the offence category**

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

**Culpability – Type of weapon**

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

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

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

**Culpability– Other culpability factors**

The court should weigh all the factors set out below in determining the offender’s culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

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

**Culpability category**

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

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

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

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

| <b>STEP TWO</b>  |   |   |   |
|--|---|---|---|
| <b>Starting point and category range</b>   |   |   |   |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. |   |   |   |
| <b>Harm</b>  | <b>Culpability</b>  |   |   |
|  | <b>A</b>  | <b>B</b>  | <b>C</b>  |
| <b>Category 1</b>  | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2 – 4 years' custody                                | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                                | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level<br>community order – 2<br>years' custody |
| <b>Category 2</b>  | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody                                | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level community<br>order – 2 years'<br>custody | <b>Starting point</b><br>Medium level<br>community order<br><b>Category range</b><br>Band A fine – 6<br>months' custody   |
| <b>Category 3</b>  | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level<br>community order –<br>2 years' custody | <b>Starting point</b><br>Medium level<br>community order<br><b>Category range</b><br>Band A fine – 6<br>months' custody   | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C<br>Fine                               |

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

**Factors increasing seriousness**

**Statutory aggravating factors:**

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

**Other aggravating factors:**

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

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

**Factors reducing seriousness or reflecting personal mitigation**

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

**STEP THREE**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

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

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



**STEP FIVE**

**Totality principle**

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

**STEP SIX**

**Ancillary orders**

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

***Forfeiture and destruction of firearms and cancellation of certificate***

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP SEVEN**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail**

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

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# Firearms – Carrying in a public place

## Carrying a firearm in a public place

Firearms Act 1968 (section 19)

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

Triable either way:

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

Summary only if the firearm is an air weapon

Maximum: 7 years' custody (12 months' custody for imitation firearms, 6 months' custody for an air weapon)

Offence range: Discharge – 4 years' custody

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

**STEP ONE  
Determining the offence category**

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

**Culpability– Type of weapon**

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

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

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

**Culpability – Other culpability factors**

The court should weigh all the factors set out below in determining the offender’s culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

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

**Culpability category**

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

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

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

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

| <b>STEP TWO</b>   |  |   |   |
|---|--|---|---|
| <b>Starting point and category range</b>  |  |   |   |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.  |  |   |   |
| The offence may be subject to a minimum sentence. Where the minimum sentence applies, <sup>1</sup> and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances. |  |   |   |
| <b>Harm</b>   | <b>Culpability</b>   |   |   |
|   | <b>A</b>   | <b>B</b>  | <b>C</b>  |
| <b>Category 1</b>   | <b>Starting point</b><br>2 years custody<br><b>Category range</b><br>1 – 4 years' custody                                    | <b>Starting point</b><br>1 years' custody<br><b>Category range</b><br>6 months' – 2 years' custody*                           | <b>Starting point</b><br>High level community order<br><b>Category range</b><br>Low level community order – 1 year's custody* |
| <b>Category 2</b>   | <b>Starting point</b><br>1 years' custody<br><b>Category range</b><br>6 months' – 2 years' custody                           | <b>Starting point</b><br>High level community order<br><b>Category range</b><br>Low level community order – 1 year's custody* | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band A fine – High level community order    |
| <b>Category 3</b>   | <b>Starting point</b><br>High level community order<br><b>Category range</b><br>Low level community order – 1 year's custody | <b>Starting point</b><br>Medium level community order<br><b>Category range</b><br>Band A fine – High level community order    | <b>Starting point</b><br>Band A fine<br><b>Category range</b><br>Discharge – Band C Fine                                      |

\* Where the firearm is an imitation firearm, the maximum penalty is 12 months' custody.

\* Where the firearm is an air weapon, the maximum penalty is 6 months' custody

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

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

### Factors increasing seriousness

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

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

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

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

### Factors reducing seriousness or reflecting personal mitigation

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



**STEP THREE****Minimum Term**

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

Applicability

2. The minimum terms provisions apply when sentencing:
  - an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
  - certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

**Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.
 either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not

undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.

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

Where exceptional circumstances are found

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

**Sentencing offenders aged under 18 [DROPDOWN BOX]**

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

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Reduction for guilty pleas**

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

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

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Ancillary orders**

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

***Forfeiture and destruction of firearms and cancellation of certificate***

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail**

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

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# Firearms – Possession with intent to endanger life

## **Possession with intent to endanger life**

Firearms Act 1968 (section 16)

Indictable only

Maximum: Life imprisonment

Offence range: 4 – 22 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

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

**STEP ONE  
Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

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

|  |   |
|--|---|
| <b>Harm</b>  |   |
| The court should consider the factors set out below to determine the level of harm that has been <b>caused or was risked</b> .   |   |
| This step is assessed by reference to the <b>risk of harm</b> or <b>disorder</b> occurring and/or <b>actual harm</b> caused.   |   |
| When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence. |   |
| <b>Category 1</b>  | <ul style="list-style-type: none"> <li>• Severe physical harm caused</li> <li>• Severe psychological harm caused</li> </ul>   |
| <b>Category 2</b>  | <ul style="list-style-type: none"> <li>• Serious physical harm</li> <li>• Serious psychological harm</li> <li>• High risk of death or severe physical or psychological harm</li> <li>• High risk of serious disorder</li> </ul> |
| <b>Category 3</b>  | <ul style="list-style-type: none"> <li>• Alarm/distress caused</li> <li>• All other cases not falling into 1 or 2</li> </ul>  |

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

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

| <b>STEP TWO</b>   |   |   |  |
|---|---|---|--|
| <b>Starting point and category range</b>  |   |   |  |
| <p>Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.</p> <p>This offence is subject to minimum sentence provisions. Where the minimum sentence applies,<sup>1</sup> and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.</p> |   |   |  |
| <b>Harm</b>   | <b>Culpability</b>  |   |  |
|   | <b>A</b>  | <b>B</b>  | <b>C</b>   |
| <b>Category 1</b>   | <b>Starting point</b><br>18 years' custody<br><b>Category range</b><br>16 – 22 years' custody | <b>Starting point</b><br>14 years' custody<br><b>Category range</b><br>11 – 17 years' custody | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 12 years' custody |
| <b>Category 2</b>   | <b>Starting point</b><br>14 years' custody<br><b>Category range</b><br>11 – 17 years' custody | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 12 years' custody  | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody   |
| <b>Category 3</b>   | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 12 years' custody  | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody    | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>4 – 7 years' custody   |

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

**Factors increasing seriousness**

**Statutory aggravating factors:**

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

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



- A3. Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

***Other aggravating factors:***

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

**Factors reducing seriousness or reflecting personal mitigation**

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

- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

**STEP THREE**

**Minimum Term**

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

Applicability

2. The minimum terms provisions apply when sentencing:
  - an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
  - certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

**Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.
 either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
  - One or more lower culpability factors
  - The type of weapon or ammunition falling under type 2 or 3
  - One or more mitigating factors
  - A plea of guilty

Where exceptional circumstances are found

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

**Sentencing offenders aged under 18 [DROPDOWN BOX]**

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

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Reduction for guilty pleas**

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

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

**STEP SIX**

**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 244A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN**

**Totality principle**

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

**STEP EIGHT**

**Ancillary orders**

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

**Forfeiture and destruction of firearms and cancellation of certificate**

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP NINE**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP TEN**

**Consideration for time spent on bail**

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

# **Firearms – Possession with intent to cause fear of violence**

## **Possession with intent to cause fear of violence**

Firearms Act 1968 (section 16A)

Indictable only

Maximum: 10 years' custody

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

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

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

**STEP ONE  
Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

|   |
|---|
| <b>Culpability</b> demonstrated by one or more of the following:  |
| <p><b>A – High culpability:</b></p> <ul style="list-style-type: none"> <li>• Intention falling just short of intent to endanger life</li> <li>• Conduct intended to maximise fear or distress</li> <li>• Sophisticated nature of offence/significant planning</li> <li>• Leading role where offending is part of a group activity</li> <li>• Firearm or imitation firearm discharged</li> <li>• Prolonged incident</li> </ul> |
| <p><b>B – Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm or imitation firearm loaded or held with compatible ammunition but not discharged</li> <li>• Significant role where offending is part of a group activity</li> <li>• Some degree of planning</li> <li>• Other cases falling between high and lower culpability</li> </ul>  |
| <p><b>C – Lower culpability:</b></p> <ul style="list-style-type: none"> <li>• No intention to cause injury to persons</li> <li>• Lesser role where offending is part of group activity</li> <li>• Little or no planning or unsophisticated offending</li> <li>• Firearm or imitation firearm not produced or visible</li> <li>• Conduct limited in scope and duration</li> </ul>  |

|  |   |
|--|---|
| <b>Harm</b>  |   |
| The court should consider the factors set out below to determine the level of harm that has been <b>caused or was risked</b> .   |   |
| This step is assessed by reference to the <b>risk of harm</b> or <b>disorder</b> occurring and/or <b>actual harm</b> caused.   |   |
| When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence. |   |
| <b>Category 1</b>  | <ul style="list-style-type: none"> <li>• Severe physical harm caused</li> <li>• Severe psychological harm caused</li> </ul>   |
| <b>Category 2</b>  | <ul style="list-style-type: none"> <li>• Serious physical harm caused</li> <li>• Serious psychological harm caused</li> <li>• High risk of death or severe physical or psychological harm</li> <li>• High risk of serious disorder</li> </ul> |
| <b>Category 3</b>  | <ul style="list-style-type: none"> <li>• Alarm/distress caused</li> <li>• All other cases not falling into 1 or 2</li> </ul>  |

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

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

|   |
|---|
| <b>STEP TWO</b>   |
| <b>Starting point and category range</b>  |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.  |
| Table 1 should be used if the offence is in respect of a firearm. Table 2 should be used for an imitation firearm.  |
| The offence may be subject to a minimum sentence. Where the minimum sentence applies, <sup>1</sup> and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances. |

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

| <b>TABLE 1</b>    | <b>Firearm</b>  |  |   |
|-------------------|---|--|---|
| <b>Harm</b>       | <b>Culpability</b>  |  |   |
|                   | <b>A</b>  | <b>B</b>   | <b>C</b>  |
| <b>Category 1</b> | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>7 – 9 years'<br>custody | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>4 – 8 years' custody | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>3 – 6 years' custody                      |
| <b>Category 2</b> | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>4 – 8 years'<br>custody | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>3 – 6 years' custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody                      |
| <b>Category 3</b> | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>3 – 6 years'<br>custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody | <b>Starting point</b><br>1 year 6 months'<br>custody<br><b>Category range</b><br>6 months – 2 years'<br>custody |

| <b>TABLE 2</b>    | <b>Imitation firearm</b>  |  |  |
|-------------------|---|--|--|
| <b>Harm</b>       | <b>Culpability</b>  |  |  |
|                   | <b>A</b>  | <b>B</b>   | <b>C</b>   |
| <b>Category 1</b> | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>4 – 8 years' custody    | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>3 – 6 years' custody           | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody                                   |
| <b>Category 2</b> | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>3 – 6 years'<br>custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody           | <b>Starting point</b><br>1 year 6 months'<br>custody<br><b>Category range</b><br>6 months – 2 years'<br>custody              |
| <b>Category 3</b> | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>1 – 5 years'<br>custody | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>6 months – 2 years'<br>custody | <b>Starting point</b><br>6 months' custody<br><b>Category range</b><br>Medium level<br>community order – 1<br>year's custody |

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

#### Factors increasing seriousness



**Statutory aggravating factors:**

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail
- A3. Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

**Other aggravating factors:**

- A4. Firearm is prohibited under section 5 and subject to minimum term (taking care to avoid double counting with minimum term provisions)
- A5. Firearm under section 5(1)(a) (automatic weapon)
- A6. Firearm modified to make it more dangerous
- A7. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A8. Imitation firearm is readily convertible<sup>2</sup>
- A9. Steps taken to make imitation firearm appear more realistic (See step seven on totality when sentencing for more than one offence.)
- A10. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A11. Offence was committed as part of a group (except where already taken into account at step one)
- A12. Offence committed to further organised criminal activity (except where already taken into account at step one)
- A13. Expectation of substantial financial gain (except where already taken into account at step one)
- A14. Attempts to conceal or dispose of the firearm or other evidence
- A15. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A16. Abuse of position as registered firearms dealer or certificate holder
- A17. Commission of offence whilst under the influence of alcohol or drugs
- A18. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step seven on totality when sentencing for more than one offence.)

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<sup>2</sup> [Drop-down box to show relevant statutory provision or link to statute - Section 1(6) Firearms Act 1982]

- A19. Failure to comply with current court orders
- A20. Offence committed on licence or post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Imitation firearm is unrealistic and unconvincing
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

**STEP THREE**

**Minimum Term**

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

Applicability

2. The minimum terms provisions apply when sentencing:
  - an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
  - certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

#### **Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

#### Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
  - One or more lower culpability factors
  - The type of weapon or ammunition falling under type 2 or 3
  - One or more mitigating factors
  - A plea of guilty

#### Where exceptional circumstances are found

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

#### **Sentencing offenders aged under 18 [DROPDOWN BOX]**

1. Where the offender is aged 16 or 17 when the offence was committed, the minimum term is three years' custody. Where the offender is under 16 when the offence was committed, the minimum term does not apply.

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

#### **STEP FOUR**

##### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

#### **STEP FIVE**

##### **Reduction for guilty pleas**

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

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

#### **STEP SIX**

##### **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 SEVEN**

##### **Totality principle**

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

#### **STEP EIGHT**

##### **Ancillary orders**

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

##### **Forfeiture and destruction of firearms and cancellation of certificate**

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP NINE**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP TEN**

**Consideration for time spent on bail**

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

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# **Firearms – Possession with intent – other offences**

## **Use of firearm to resist arrest**

Firearms Act 1968 (section 17(1))

## **Possession while committing a Schedule 1 offence**

Firearms Act 1968 (section 17(2))

## **Carrying firearm with criminal intent**

Firearms Act 1968 (section 18)

Indictable only

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

These are serious specified offences for the purposes of sections 224 and 225(2) (life sentences for serious offences) of the Criminal Justice Act 2003.

These are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for a second listed offence).

These are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

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

**STEP ONE  
Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

|  |
|--|
| <b>Culpability</b> demonstrated by one or more of the following:   |
| <p><b>A – High culpability:</b></p> <ul style="list-style-type: none"> <li>• Sophisticated nature of offence/significant planning</li> <li>• Leading role where offending is part of a group activity</li> <li>• Firearm discharged</li> <li>• Prolonged incident</li> <li>• Serious nature of intended offence</li> </ul>   |
| <p><b>B – Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Firearm loaded or held with compatible ammunition but not discharged</li> <li>• Significant role where offending is part of a group activity</li> <li>• Some degree of planning</li> <li>• Other cases falling between high and lower culpability</li> </ul>  |
| <p><b>C – Lower culpability:</b></p> <ul style="list-style-type: none"> <li>• No intention to cause injury to persons</li> <li>• Lesser role where offending is part of group activity</li> <li>• Little or no planning or unsophisticated offending</li> <li>• Conduct limited in scope and duration</li> <li>• Firearm not produced or visible</li> <li>• Less serious nature of intended offence</li> </ul> |



|  |   |
|--|---|
| <b>Harm</b>  |   |
| The court should consider the factors set out below to determine the level of harm that has been <b>caused or was risked</b> .   |   |
| This step is assessed by reference to the <b>risk of harm</b> or <b>disorder</b> occurring and/or <b>actual harm</b> caused.   |   |
| When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence. |   |
| <b>Category 1</b>  | <ul style="list-style-type: none"> <li>• Severe physical harm caused</li> <li>• Severe psychological harm caused</li> </ul>   |
| <b>Category 2</b>  | <ul style="list-style-type: none"> <li>• Serious physical harm caused</li> <li>• Serious psychological harm caused</li> <li>• High risk of death or severe physical or psychological harm</li> <li>• High risk of serious disorder</li> </ul> |
| <b>Category 3</b>  | <ul style="list-style-type: none"> <li>• Alarm/distress caused</li> <li>• All other cases not falling into 1 or 2</li> </ul>  |

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

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

| <b>STEP TWO</b>   |   |   |  |
|---|---|---|--|
| <b>Starting point and category range</b>  |   |   |  |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.  |   |   |  |
| This offence is subject to minimum sentence provisions. Where the minimum sentence applies, <sup>1</sup> and the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances. |   |   |  |
| <b>TABLE 1</b>  | <b>Firearm</b>  |   |  |
| <b>Harm</b>   | <b>Culpability</b>  |   |  |
|   | <b>A</b>  | <b>B</b>  | <b>C</b>   |
| <b>Category 1</b>   | <b>Starting point</b><br>12 years' custody<br><b>Category range</b><br>10 – 16 years' custody | <b>Starting point</b><br>9 years' custody<br><b>Category range</b><br>7 – 11 years' custody | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody |
| <b>Category 2</b>   | <b>Starting point</b><br>9 years' custody<br><b>Category range</b><br>7 – 11 years' custody   | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody  | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>2 – 6 years' custody |
| <b>Category 3</b>   | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody    | <b>Starting point</b><br>4 years' custody<br><b>Category range</b><br>2 – 6 years' custody  | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 3 years' custody |

| <b>TABLE 2</b>    | <b>Imitation firearm</b>   |  |   |
|-------------------|--|--|---|
| <b>Harm</b>       | <b>Culpability</b>   |  |   |
|                   | <b>A</b>   | <b>B</b>   | <b>C</b>  |
| <b>Category 1</b> | <b>Starting point</b><br>9 years' custody<br><b>Category range</b><br>6 – 12 years         | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years          | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>3 – 7 years   |
| <b>Category 2</b> | <b>Starting point</b><br>7 years' custody<br><b>Category range</b><br>5 – 9 years' custody | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>3 – 7 years' custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody                                |
| <b>Category 3</b> | <b>Starting point</b><br>5 years' custody<br><b>Category range</b><br>3 – 7 years' custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1 – 4 years' custody | <b>Starting point</b><br>1 year's custody<br><b>Category range</b><br>High level<br>community order – 3<br>years' custody |

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

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

### Factors increasing seriousness

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

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail
- A3. Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

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

- A4. Firearm prohibited under section 5 and subject to minimum term (taking care to avoid double counting with minimum term provisions)
- A5. Firearm under section 5(1)(a) (automatic weapon)
- A6. Firearm modified to make it more dangerous
- A7. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A8. Imitation firearm is readily convertible<sup>2</sup>
- A9. Steps taken to make imitation firearm appear more realistic (See step seven on totality when sentencing for more than one offence.)
- A10. Firearm/ammunition held with multiple weapons and/or substantial quantity of ammunition (See step seven on totality when sentencing for more than one offence.)
- A11. Offence was committed as part of a group (except where already taken into account at step one)
- A12. Offender's actions resulted in a suspect avoiding arrest
- A13. Expectation of substantial financial gain (except where already taken into account at step one)
- A14. Attempts to conceal or dispose of the firearm or other evidence

<sup>2</sup> [Drop-down box to show relevant statutory provision or link to statute - Section 1(6) Firearms Act 1982]

- A15. Serious damage to property caused (See step seven on totality when sentencing for more than one offence.)
- A16. Abuse of position as registered firearms dealer or certificate holder
- A17. Commission of offence whilst under the influence of alcohol or drugs
- A18. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step seven on totality when sentencing for more than one offence.)
- A19. Failure to comply with current court orders
- A20. Offence committed on licence or post sentence supervision

### Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M4. Imitation firearm is unrealistic and unconvincing
- M5. Involved through coercion, intimidation, or exploitation
- M6. Voluntary surrender of firearm
- M7. Offender co-operated with investigation and/or made early admissions
- M8. Remorse
- M9. Serious medical condition requiring urgent, intensive or long-term treatment
- M10. Age and/or lack of maturity
- M11. Mental disorder or learning disability
- M12. Sole or primary carer for dependent relatives

### STEP THREE

#### Minimum Term

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

#### Applicability

2. The minimum terms provisions apply when sentencing:
  - an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
  - certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

#### **Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

#### Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
  - One or more lower culpability factors
  - The type of weapon or ammunition falling under type 2 or 3
  - One or more mitigating factors
  - A plea of guilty

#### Where exceptional circumstances are found

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

**Sentencing offenders aged under 18 [DROPDOWN BOX]**

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

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Reduction for guilty pleas**

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

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

**STEP SIX**

**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 244A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN**

**Totality principle**

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

**STEP EIGHT**

**Ancillary orders**

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

**Forfeiture and destruction of firearms and cancellation of certificate**

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP NINE**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP TEN**

**Consideration for time spent on bail**

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

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## **Firearms – Transfer and manufacture**

### **Manufacture weapon or ammunition specified in section 5(1)**

Firearms Act 1968 (section 5(2A)(a))

### **Sell or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(b))

### **Possess for sale or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(c))

### **Purchase or acquire for sale or transfer prohibited weapon or ammunition**

Firearms Act 1968 (section 5(2A)(d))

Indictable only

Maximum: Life imprisonment

Offence range: 5 – 28 years' custody

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

**STEP ONE  
Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following:

**A – High culpability:**

- Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator
- Significant planning, including but not limited to significant steps to evade detection
- Abuse of position of trust or responsibility, for example registered firearms dealer
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

**B – Medium culpability:**

- Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between high and lower culpability

**C – Lower culpability:**

- Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage

|  |   |
|--|---|
| <b>Harm</b>  |   |
| The court should consider the steps set out below to determine the level of harm caused.   |   |
| This step is assessed by reference to the <b>scale</b> and <b>nature of the enterprise</b> and any <b>actual harm</b> caused, regardless of the offender's role. |   |
| <b>Category 1</b>  | <ul style="list-style-type: none"> <li>• Large-scale commercial and/or highly sophisticated enterprise – indicators may include: <ul style="list-style-type: none"> <li>○ Large number of prohibited weapons/ammunition involved</li> <li>○ Operation over significant time period</li> <li>○ Operation over significant geographic range</li> <li>○ Close connection to organised criminal group(s)</li> </ul> </li> <li>• Evidence firearm/ammunition subsequently used to cause serious injury or death</li> </ul> |
| <b>Category 2</b>  | <ul style="list-style-type: none"> <li>• Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> <li>○ Factors in both 1 and 3 are present which balance each other out; and/or</li> <li>○ The harm falls between the factors as described in 1 and 3</li> </ul> </li> <li>• Evidence firearm/ammunition subsequently used in criminal offending (where not at category 1)</li> </ul>                     |
| <b>Category 3</b>  | <ul style="list-style-type: none"> <li>• Smaller-scale and/or unsophisticated enterprise – indicators may include: <ul style="list-style-type: none"> <li>○ Limited number of prohibited weapons/ammunition involved</li> <li>○ Operation over limited time period</li> <li>○ Operation over limited geographic range</li> <li>○ Minimal/no connection to organised criminal group(s)</li> </ul> </li> <li>• Evidence firearm/ammunition not subsequently used in criminal offending</li> </ul>                       |

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

| <b>STEP TWO</b>  |   |   |  |
|--|---|---|--|
| <b>Starting point and category range</b>   |   |   |  |
| Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. |   |   |  |
| This offence may be subject to minimum sentencing provisions. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.   |   |   |  |
| <b>Harm</b>  | <b>Culpability</b>  |   |  |
|  | <b>A</b>  | <b>B</b>  | <b>C</b>   |
| <b>Category 1</b>  | <b>Starting point</b><br>20 years' custody<br><b>Category range</b><br>16 – 28 years' custody | <b>Starting point</b><br>14 years' custody<br><b>Category range</b><br>12 – 18 years' custody | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 14 years' custody |
| <b>Category 2</b>  | <b>Starting point</b><br>14 years' custody<br><b>Category range</b><br>12 – 18 years' custody | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 14 years' custody  | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>6 – 12 years' custody  |
| <b>Category 3</b>  | <b>Starting point</b><br>10 years' custody<br><b>Category range</b><br>8 – 14 years' custody  | <b>Starting point</b><br>8 years' custody<br><b>Category range</b><br>6 – 12 years' custody   | <b>Starting point</b><br>6 years' custody<br><b>Category range</b><br>5 – 8 years' custody   |

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

#### **Factors increasing seriousness**

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

- A1. Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- A2. Offence committed whilst on bail

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

- A3. Firearm under section 5(1)(a) (automatic weapon)
- A4. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A5. Compatible ammunition and/or silencer(s) supplied with firearm (See step six on totality when sentencing for more than one offence.)

- A6. Others put at risk of harm, including by location or method of manufacture or transfer
- A7. Use of business as a cover
- A8. Attempts to conceal or dispose of the firearm or other evidence
- A9. Commission of offence whilst under the influence of alcohol or drugs
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence.)
- A11. Failure to comply with current court orders
- A12. Offence committed on licence or post sentence supervision

**Factors reducing seriousness or reflecting personal mitigation**

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm/ammunition not prohibited under section 5
- M4. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M5. Genuine belief that firearm will not be used for criminal purpose
- M6. No knowledge or suspicion that item possessed was firearm/ammunition
- M7. No knowledge or suspicion that firearm/ammunition is prohibited
- M8. Voluntary surrender of firearm/ammunition
- M9. Offender co-operated with investigation and/or made early admissions
- M10. Remorse
- M11. Serious medical condition requiring urgent, intensive or long-term treatment
- M12. Age and/or lack of maturity
- M13. Mental disorder or learning disability
- M14. Sole or primary carer for dependent relatives

**STEP THREE**  
**Minimum Term**

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

Applicability

2. The minimum terms provisions apply when sentencing:

- an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
- certain other offences committed in respect of a firearm or ammunition specified in the provisions above. [DROPDOWN BOX]

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

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

3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of five years applies to offenders aged 18 or over at the date of conviction. See below for guidance when sentencing offenders aged under 18.
5. Where the minimum term applies, this should be stated expressly.

#### **Exceptional circumstances**

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offender.either of which may give rise to exceptional circumstances
7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

#### Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must be truly exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
  - One or more lower culpability factors
  - The type of weapon or ammunition falling under type 2 or 3

- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

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

**Sentencing offenders aged under 18 [DROPDOWN BOX]**

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

**STEP FOUR**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FIVE**

**Reduction for guilty pleas**

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

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

**STEP SIX**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to

the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN**

**Ancillary orders**

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

**Forfeiture and destruction of firearms and cancellation of certificate**

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

**Serious Crime Prevention Order**

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail**

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



Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, all courts, 2008-2018

| Guideline group   | Legislation       | Section   | Offence   | Number of adult offenders sentenced |   |              |            |            |            |            |            |            |            |            |
|---|-------------------|---|---|-------------------------------------|---|--------------|------------|------------|------------|------------|------------|------------|------------|------------|
|   |                   |   |   | 2008                                | 2009  | 2010         | 2011       | 2012       | 2013       | 2014       | 2015       | 2016       | 2017       | 2018       |
| Group 1<br>(Maximum: 10 years)                                | Firearms Act 1968 | 5(1)(a)-(af), (c)<br>5(1A)(a)                             | Minimum term applies<br>Possess/purchase/acquire a prohibited weapon (automatic)/<br>ammunition/ smooth-bore revolver/ rocket launcher/ mortar/<br>pump action rifle        | 340                                 | 360   | 308          | 207        | 172        | 206        | 253        | 364        | 463        | 402        | 345        |
|   |                   |   | 5(1A)(a)<br>Possess/ purchase disguised firearm   |                                     |   |              |            |            |            |            |            |            |            |            |
|   |                   | Minimum term does not apply<br>5(1)(b)<br>5(1A)(b)-(g)    | Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing<br>Possess/ purchase/ sell or transfer military equipment | 889                                 | 896   | 840          | 771        | 634        | 581        | 485        | 469        | 482        | 358        | 375        |
| <b>TOTAL SECTION 5 OFFENCES</b>                               |                   |   |   | <b>1,229</b>                        | <b>1,256</b>  | <b>1,148</b> | <b>978</b> | <b>806</b> | <b>787</b> | <b>738</b> | <b>833</b> | <b>945</b> | <b>760</b> | <b>720</b> |
| Group 2<br>(Maximum: 5 years, or 7 years for 1(1) aggravated) | Firearms Act 1968 | 1(1)  | Possess a firearm/ammunition without a certificate <sup>1</sup>   | -                                   | -   | -            | 163        | 139        | 128        | 126        | 101        | 128        | 97         | 105        |
|   |                   |   | Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) <sup>1</sup>  | -                                   | -   | -            | 13         | 13         | 6          | 15         | 8          | 6          | 14         | 8          |
|   |                   | 2(1)  | Possess shotgun without a certificate   | 55                                  | 39  | 54           | 38         | 35         | 30         | 37         | 36         | 31         | 41         | 31         |
| <b>TOTAL 1(1) &amp; 2(1) OFFENCES</b>                         |                   |   |   | <b>240</b>                          | <b>230</b>  | <b>251</b>   | <b>216</b> | <b>194</b> | <b>164</b> | <b>178</b> | <b>145</b> | <b>168</b> | <b>152</b> | <b>144</b> |
| Group 3<br>(Maximum: 5 years)                                 | Firearms Act 1968 | 21(1) & (4)<br>21(2) & (4) & Sch 6                        | Possess a firearm/ shotgun/ air weapon/ ammunition when prohibited for life/ five years   | 89                                  | 111   | 95           | 89         | 74         | 62         | 53         | 49         | 60         | 48         | 61         |
|   |                   | Group 4<br>(Maximum: 7 years, or 12 months for imitation) | Firearms Act 1968   | 19                                  | Possess loaded/unloaded firearm and suitable ammunition in public place | 53           | 31         | 23         | 21         | 12         | 16         | 10         | 14         | 12         |
| Possess a loaded shotgun in a public place                    | 21                |   |   |                                     | 11  | 7            | 3          | 6          | 4          | 2          | 1          | 2          | 2          | 6          |
| Possess a loaded / unloaded air weapon in a public place      | 274               |   |   |                                     | 250   | 221          | 151        | 127        | 101        | 92         | 103        | 69         | 74         | 72         |
| Possess an imitation firearm in a public place                | 47                |   |   |                                     | 96  | 84           | 84         | 87         | 89         | 103        | 98         | 112        | 120        | 107        |
| <b>TOTAL SECTION 19 OFFENCES</b>                              |                   |   |   | <b>395</b>                          | <b>388</b>  | <b>335</b>   | <b>259</b> | <b>232</b> | <b>210</b> | <b>207</b> | <b>216</b> | <b>195</b> | <b>203</b> | <b>199</b> |
| Group 5<br>(Maximum: Life)                                    | Firearms Act 1968 | 16  | Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so   | 63                                  | 53  | 48           | 69         | 64         | 70         | 44         | 54         | 53         | 77         | 63         |
| Group 6<br>(Maximum: 10 years)                                | Firearms Act 1968 | 16A   | Possess a firearm with intent to cause fear of violence <sup>1</sup>  | -                                   | -   | -            | 101        | 81         | 82         | 74         | 77         | 98         | 74         | 76         |
|   |                   |   | Possess an imitation firearm with intent to cause fear of violence <sup>1</sup>   | -                                   | -   | -            | 146        | 139        | 138        | 145        | 162        | 180        | 187        | 164        |
|   |                   | <b>TOTAL SECTION 16A OFFENCES</b>                         |   |                                     |   | <b>327</b>   | <b>257</b> | <b>274</b> | <b>250</b> | <b>230</b> | <b>221</b> | <b>221</b> | <b>241</b> | <b>280</b> |
| Group 7<br>(Maximum: Life)                                    | Firearms Act 1968 | 17(1), 17(2), 18(1)                                       | Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>1</sup>  | -                                   | -   | -            | 18         | 15         | 13         | 10         | 7          | 11         | 5          | 22         |
|   |                   |   | Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>1</sup>   | -                                   | -   | -            | 34         | 17         | 20         | 28         | 17         | 20         | 27         | 20         |
|   |                   | <b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>         |   |                                     |   | <b>81</b>    | <b>73</b>  | <b>50</b>  | <b>52</b>  | <b>34</b>  | <b>33</b>  | <b>38</b>  | <b>24</b>  | <b>31</b>  |
| Group 8<br>(Maximum: Life)                                    | Firearms Act 1968 | 5(2A)(a)  | Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>2</sup>   | -                                   | -   | -            | -          | -          | -          | 0          | 0          | 4          | 0          | 1          |
|   |                   | 5(2A)(b)  | Sell / transfer prohibited weapon / ammunition <sup>2</sup>   | -                                   | -   | -            | -          | -          | -          | 0          | 0          | 10         | 19         | 5          |
|   |                   | 5(2A)(c)  | Possess prohibited weapon / ammunition for sale / transfer <sup>2</sup>   | -                                   | -   | -            | -          | -          | -          | 0          | 0          | 4          | 5          | 4          |
|   |                   | 5(2A)(d)  | Purchase / acquire prohibited weapon / ammunition for sale / transfer <sup>2</sup>  | -                                   | -   | -            | -          | -          | -          | 0          | 0          | 0          | 1          | 0          |
| <b>TOTAL SECTION 5(2A) OFFENCES</b>                           |                   |   |   | <b>-</b>                            | <b>-</b>  | <b>-</b>     | <b>-</b>   | <b>-</b>   | <b>-</b>   | <b>0</b>   | <b>0</b>   | <b>18</b>  | <b>25</b>  | <b>10</b>  |

## Notes

1) Data for these specific offences not available prior to 2011

2) These offences came into force on 14 July 2014. Cases in 2016 may have been sentenced prior to the Stephenson judgment

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2018

| Guideline group  | Section   | Offence   | Conditional Discharge | Fine      | Community Order | Suspended Sentence | Immediate Custody | Otherwise dealt with <sup>1</sup> | Total      |
|--|---|---|-----------------------|-----------|-----------------|--------------------|-------------------|-----------------------------------|------------|
| Group 1 (Maximum: 10 years)                                | <b>Minimum term applies</b><br>5(1)(a)-(af), (c)<br>5(1A)(a)  | Possess/purchase/acquire a prohibited weapon (automatic)/<br>ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump<br>action rifle  | 0                     | 2         | 1               | 30                 | 309               | 3                                 | <b>345</b> |
|  | <b>Minimum term does not apply</b><br>5(1)(b)<br>5(1A)(b)-(g) | Possess/ purchase disguised firearm<br><br>Possess/ purchase a weapon for the discharge of a noxious liquid / gas /<br>electrical incapacitation device / thing<br>Possess/ purchase/ sell or transfer military equipment | 31                    | 67        | 111             | 98                 | 62                | 6                                 | <b>375</b> |
|  | <b>TOTAL SECTION 5 OFFENCES</b>                               |   | <b>31</b>             | <b>69</b> | <b>112</b>      | <b>128</b>         | <b>371</b>        | <b>9</b>                          | <b>720</b> |
| Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated) | 1(1)  | Possess a firearm/ammunition without a certificate<br>Possess a shortened shotgun without a certificate; possess a thing<br>converted into a firearm (aggravated form)  | 10                    | 17        | 16              | 17                 | 44                | 1                                 | <b>105</b> |
|  | 2(1)  | Possess shotgun without a certificate   | 0                     | 0         | 0               | 0                  | 7                 | 1                                 | <b>8</b>   |
|  | <b>TOTAL 1(1) &amp; 2(1)</b>                                  |   | <b>2</b>              | <b>2</b>  | <b>3</b>        | <b>12</b>          | <b>11</b>         | <b>1</b>                          | <b>31</b>  |
| <b>TOTAL SECTION 1(1) &amp; 2(1)</b>                       |   |   | <b>12</b>             | <b>19</b> | <b>19</b>       | <b>29</b>          | <b>62</b>         | <b>3</b>                          | <b>144</b> |
| Group 3 (Maximum: 5 years)                                 | 21  | Possess a firearm when prohibited for life / five years due to previous<br>conviction   | 1                     | 3         | 7               | 17                 | 32                | 1                                 | <b>61</b>  |
| Group 4 (Maximum: 7 years, or 12 months for imitation)     | 19  | Possess loaded/unloaded firearm and suitable ammunition/shotgun/<br>airweapon/ imitation firearm in public place  | 6                     | 33        | 78              | 34                 | 41                | 7                                 | <b>199</b> |
| Group 5 (Maximum: Life)                                    | 16  | Possess a firearm/ ammunition/ shotgun/ air weapon with intent to<br>endanger life / enable another to do so  | 0                     | 0         | 0               | 0                  | 63                | 0                                 | <b>63</b>  |
| Group 6 (Maximum: 10 years)                                | 16A   | Possess a firearm with intent to cause fear of violence   | 0                     | 0         | 1               | 10                 | 61                | 4                                 | <b>76</b>  |
|  |   | Possess an imitation firearm with intent to cause fear of violence  | 0                     | 0         | 5               | 32                 | 120               | 7                                 | <b>164</b> |
|  |   | <b>TOTAL SECTION 16A OFFENCES</b>   |                       | <b>0</b>  | <b>0</b>        | <b>6</b>           | <b>42</b>         | <b>181</b>                        | <b>11</b>  |
| Group 7 (Maximum: Life)                                    | 17(1), 17(2), 18(1)   | Possess a firearm with intent to resist arrest/ commit a Schedule 1<br>offence/ commit an indictable offence  | 0                     | 0         | 0               | 3                  | 17                | 2                                 | <b>22</b>  |
|  |   | Possess an imitation firearm with intent to resist arrest/ commit a<br>Schedule 1 offence/ commit an indictable offence   | 0                     | 0         | 0               | 2                  | 17                | 1                                 | <b>20</b>  |
|  |   | <b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>   |                       | <b>0</b>  | <b>0</b>        | <b>0</b>           | <b>5</b>          | <b>34</b>                         | <b>3</b>   |
| Group 8 (Maximum: Life)                                    | 5(2A)(a)  | Manufacture weapon / ammunition specified in section 5(1) of the<br>Firearms Act 1968 <sup>2</sup>  | 0                     | 0         | 0               | 0                  | 5                 | 0                                 | <b>5</b>   |
|  | 5(2A)(b)-(d)  | Sell / transfer prohibited weapon / ammunition,<br>Possess/purchase/acquire prohibited weapon / ammunition for sale /<br>transfer   | 0                     | 0         | 0               | 0                  | 9                 | 0                                 | <b>9</b>   |

Source: Court Proceedings Database, Ministry of Justice

| Guideline group   | Section                     | Offence  | Conditional Discharge | Fine       | Community Order | Suspended Sentence | Immediate Custody | Otherwise dealt with <sup>1</sup> | Total       |
|---|-----------------------------|--|-----------------------|------------|-----------------|--------------------|-------------------|-----------------------------------|-------------|
| Group 1 (Maximum: 10 years)                                     | <b>Minimum term applies</b> | Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle | 0%                    | 1%         | <0.5%           | 9%                 | 90%               | 1%                                | 100%        |
|   | 5(1)(a)-(af), (c)           | Possess/ purchase disguised firearm  |                       |            |                 |                    |                   |                                   |             |
|   | 5(1A)(a)                    | <b>Minimum term does not apply</b>   |                       |            |                 |                    |                   |                                   |             |
|   | 5(1)(b)                     | Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing                      | 8%                    | 18%        | 30%             | 26%                | 17%               | 2%                                | 100%        |
|   | 5(1A)(b)-(g)                | Possess/ purchase/ sell or transfer military equipment   |                       |            |                 |                    |                   |                                   |             |
|   |                             | <b>TOTAL SECTION 5 OFFENCES</b>  | <b>4%</b>             | <b>10%</b> | <b>16%</b>      | <b>18%</b>         | <b>52%</b>        | <b>1%</b>                         | <b>100%</b> |
| Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)      | 1(1)                        | Possess a firearm/ammunition without a certificate   | 10%                   | 16%        | 15%             | 16%                | 42%               | 1%                                | 100%        |
|   |                             | Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)                          | 0%                    | 0%         | 0%              | 0%                 | 88%               | 13%                               | 100%        |
|   | 2(1)                        | Possess shotgun without a certificate  | 6%                    | 6%         | 10%             | 39%                | 35%               | 3%                                | 100%        |
|   |                             | <b>TOTAL 1(1) &amp; 2(1)</b>   | <b>8%</b>             | <b>13%</b> | <b>13%</b>      | <b>20%</b>         | <b>43%</b>        | <b>2%</b>                         | <b>100%</b> |
| Group 3 (Maximum: 5 years)                                      | 21                          | Possess a firearm when prohibited for life / five years due to previous conviction   | 2%                    | 5%         | 11%             | 28%                | 52%               | 2%                                | 100%        |
| Group 4 (Maximum: 7 years, or 12 months for imitation firearms) | 19                          | Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place                          | 3%                    | 17%        | 39%             | 17%                | 21%               | 4%                                | 100%        |
| Group 5 (Maximum: Life)   | 16                          | Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so                              | 0%                    | 0%         | 0%              | 0%                 | 100%              | 0%                                | 100%        |
|   |                             | Possess a firearm with intent to cause fear of violence  | 0%                    | 0%         | 1%              | 13%                | 80%               | 5%                                | 100%        |
| Group 6 (Maximum: 10 years)                                     | 16A                         | Possess an imitation firearm with intent to cause fear of violence   | 0%                    | 0%         | 3%              | 20%                | 73%               | 4%                                | 100%        |
|   |                             | <b>TOTAL SECTION 16A OFFENCES</b>  | <b>0%</b>             | <b>0%</b>  | <b>3%</b>       | <b>18%</b>         | <b>75%</b>        | <b>5%</b>                         | <b>100%</b> |
| Group 7 (Maximum: Life)   |                             | Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence                              | 0%                    | 0%         | 0%              | 14%                | 77%               | 9%                                | 100%        |
|   | 17(1), 17(2), 18(1)         | Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence                   | 0%                    | 0%         | 0%              | 10%                | 85%               | 5%                                | 100%        |
|   |                             | <b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>  | <b>0%</b>             | <b>0%</b>  | <b>0%</b>       | <b>12%</b>         | <b>81%</b>        | <b>7%</b>                         | <b>100%</b> |
| Group 8 (Maximum: Life)   | 5(2A)(a)                    | Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>2</sup>  | 0%                    | 0%         | 0%              | 0%                 | 100%              | 0%                                | 100%        |
|   | 5(2A)(b)-(d)                | Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer            | 0%                    | 0%         | 0%              | 0%                 | 100%              | 0%                                | 100%        |

Source: Court Proceedings Database, Ministry of Justice

## Notes

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

2) Data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for offences under the Firearms Act 1968, 2018

| Guideline group   | Section  | Offence  | Mean sentence length <sup>1,3</sup> | Median sentence length <sup>2,3</sup> | Sentence range (using estimated pre GP sentence lengths) |
|---|--|--|-------------------------------------|---------------------------------------|--|
| Group 1<br>(Maximum: 10 years)                                | Minimum term applies<br>5(1)(a)-(af), (c)<br>5(1A)(a)  | Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle | 6 years 4 months                    | 7 years                               | Fine - 10 years' custody                                 |
|   |  | Possess/ purchase disguised firearm  |                                     |                                       |  |
|   | Minimum term does not apply<br>5(1)(b)<br>5(1A)(b)-(g) | Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing                      | 1 year 8 months                     | 1 year 2 months                       | Discharge - 8 years 3 months' custody                    |
|   |  | Possess/ purchase/ sell or transfer military equipment   |                                     |                                       |  |
|   |  | <b>TOTAL SECTION 5 OFFENCES</b>  | <b>5 years 6 months</b>             | <b>6 years 6 months</b>               | <b>Discharge - 10 years' custody</b>                     |
| Group 2<br>(Maximum: 5 years, or 7 years for 1(1) aggravated) | 1(1)   | Possess a firearm/ammunition without a certificate   | 2 years 5 months                    | 2 years 1 month                       | Discharge - 5 years' custody                             |
|   |  | Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) <sup>4</sup>             | 4 years 1 month                     | 4 years                               | 1 year 9 months - 5 years 9 months' custody              |
|   | 2(1)   | Possess shotgun without a certificate <sup>5</sup>   | 2 years 6 months                    | 3 years                               | Discharge - 4 years' custody                             |
|   |  | <b>TOTAL 1(1) &amp; 2(1)</b>   | <b>2 years 8 months</b>             | <b>2 years 7 months</b>               | <b>Discharge - 5 years 9 months' custody</b>             |
| Group 3<br>(Maximum: 5 years)                                 | 21   | Possess a firearm when prohibited for life / five years due to previous conviction   | 1 year 6 months                     | 1 year 4 months                       | Discharge - 5 years' custody                             |
| Group 4<br>(Maximum: 7 years, or 12 months for imitation)     | 19   | Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place                          | 1 year 6 months                     | 9 months                              | Discharge - 7 years' custody                             |
| Group 5<br>(Maximum: Life)                                    | 16   | Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so                              | 12 years 4 months                   | 12 years                              | 2 years 3 months - 30 years' custody (and indeterminate) |
| Group 6<br>(Maximum: 10 years)                                | 16A  | Possess a firearm with intent to cause fear of violence  | 4 years 11 months                   | 4 years 6 months                      | CO - 10 years' custody                                   |
|   |  | Possess an imitation firearm with intent to cause fear of violence   | 2 years 8 months                    | 2 years 3 months                      | CO - 7 years 9 months' custody                           |
|   |  | <b>TOTAL SECTION 16A OFFENCES</b>  | <b>3 years 5 months</b>             | <b>2 years 6 months</b>               | <b>CO - 10 years' custody</b>                            |
| Group 7<br>(Maximum: Life)                                    | 17(1), 17(2),<br>18(1)                                 | Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>5</sup>                 | 8 years 11 months                   | 8 years                               | SSO - 26 years 8 months' custody                         |
|   |  | Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence <sup>5</sup>      | 7 years                             | 5 years                               | SSO - 18 years' custody                                  |
|   |  | <b>TOTAL SECTION 17(1), 17(2), 18(1) OFFENCES</b>  | <b>7 years 11 months</b>            | <b>6 years</b>                        | <b>SSO - 26 years 8 months' custody</b>                  |
| Group 8<br>(Maximum: Life)                                    | 5(2A)(a)   | Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 <sup>4,6</sup>                                      | 14 years 9 months                   | 19 years 7 months                     | 4 years - 22 years' custody                              |
|   | 5(2A)(b)-(d)   | Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer            | 11 years 2 months                   | 9 years                               | 3 years 9 months - 23 years' custody                     |

Source: Court Proceedings Database, Ministry of Justice

## Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) These figures should be treated with caution, due to the low number of offenders sentenced for this offence.
- 5) These figures should be treated with some caution, due to the relatively low number of offenders sentenced for this offence
- 6) The ACSLs and ranges shown for this offence cover the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment

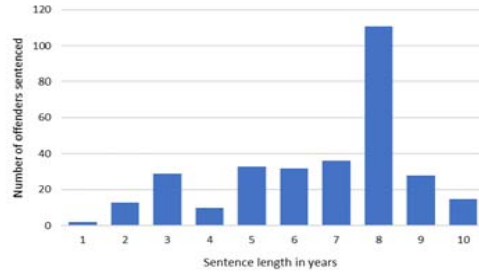
Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2018

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

**Group 1 (Maximum: 10 years)**

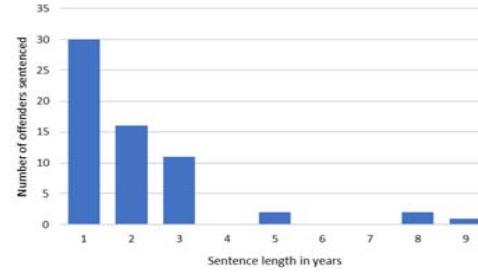
**Minimum term applies**

Sections 5(1)(a)-(af),(c) & 5(1A)(a) combined, 2018



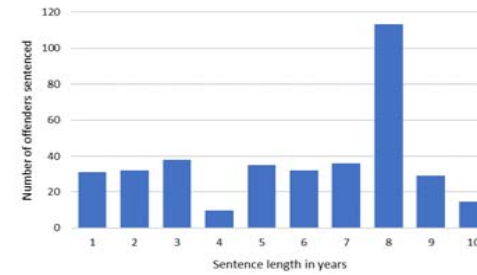
**Minimum term does not apply**

Sections 5(1)(b) & 5(1A)(b)-(g) combined, 2018



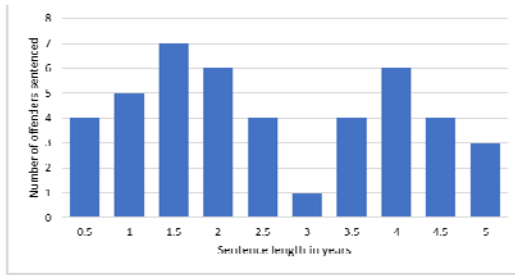
**All Group 1 offences**

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) & 5(1A)(b)-(g) combined, 2018

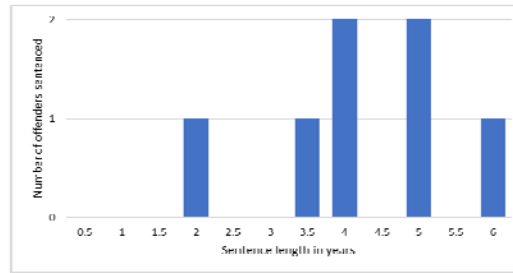


**Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)**

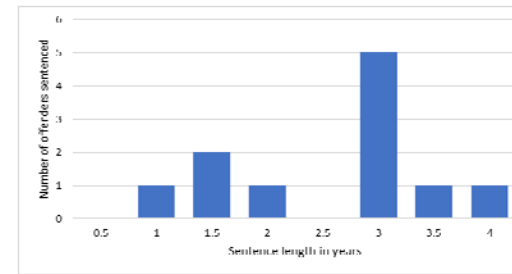
Section 1(1) - Possess a firearm/ammunition without a certificate, 2018



Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2018

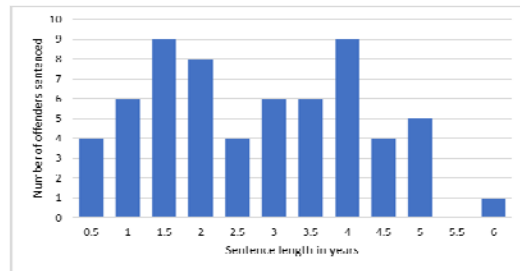


Section 2(1) - Possess shotgun without a certificate, 2018



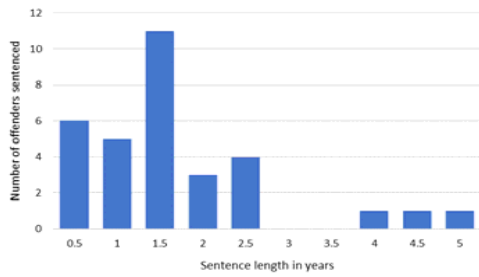
**All Group 2 offences**

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2018



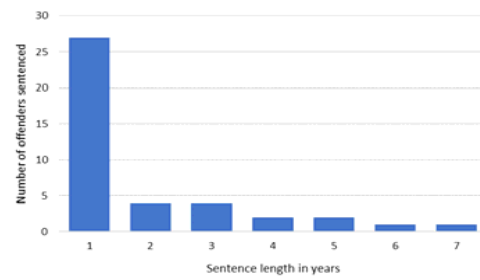
**Group 3 (Maximum: 5 years)**

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2018



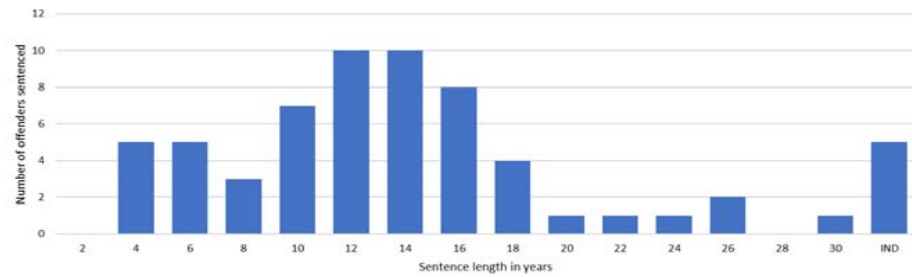
**Group 4 (Maximum: 7 years, or 12 months for imitation)**

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2018



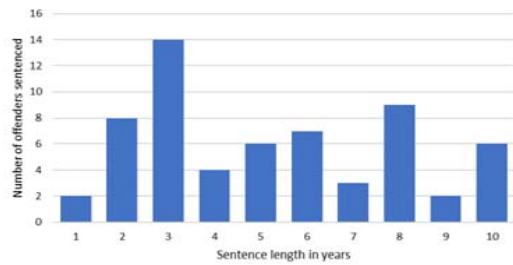
**Group 5 (Maximum: Life)**

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so, 2018

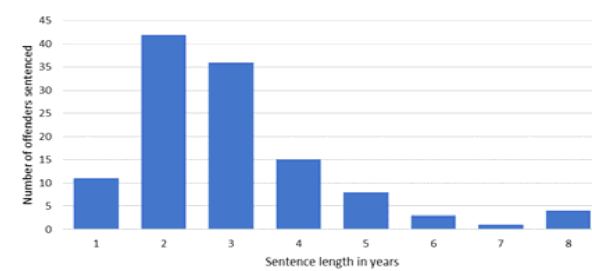


**Group 6 (Maximum: 10 years)**

Section 16A - Possess a firearm with intent to cause fear of violence, 2018

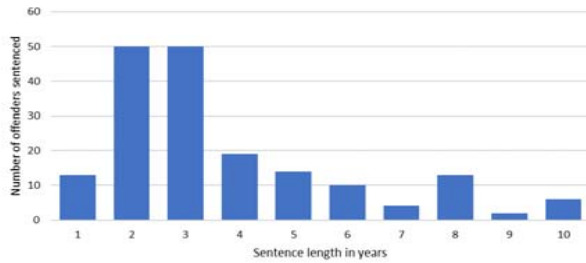


Section 16A - Possess an imitation firearm with intent to cause fear of violence, 2018



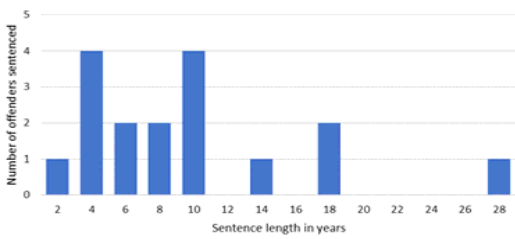
**All Group 6 offences**

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence, 2018

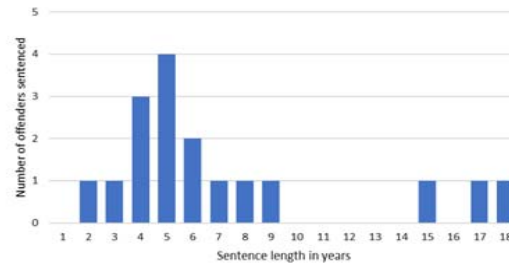


**Group 7 (Maximum: Life)**

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

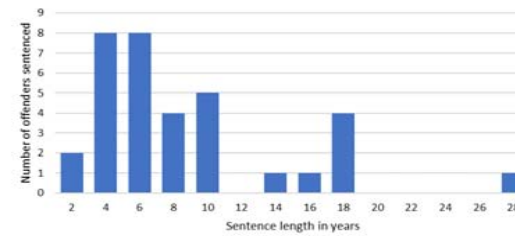


Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018



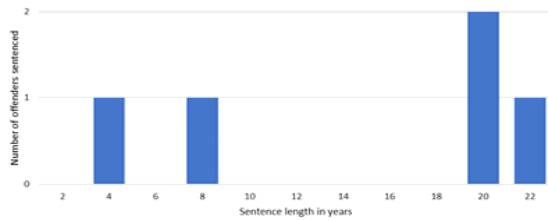
**All Group 7 offences**

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

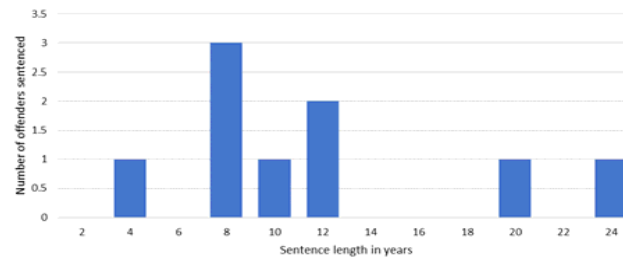


**Group 8 (Maximum: Life)**

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016-2018<sup>1</sup>



Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2018<sup>1</sup>



Note:

1) The data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

Note:

1) Separate sentence length breakdowns for section 5(2A)(b)-(d) offences have not been shown due to low volumes.

**Table 4: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2018**

Note: Sentence length intervals include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

**Group 1 (Maximum: 10 years)****Minimum term applies**

Sections 5(1)(a)-(af),(c) &amp; 5(1A)(a) combined, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 2                             | 1%                                |
| 2                        | 13                            | 4%                                |
| 3                        | 29                            | 9%                                |
| 4                        | 10                            | 3%                                |
| 5                        | 33                            | 11%                               |
| 6                        | 32                            | 10%                               |
| 7                        | 36                            | 12%                               |
| 8                        | 111                           | 36%                               |
| 9                        | 28                            | 9%                                |
| 10                       | 15                            | 5%                                |
| <b>Total</b>             | <b>309</b>                    | <b>100%</b>                       |

**Minimum term does not apply**

Sections 5(1)(b) &amp; 5(1A)(b)-(g) combined, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 30                            | 48%                               |
| 2                        | 16                            | 26%                               |
| 3                        | 11                            | 18%                               |
| 4                        | 0                             | 0%                                |
| 5                        | 2                             | 3%                                |
| 6                        | 0                             | 0%                                |
| 7                        | 0                             | 0%                                |
| 8                        | 2                             | 3%                                |
| 9                        | 1                             | 2%                                |
| <b>Total</b>             | <b>62</b>                     | <b>100%</b>                       |

**All Group 1 offences**

Sections 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) &amp; 5(1A)(b)-(g) combined, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 31                            | 8%                                |
| 2                        | 32                            | 9%                                |
| 3                        | 38                            | 10%                               |
| 4                        | 10                            | 3%                                |
| 5                        | 35                            | 9%                                |
| 6                        | 32                            | 9%                                |
| 7                        | 36                            | 10%                               |
| 8                        | 113                           | 30%                               |
| 9                        | 29                            | 8%                                |
| 10                       | 15                            | 4%                                |
| <b>Total</b>             | <b>371</b>                    | <b>100%</b>                       |

**Group 2 (Maximum: 5 years, or 7 years for 1(1) aggravated)**

Section 1(1) - Possess a firearm/ammunition without a certificate, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 4                             | 9%                                |
| 1                        | 5                             | 11%                               |
| 1.5                      | 7                             | 16%                               |
| 2                        | 6                             | 14%                               |
| 2.5                      | 4                             | 9%                                |
| 3                        | 1                             | 2%                                |
| 3.5                      | 4                             | 9%                                |
| 4                        | 6                             | 14%                               |
| 4.5                      | 4                             | 9%                                |
| 5                        | 3                             | 7%                                |
| <b>Total</b>             | <b>44</b>                     | <b>100%</b>                       |

Section 1(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 0                             | 0%                                |
| 1                        | 0                             | 0%                                |
| 1.5                      | 0                             | 0%                                |
| 2                        | 1                             | 14%                               |
| 2.5                      | 0                             | 0%                                |
| 3                        | 0                             | 0%                                |
| 3.5                      | 1                             | 14%                               |
| 4                        | 2                             | 29%                               |
| 4.5                      | 0                             | 0%                                |
| 5                        | 2                             | 29%                               |
| 5.5                      | 0                             | 0%                                |
| 6                        | 1                             | 14%                               |
| <b>Total</b>             | <b>7</b>                      | <b>100%</b>                       |

Section 2(1) - Possess shotgun without a certificate, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 0                             | 0%                                |
| 1                        | 1                             | 9%                                |
| 1.5                      | 2                             | 18%                               |
| 2                        | 1                             | 9%                                |
| 2.5                      | 0                             | 0%                                |
| 3                        | 5                             | 45%                               |
| 3.5                      | 1                             | 9%                                |
| 4                        | 1                             | 9%                                |
| 4.5                      | 0                             | 0%                                |
| 5                        | 0                             | 0%                                |
| <b>Total</b>             | <b>11</b>                     | <b>100%</b>                       |



**All Group 2 offences**

Sections 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 4                             | 6%                                |
| 1                        | 6                             | 10%                               |
| 1.5                      | 9                             | 15%                               |
| 2                        | 8                             | 13%                               |
| 2.5                      | 4                             | 6%                                |
| 3                        | 6                             | 10%                               |
| 3.5                      | 6                             | 10%                               |
| 4                        | 9                             | 15%                               |
| 4.5                      | 4                             | 6%                                |
| 5                        | 5                             | 8%                                |
| 5.5                      | 0                             | 0%                                |
| 6                        | 1                             | 2%                                |
| <b>Total</b>             | <b>62</b>                     | <b>100%</b>                       |

**Group 3 (Maximum: 5 years)**

Section 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 6                             | 19%                               |
| 1                        | 5                             | 16%                               |
| 1.5                      | 11                            | 34%                               |
| 2                        | 3                             | 9%                                |
| 2.5                      | 4                             | 13%                               |
| 3                        | 0                             | 0%                                |
| 3.5                      | 0                             | 0%                                |
| 4                        | 1                             | 3%                                |
| 4.5                      | 1                             | 3%                                |
| 5                        | 1                             | 3%                                |
| <b>Total</b>             | <b>32</b>                     | <b>100%</b>                       |

**Group 4 (Maximum: 7 years, or 12 months for imitation)**

Section 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 0.5                      | 13                            | 32%                               |
| 1                        | 14                            | 34%                               |
| 1.5                      | 4                             | 10%                               |
| 2                        | 0                             | 0%                                |
| 2.5                      | 0                             | 0%                                |
| 3                        | 4                             | 10%                               |
| 3.5                      | 1                             | 2%                                |
| 4                        | 1                             | 2%                                |
| 4.5                      | 2                             | 5%                                |
| 5                        | 0                             | 0%                                |
| 5.5                      | 0                             | 0%                                |
| 6                        | 1                             | 2%                                |
| 6.5                      | 0                             | 0%                                |
| 7                        | 1                             | 2%                                |
| <b>Total</b>             | <b>41</b>                     | <b>100%</b>                       |

**Group 5 (Maximum: Life)**

Section 16 (all) - Possess a firearm/ ammunition/ shotgun/ air weapon with intent to endanger life / enable another to do so, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 2                        | 0                             | 0%                                |
| 4                        | 5                             | 8%                                |
| 6                        | 5                             | 8%                                |
| 8                        | 3                             | 5%                                |
| 10                       | 7                             | 11%                               |
| 12                       | 10                            | 16%                               |
| 14                       | 10                            | 16%                               |
| 16                       | 8                             | 13%                               |
| 18                       | 4                             | 6%                                |
| 20                       | 1                             | 2%                                |
| 22                       | 1                             | 2%                                |
| 24                       | 1                             | 2%                                |
| 26                       | 2                             | 3%                                |
| 28                       | 0                             | 0%                                |
| 30                       | 1                             | 2%                                |
| Indeterminate            | 5                             | 8%                                |
| <b>Total</b>             | <b>63</b>                     | <b>100%</b>                       |

**Group 6 (Maximum: 10 years)**

Section 16A - Possess a firearm with intent to cause fear of violence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 2                             | 3%                                |
| 2                        | 8                             | 13%                               |
| 3                        | 14                            | 23%                               |
| 4                        | 4                             | 7%                                |
| 5                        | 6                             | 10%                               |
| 6                        | 7                             | 11%                               |
| 7                        | 3                             | 5%                                |
| 8                        | 9                             | 15%                               |
| 9                        | 2                             | 3%                                |
| 10                       | 6                             | 10%                               |
| <b>Total</b>             | <b>61</b>                     | <b>100%</b>                       |

**Group 7 (Maximum: Life)**

Sections 17(1), 17(2), 18(1) - Possess a firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 2                        | 1                             | 6%                                |
| 4                        | 4                             | 24%                               |
| 6                        | 2                             | 12%                               |
| 8                        | 2                             | 12%                               |
| 10                       | 4                             | 24%                               |
| 12                       | 0                             | 0%                                |
| 14                       | 1                             | 6%                                |
| 16                       | 0                             | 0%                                |
| 18                       | 2                             | 12%                               |
| 20                       | 0                             | 0%                                |
| 22                       | 0                             | 0%                                |
| 24                       | 0                             | 0%                                |
| 26                       | 0                             | 0%                                |
| 28                       | 1                             | 6%                                |
| <b>Total</b>             | <b>17</b>                     | <b>100%</b>                       |

Section 16A - Possess an imitation firearm with intent to cause fear of violence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 11                            | 9%                                |
| 2                        | 42                            | 35%                               |
| 3                        | 36                            | 30%                               |
| 4                        | 15                            | 13%                               |
| 5                        | 8                             | 7%                                |
| 6                        | 3                             | 3%                                |
| 7                        | 1                             | 1%                                |
| 8                        | 4                             | 3%                                |
| 9                        | 0                             | 0%                                |
| 10                       | 0                             | 0%                                |
| <b>Total</b>             | <b>120</b>                    | <b>100%</b>                       |

Sections 17(1), 17(2), 18(1) - Possess an imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 0                             | 0%                                |
| 2                        | 1                             | 6%                                |
| 3                        | 1                             | 6%                                |
| 4                        | 3                             | 18%                               |
| 5                        | 4                             | 24%                               |
| 6                        | 2                             | 12%                               |
| 7                        | 1                             | 6%                                |
| 8                        | 1                             | 6%                                |
| 9                        | 1                             | 6%                                |
| 10                       | 0                             | 0%                                |
| 11                       | 0                             | 0%                                |
| 12                       | 0                             | 0%                                |
| 13                       | 0                             | 0%                                |
| 14                       | 0                             | 0%                                |
| 15                       | 1                             | 6%                                |
| 16                       | 0                             | 0%                                |
| 17                       | 1                             | 6%                                |
| 18                       | 1                             | 6%                                |
| <b>Total</b>             | <b>17</b>                     | <b>100%</b>                       |

**All Group 6 offences**

Section 16A - Possess a firearm/ imitation firearm with intent to cause fear of violence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 1                        | 13                            | 7%                                |
| 2                        | 50                            | 28%                               |
| 3                        | 50                            | 28%                               |
| 4                        | 19                            | 10%                               |
| 5                        | 14                            | 8%                                |
| 6                        | 10                            | 6%                                |
| 7                        | 4                             | 2%                                |
| 8                        | 13                            | 7%                                |
| 9                        | 2                             | 1%                                |
| 10                       | 6                             | 3%                                |
| <b>Total</b>             | <b>181</b>                    | <b>100%</b>                       |

**All Group 7 offences**

Sections 17(1), 17(2), 18(1) - Possess a firearm/ imitation firearm with intent to resist arrest/ commit a Schedule 1 offence/ commit an indictable offence, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 2                        | 2                             | 6%                                |
| 4                        | 8                             | 24%                               |
| 6                        | 8                             | 24%                               |
| 8                        | 4                             | 12%                               |
| 10                       | 5                             | 15%                               |
| 12                       | 0                             | 0%                                |
| 14                       | 1                             | 3%                                |
| 16                       | 1                             | 3%                                |
| 18                       | 4                             | 12%                               |
| 20                       | 0                             | 0%                                |
| 22                       | 0                             | 0%                                |
| 24                       | 0                             | 0%                                |
| 26                       | 0                             | 0%                                |
| 28                       | 1                             | 3%                                |
| <b>Total</b>             | <b>34</b>                     | <b>100%</b>                       |

**Group 8 (Maximum: Life)**

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016-2018<sup>1,2</sup>

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 2                        | 0                             | 0%                                |
| 4                        | 1                             | 20%                               |
| 6                        | 0                             | 0%                                |
| 8                        | 1                             | 20%                               |
| 10                       | 0                             | 0%                                |
| 12                       | 0                             | 0%                                |
| 14                       | 0                             | 0%                                |
| 16                       | 0                             | 0%                                |
| 18                       | 0                             | 0%                                |
| 20                       | 2                             | 40%                               |
| 22                       | 1                             | 20%                               |
| <b>Total</b>             | <b>5</b>                      | <b>100%</b>                       |

Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2018

| Sentence length in years | Number of offenders sentenced | Proportion of offenders sentenced |
|--------------------------|-------------------------------|-----------------------------------|
| 2                        | 0                             | 0%                                |
| 4                        | 1                             | 11%                               |
| 6                        | 0                             | 0%                                |
| 8                        | 3                             | 33%                               |
| 10                       | 1                             | 11%                               |
| 12                       | 2                             | 22%                               |
| 14                       | 0                             | 0%                                |
| 16                       | 0                             | 0%                                |
| 18                       | 0                             | 0%                                |
| 20                       | 1                             | 11%                               |
| 22                       | 0                             | 0%                                |
| 24                       | 1                             | 11%                               |
| <b>Total</b>             | <b>9</b>                      | <b>100%</b>                       |

## Notes:

1) The data shown for this offence covers the period 2016-2018 (due to very low volumes), and may therefore include cases sentenced prior to the Stephenson judgment.

2) These proportions should be treated with caution, due to the low number of offenders sentenced for this offence.

Source: Court Proceedings Database, Ministry of Justice

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**Paper number:** 26 July 2019  
**Lead official:** SC(19)JUL06 – Terrorism  
Vicky Hunt  
0207 071 5786

## **1 ISSUE**

1.1 In May the Council was informed of the changes made to Terrorism legislation by the Counter-Terrorism and Border Security Act 2019. The main changes that affect our guidelines include;

- a new subsection 1A to section 12 TACT 2000 (Proscribed Organisations – Support) to cover offenders who express supportive views for a proscribed organisation, reckless as to whether others will be encouraged to support it;
- two new subsections to section 58 TACT 2000 (Collection of Terrorist Information) – to cover those offenders who view/ stream terrorist information over the internet rather than download it;
- changes to sections 1 and 2 TACT 2006 (Encouragement of Terrorism) to refer to a ‘reasonable person’ rather than ‘some or all members of the public’;
- changes to bring more offences into scope for extended determinate sentences and sentences for offenders of particular concern; and
- an increase to the maximum sentences for s38B TACT 2000 Failure to Disclose Information About Acts of Terrorism (from five to ten years), s58 TACT 2000 Collection of Terrorist Information (from ten to 15 years) and ss1 and 2 TACT 2006 Encouragement of Terrorism (from seven to 15 years).

1.2 The Council is invited to consider amendments to the guidelines to reflect these legislative changes.

1.3 It is hoped that the Council might agree these changes this month and sign off the guidelines ready for consultation. If the guidelines are signed off a draft of the consultation will be prepared over the summer and circulated with an aim to publish it in September.

## **2 RECOMMENDATION**

2.1 That the Council should:

- Agree the proposed changes to the culpability factors in the Support guideline (s12 TACT 00)
- Agree the proposed changes to the culpability factors in the Collection guideline (s58 TACT 00)
- Agree the proposed changes to the sentence levels in the Collection, Encouragement (ss1 and 2 TACT 06), and Failure to Disclose Information (s38B TACT 00) guidelines.

### 3 CONSIDERATION

- ***Amendments to section 12 Terrorism Act 2000***

3.1 The Counter-Terrorism and Border Security Act 2019 amended section 12 TACT 2000, introducing a new section 12A. The full section is set out below, with the new section in bold:

*Section 12 TACT 2000 (Proscribed Organisations – Support)*

(1) A person commits an offence if–

- (a) he invites support for a proscribed organisation, and
- (b) the support is not, or is not restricted to, the provision of money or other property (within the meaning of section 15).

**(1A) A person commits an offence if the person—**

- (a) expresses an opinion or belief that is supportive of a proscribed organisation, and**
- (b) in doing so is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.**

(2) A person commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is–

- (a) to support a proscribed organisation,
- (b) to further the activities of a proscribed organisation, or
- (c) to be addressed by a person who belongs or professes to belong to a proscribed organisation.

(3) A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a proscribed organisation or to further its activities.

(4) Where a person is charged with an offence under subsection (2)(c) in respect of a private meeting it is a defence for him to prove that he had no reasonable cause to believe that the address mentioned in subsection (2)(c) would support a proscribed organisation or further its activities.

(5) In subsections (2) to (4)–

(a) “*meeting*” means a meeting of three or more persons, whether or not the public are admitted, and

(b) a meeting is private if the public are not admitted.

(6) A person guilty of an offence under this section shall be liable–

(a) on conviction on indictment, to imprisonment for a term not exceeding ten years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

3.2 Prior to the introduction of section 12(1A) a person was guilty of the offence only if they *directly* invited support for a proscribed organisation. Section 12(1A) has broadened the offence. It appears that the purpose of the new provision is to capture those offenders (such as Anjem Choudary) who avoid inviting support directly but instead garner support through methods of radicalisation such as through the use of rousing speeches, expressing their own support for a proscribed organisation and, through their charismatic, energetic performances inspire others to believe and support too.

3.3 Throughout the passage of the Bill there was considerable debate about whether such an amendment was appropriate or whether it strayed into the territory of freedom of expression. For some, such as Lord Anderson (a former independent reviewer of terrorism legislation), this issue is particularly heightened due to his concern that ...” *substantial numbers of proscribed organisations - 14 by the Home Office’s own admission, and no doubt more in Northern Ireland - are proscribed despite failing to satisfy the statutory condition for proscription, which is being concerned in terrorism.*”

3.4 Prior to the introduction of s12(1A), the section 12 offence concerned only intentional acts to gain support. Section 12(1A) involves an offence of recklessness.

3.5 The current guideline culpability factors are set out below:

**A**

- Offender in position of trust, authority or influence and abuses their position
- Persistent efforts to gain widespread or significant support for organisation
- Encourages activities intended to cause endangerment to life

**B**

- Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation
- Intended to gain widespread or significant support for organisation
- Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure

**C**

- Lesser cases where characteristics for categories A or B are not present

3.6 The majority of the culpability factors involve intentional acts and therefore most s12(1A) cases would likely fall into culpability C. However, the top culpability factor in culpability A does not distinguish between an intentional or reckless act and so could apply to either s12(1) or s12(1A) offences.

3.7 For example, a university lecturer who directly invites his class to support a proscribed organisation would fall into the top culpability factor in category A; *offender in position of trust, authority or influence and abuses their position*. However, the same category would apply to a lecturer who gave a speech to his class which included comments that he agreed with and supported some of the less offensive beliefs or actions of a certain proscribed organisation (perhaps even an organisation that should not be proscribed).

**Question 1: Does the Council consider that the top culpability factor in category A requires amendment to distinguish between intentional and reckless acts, perhaps moving reckless behaviour to culpability B?**

- **Amendments to section 58 Terrorism Act 2000**

3.8 There are new subsections (1)(c), (1A) and (3A) to section 58 TACT 2000 (Collection of terrorist information) as seen below:

(1) A person commits an offence if—  
 (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or  
 (b) he possesses a document or record containing information of that kind or  
**(c) the person views, or otherwise accesses, by means of the internet a document or record containing information of that kind.**

**(1A) The cases in which a person collects or makes a record for the purposes of subsection (1)(a) include (but are not limited to) those in which the person does so by means of the internet (whether by downloading the record or**



**otherwise).**

(2) In this section “record” includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession.

**(3A) The cases in which a person has a reasonable excuse for the purposes of subsection (3) include (but are not limited to) those in which—**

**(a) at the time of the person’s action or possession the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of terrorism, or**

**(b) the person’s action or possession was for the purposes of—**

**(i) carrying out work as a journalist, or**

**(ii) academic research.**

3.9 The purpose of these amendments is to reflect changes in technology. When this legislation was first drafted offenders were more likely to collect physical documents or records and even if they obtained materials from the internet they would most likely have downloaded them. Now people more commonly view materials over the internet by streaming them, and it was felt that this should be reflected.

3.10 The current guideline culpability factors are:

|   |  |
|---|--|
| A | <ul style="list-style-type: none"><li>• Offender collected, made a record of, or was in possession of information for use in a specific terrorist act</li></ul>  |
| B | <ul style="list-style-type: none"><li>• Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</li><li>• Offender repeatedly accessed extremist material (where not falling within A)</li></ul> |
| C | <ul style="list-style-type: none"><li>• Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations</li></ul>  |

3.11 Changes could be made to the above culpability factors to include the phrase ‘or viewed over the internet’. For example, ‘Offender collected, made a record of, was in possession of, or viewed over the internet information for use in a specific terrorist act’.

3.12 The requirement within culpability factors A and B that the offender must either be ‘using the material for use in a specific terrorist act’, or have had ‘terrorist connections or motivations’ would seem to protect against a very high sentence being received by a simply curious person who could now, in theory, be captured by the legislation simply by clicking onto a terrorist article.

3.13 The only factor that may be of concern is the second factor in culpability B 'Offender repeatedly accessed extremist material (where not falling within A)'. This may mean that a curious person with no terrorist motivations who clicks on a terrorist article a couple of times could receive a very high sentence (especially so once the sentencing table is amended to reflect the higher statutory maximum).

3.14 The original amendment made to the legislation by the Counter-Terrorism and Border Security Bill provided that a person commits the offence if they accessed such material on three or more different occasions. The Home Secretary said during the second reading in the House of Commons:

The objective is to allow for the fact that it is quite possible for someone to accidentally come across such a video, be curious and watch it one time and perhaps a second time. I am not pretending that there is something magical about the number three. This is an attempt to capture repeated viewing, which may suggest that the intent is not innocent. Of course, should the Bill become an Act of Parliament and someone is prosecuted under this law, that decision would be made by the police, based on evidence and working with the Crown Prosecution Service. As with other criminal offences of this type, the CPS would use its judgment to decide whether it is in the public interest to prosecute.

3.15 There was significant criticism of this provision; many queried the number three, others questioned whether the three occasions needed to be close in time, or could they be separated by several years. Many questioned the provision in its entirety because it would likely capture non-terrorists:

Rachel Robinson, of Liberty,

"Blurring the boundary between thought and action by locking people up simply for exploring ideas undermines the foundations of our criminal justice system. Terrorists' primary goal is to undermine our freedom. With proposals like this, the government risks giving them exactly what they want."

3.16 In response to the criticism changes were made to the amendment so it no longer referred to three occasions, but the Act still provides for a streaming offence (as set out above). However, a new section was introduced (section 3A- which can also be seen above) to deal with concerns that journalists or academics who legitimately view terrorist material could be caught out. The defence does not, however, protect a whole host of other parties who choose to look at such material simply out of curiosity.

3.17 The issues raised during debate are similar to the ones we might have with regard to the factor 'Offender repeatedly accessed extremist material (where not falling within A)'.

Given the issues raised might the Council consider removing this factor altogether? The factor now simply provides for the new offence but would place any offender caught by it into culpability B whether they have terrorist motivations or not. Without this factor a simply curious person who has had the misfortune to be prosecuted would fall into category C; one with a terrorist interest or motivation would fall into category B, and one accessing the material to use it in a terrorist action would fall into A. This seems to be the most appropriate distribution.

**Question 2: Does the Council want to remove the factor ‘Offender repeatedly accessed extremist material (where not falling within A) from the guideline?’**

- ***Amendments to section 1 and 2 Terrorism Act 2006***

3.18 There are changes to the wording of sections 1 and 2 of TACT 2006 (encouragement of terrorism) to include references to a ‘reasonable person’ rather than ‘some or all members of the public’.

Original Section 1(1) TACT 2006

This section applies to a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences.

3.19 The requirement that the statement must be ‘likely to be understood’ by some or all members of the public as an encouragement or inducement to them to commission, prepare or instigate an act of terrorism, meant that the encouragement offence would not be made out if the statement was directed at children or vulnerable adults who do not understand the statement to be an encouragement to engage in acts of terrorism. In order to correct that, the section has been amended:

New Section 1(1) TACT 2006

(1) This section applies to a statement that is likely to be understood by a reasonable person as a direct or indirect encouragement or other inducement to some or all of the members of the public to whom it is published to the commission, preparation or instigation of acts of terrorism or Convention offences.

3.20 The factors in the guideline do not require amendment to provide for this change.

- ***Amendments to bring more offences into scope for extended determinate sentences and sentences for offenders of particular concern.***

3.21 The new legislation also brings further offences in scope for extended determinate sentences and sentences for offenders of particular concern. Ruth brought these changes to the attention of the Council in May and proposed changes to the wording at the front of the affected guidelines to make it clear that these provisions apply from 12 April 2019 (the date that the amendments came into force). No further changes are needed.

- ***An increase to the maximum sentences***

3.22 The government provided the following rationale for increasing the statutory maximum for the Collection of Terrorist Information (section 58 TACT 00) and Encouragement (sections 1 and 2 TACT 06) offences. The failure to disclose information offence (s38B TACT) is discussed separately:

The maximum penalties for a number of terrorism offences were established in the Terrorism Acts of 2000 and 2006. The terrorist threat has since changed, with individuals engaging in such conduct now likely to pose an increased risk of moving quickly on to attack planning, given the rapid trajectory of radicalisation now being observed. Increased maximum penalties better reflect the increased risk and the seriousness of these offences.

3.23 The Joint Committee on Human Rights, in their scrutiny of the legislation, made the following recommendation:

In our view, the increase in sentences does not appear to be supported by evidence to suggest why it is justified or proportionate. We recommend that the Home Office provide further evidence (if they have such evidence) as to why they consider the current maximum sentences to be insufficient and how this increase is necessary and proportionate. We are particularly concerned that a sentence of 15 years could be imposed for a precursor offence of viewing terrorist material online three times or more. This would put viewing material online (without intent to cause harm) on the same level of culpability as possession of an article (e.g. materials for bomb-making) for terrorist purposes. As such, we recommend that clause 6(2) [the clause introducing the increases to statutory maximum across four offences] be deleted.

3.24 The Government provided the following response:

It is important to remember that for all four offences [sections 58 and 58A of the 2000 Act, and sections 1 and 2 of the Terrorism Act 2006], 15 years' imprisonment will be the maximum penalty provided by clause 6, and a sentence of that length will only be appropriate in cases of the utmost seriousness. In the normal way, it will be for the sentencing judge to determine the appropriate sentence to be imposed, taking into account the circumstances of each individual case, in line with applicable sentencing guidelines.

Since Parliament set the current maximum penalties for the offences at sections 58 and 58A of the 2000 Act, and sections 1 and 2 of the Terrorism Act 2006, the threat landscape has changed significantly. In the modern digital age, individuals who view or disseminate terrorist

material, or who encourage terrorism, pose an increased risk of quickly moving to attack planning themselves or of radicalising others to do so. We have seen an increase in low sophistication terrorist plots which are inspired rather than directed, and in attack operatives who are self-radicalised and self-trained without necessarily having had significant direct contact with terrorist organisations. The division between preliminary terrorist activity and attack planning is increasingly blurred, and the move from the type of activity covered by these offences to planning or launching an attack can happen quickly and unpredictably, with little or no warning, particularly in the case of spontaneous or volatile individuals. An increased maximum penalty does not mean that we consider every case is going to be of equivalent seriousness.

If the police and intelligence agencies are going to keep the public safe they need the powers to effectively disrupt terrorists involved in this type of activity at an earlier stage, before the risk of them carrying out an attack has progressed. The increased maximum penalties will properly reflect the seriousness of these offences and the risk arising from this activity, and will help to protect our communities.

3.25 Having read through the debates it is not clear whether the will of parliament was that all sentences should attract a higher sentence, or whether there should be an increase just to the most serious cases. It seems that the Government's aim is to disrupt terrorists earlier on, before a major terrorist incident occurs. This would tend to suggest that the aim is to disrupt offenders by prosecuting them for less serious offences for which they receive more significant sentences than they would have previously.

3.26 It must, however, be remembered that the Council expressed a similar rationale in drafting the guidelines that were published last year. The consultation stated:

[Kahar] has worked effectively for sentencing preparation cases up until now, but the changing nature of offending requires that the guidance be reconsidered, and that a comprehensive package of guidelines be produced to cover a wider number of offences.

The Council considered the sentences as set out in the guideline case Kahar alongside the details of recent cases, and agreed that sentencing practice should be increased for these offences. In Kahar the lowest level offence will fall into Level 6 which has a sentencing range of 21 months to 5 years, whereas the lowest sentence range within the proposed guideline is 3 years to 6 years. The cases that will fall into the lower categories of the new guideline are ones where preparations might not be as well developed or an offender may be offering a small amount of assistance to others.

The Council determined that, when considering these actions in the current climate, where a terrorist act can be planned in a very short time, using readily available items as weapons, combined with online extremist material on websites which normalise terrorist activity, and creates a climate where acts of terrorism can be committed by many rather than a few highly-organised individuals, these offences are more serious than they have previously

been perceived. The Council believes that its proposals take account of the need to punish, incapacitate and deter.

3.27 Whilst the comments relate primarily to preparation offences (s5 TACT 06), the same considerations about the changing nature of offending was applied to the other guidelines, ensuring that significant sentences were available for lower level offending.

3.28 The Council may, therefore, wish to be cautious about further increasing sentences across all levels of the guidelines to reflect the increased statutory maxima. The issue now might be to increase sentences only for the top levels of seriousness were there was no room to increase prior to the change to the statutory maxima.

***s58 TACT 2000 Collection of Terrorist Information (from ten to 15 years)***

3.29 The current guideline can be seen here: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Terrorism-offences-definitive-guideline-Web.pdf>

3.30 Prior to the public consultation of this guideline the Government announced its proposal to increase the statutory maximum for this offence from ten to 15 years. For that reason, at consultation, the Council included a second sentencing table with higher sentences in it to seek people’s views. At that time the guideline looked quite different to how it ended up at publication, and had just two levels of culpability. The higher sentences table looked like this:

|   | A  | B  | C  |
|---|--|--|--|
| 1 | <b>Starting point*</b><br>10 years’ custody<br><b>Category range</b><br>8-14 years custody | <b>Starting point*</b><br>7 years’ custody<br><b>Category range</b><br>5-9 years custody | <b>Starting point</b><br>4 years’ custody<br><b>Category range</b><br>2 -6 years custody |
| 2 | <b>Starting point*</b><br>6 years’ custody<br><b>Category range</b><br>4-8 years custody   | <b>Starting point</b><br>4 years’ custody<br><b>Category range</b><br>2-6 years custody  | <b>Starting point</b><br>2 years custody<br><b>Category range</b><br>1-3 years custody   |

3.31 The changes made above represented an increase across the board. Not many of the consultees commented on the second sentencing table but a couple agreed, including

the CPS and Attorney General’s Office. The London Criminal Courts Solicitors Association was the only respondent to provide any detailed feedback and they commented that an increase across the board does not necessarily reflect the will of parliament and that we should have awaited the debate to see what the intention was.

3.32 Over the last ten years there have been 20 offenders sentenced for this offence.<sup>1</sup> Three received a suspended sentence and 17 received an immediate custodial sentence. The mean average custodial sentence length (ACSL) was 3.7 years, after any reduction for guilty plea. The maximum sentence, received by two offenders, was seven years.

3.33 At **Annex A** there are some descriptions of cases taken from transcripts. In the pre-guideline cases 4 of the 6 cases sentenced would have received a higher sentence had the guideline been published and followed. From statistics it is too soon to say whether our guideline has had an inflationary effect as there are too few cases, but the transcripts suggest that is a possibility.

3.34 It is therefore proposed that the Council take a more nuanced approach to reflect the increased statutory maximum, and instead of increasing sentences across the board, focus on the most serious offending:

|   | A  | B   | C   |
|---|--|---|---|
| 1 | <b>Starting point*</b><br>10 years’ custody<br><b>Category range</b><br>8 - 14 years custody | <b>Starting point*</b><br>7 years’ custody<br><b>Category range</b><br>5-9 years custody  | <b>Starting point*</b><br>3 years’ custody<br><b>Category range</b><br>1-5 years custody                              |
| 2 | <b>Starting point*</b><br>7 years’ custody<br><b>Category range</b><br>5-9 years custody     | <b>Starting point</b><br>4 years’ custody<br><b>Category range</b><br>3 - 5 years custody | <b>Starting point</b><br>1 year 6 months custody<br><b>Category range</b><br>6 months - 3 years custody               |
| 3 | <b>Starting point</b><br>5 years’ custody<br><b>Category range</b><br>3-6 years custody      | <b>Starting point</b><br>3 years’ custody<br><b>Category range</b><br>2 - 5 years custody | <b>Starting point</b><br>1 years’ custody<br><b>Category range</b><br>High level community order<br>– 2 years custody |

\*indicates a change to the sentence

<sup>1</sup> All statistics include adult offenders only, and only the principal offence for which the offender was sentenced.

3.35 As this offence now carries a statutory maximum of 15 years, comparisons could be made with the section 57 offence of Possession for Terrorist Purposes which also has a statutory maximum of 15 years. However, the Possession offence is arguably more serious than the Collection offence. Very few Possession cases are prosecuted as, for the most part, section 5 TACT 06 is more commonly used. The Possession offence is committed where a person possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

3.36 Given the different and more serious nature of the Possession offence it is not proposed that the Council simply replicate that sentencing table into this offence. However, the proposed sentences above would ensure that offending of a similar level of seriousness is met by similar sentences.

3.37 **Annex B** includes a table setting out the current and proposed sentences for the Collection (section 58 tact 00) and Encouragement (ss1 and 2 TACT 06) offences alongside the existing sentences for Possession (s57 TACT 00), as all three of these offences now have the same statutory maximum sentence of 15 years.

**Question 3: Does the Council agree with the changes made to the sentencing table for the Collection (section 58 TACT 00) offence?**

***ss1 and 2 TACT 2006 Encouragement of Terrorism (from seven to 15 years)***

3.38 The current guideline can be seen here: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Terrorism-offences-definitive-guideline-Web.pdf>

3.39 Over the last ten years there have been 57 offenders sentenced for this offence. Four received a suspended sentence and 52 received an immediate custodial sentence<sup>2</sup>. The mean ACSL was 2.9 years, after any reduction for guilty plea. The maximum sentence, received by one offender was six years. 12 offenders received a sentence of four and a half to six years.

3.40 Sentencing data is available up to December 2018, by which point the guideline had been in force for 8 months. During this time the mean ACSL was 3 years 6 months and the median length was 3 years 11 months. In the 8 months immediately prior to the guideline coming into force the mean ACSL was 3 years 2 months, and the median was 3 years. The data indicates that sentences have increased following the guideline's introduction, however this finding should be treated with caution due to the very low volumes.

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<sup>2</sup> One offender received a non-custodial sentence



3.41 At **Annex A** there are some descriptions of cases taken from transcripts. In the pre-guideline cases 4 of the 8 cases sentenced would have received a higher sentence had the guideline been published and followed.

3.42 The proposed changes can be seen below:

|   | A  | B  | C   |
|---|--|--|---|
| 1 | <b>Starting point*</b><br>10 years' custody<br><b>Category range</b><br>8 - 14 years custody | <b>Starting point*</b><br>7 years' custody<br><b>Category range</b><br>5-9 years custody | <b>Starting point</b><br>3 years' custody<br><b>Category range</b><br>2-4 years custody                           |
| 2 | <b>Starting point*</b><br>7 years' custody<br><b>Category range</b><br>5-9 years custody     | <b>Starting point*</b><br>4 years' custody<br><b>Category range</b><br>3-5 years custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1-3 years custody                           |
| 3 | <b>Starting point*</b><br>4 years' custody<br><b>Category range</b><br>3-5 years custody     | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>1-3 years custody  | <b>Starting point</b><br>1 years' custody<br><b>Category range</b><br>High level community order – 2years custody |

\*indicates a change to the sentence

**Question 4: Does the Council agree with the changes made to the sentencing table for the Encouragement (section 1 and 2 TACT 06) offences?**

**s38B TACT 2000 Failure to Disclose Information About Acts of Terrorism (from five to ten years)**

3.43 The current guideline can be seen here: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Terrorism-offences-definitive-guideline-Web.pdf>.

3.44 The government did not originally propose an increase to the sentences for these offences however Max Hill QC, as the then independent reviewer of terrorism legislation, gave oral evidence during the Public Bill Committee stage and commented that the maximum penalty for this offence was too low and should be increased. The Government agreed and thus the statutory maximum has now been increased.

3.45 Between 2008 – 2018 there were ten offenders sentenced for this offence<sup>3</sup>. One offender received a suspended sentence and nine received an immediate custodial sentence. The mean ACSL was 2.8 years, however three offenders (a third of those receiving custody) received the statutory maximum of five years.

3.46 Whilst there are few offenders sentenced for these offences it is clear that the courts are, in certain circumstances, willing to go to the statutory maximum which is quite unusual and evidences the need to increase the statutory maximum for these offences.

3.47 The offence under s38B can be committed in one of two ways:

**38B Information about acts of terrorism**

(1) This section applies where a person has information which he knows or believes might be of material assistance—  
 (a) in preventing the commission by another person of an act of terrorism, or  
 (b) in securing the apprehension, prosecution or conviction of another person, in the United Kingdom, for an offence involving the commission, preparation or instigation of an act of terrorism.

3.48 Looking at some cases (**annex A**), the offenders who receive the highest sentences are those guilty of the section 38B (1a) offence, i.e. where the offender had information before the incident that could have prevented it. These cases would most likely fall into A1 of the current guideline. In several of the cases the offenders receive final sentences that are significantly higher than the statutory maximum of 5 years because more than one charge was brought and consecutive sentences were imposed. This indicates that Judges consider the gravity of the overall offending merits a much more significant sentence.

3.49 It is proposed that the sentencing table is amended as follows:

|   | A  | B  | C  |
|---|--|--|--|
| 1 | <b>Starting point*</b><br>7 years' custody<br><b>Category range</b><br>6-9 years custody | <b>Starting point*</b><br>5 years' custody<br><b>Category range</b><br>4-6 years custody         | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>6 months - 3 years custody                         |
| 2 | <b>Starting point*</b><br>4 years' custody<br><b>Category range</b><br>3-5 years custody | <b>Starting point</b><br>2 years' custody<br><b>Category range</b><br>6 months - 3 years custody | <b>Starting point</b><br>1 year 6 months custody<br><b>Category range</b><br>High level community order – 2years custody |

<sup>3</sup> This only includes cases where this was the principal offence.

\*indicates a change to the sentence

3.50 The changes proposed only relate to the upper levels. There are no examples in the transcripts of the lowest type of offending but under the current guideline it would involve a person having information of low significance, or having information of some significance about a terrorist act not endangering life or causing widespread damage. Currently the starting points for these cases are 2 years or 1 year 6 months which seem adequate.

3.51 The biggest proposed increase is to the sentence starting point and range in A1 as this involves a case where the information known was very significant (it could have prevented an act of terrorism) and relates to a terrorist activity endangering life. B1 has also been increased, this would involve a case where the information could be of some significance and relates to activity endangering life. Finally, an increase to A2 is recommended. An A2 case involves one where the information is very significant but does not relate to loss of life or widespread damage etc.

**Question 5: Does the Council agree with the proposed increases to the sentences for the offence of failing to disclose information?**

**Question 6: Does the Council agree to sign off these guidelines?**

#### **4 IMPACT**

4.1 The changes made to the guidelines to reflect the increased statutory maxima for the Collection, Encouragement and Failure to Disclose Information offences will inevitably result in an increase in sentencing practice. The Analysis and Research team will be completing work on a resource assessment after this Council meeting and, if these guidelines are signed off today, the resource assessment will be circulated to Council members in due course, before the consultation is published.

#### **5 RISKS**

5.1 There are risks associated with the assessment of the impact of these guidelines. Most terrorist offences are low volume which makes assessing current sentencing practice difficult.

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Annex A – Case Summaries

Collection (Section 58 TACT 00)

| PRE- GUIDELINE              |   |   |                                    |
|-----------------------------|---|---|------------------------------------|
| Name                        | Description   | Actual Sentence   | Predicted guideline starting point |
| Mohammed REHMAN<br>Feb 2017 | Serving prisoner for a previous s5 TACT offence. Found to be in possession of a handwritten document detailing instructions on how to make HMTD (explosives). The offender's s5 case had involved planning to use explosive devices somewhere in London   | <b>3 years</b> (pleaded guilty- without reduction would have been 4.5 years)  | B2 *                               |
| Jade CAMPBELL<br>Apr 2017   | Young female offender pleads guilty to falsely obtaining a passport and being in possession of the first edition of Inspire (includes articles such as 'how to build a bomb in the home of your mom'). Has clear terrorist connections and motivations; the year before her husband left the country to travel to Syria   | <b>12 months</b> but Judge said starting point was 16 months  | B2*                                |
| Roger SMITH<br>January 2017 | Convicted after trial of 2 possession of explosive substance offences and 1 s58 offence- namely possession of the anarchist handbook. The offender claims to be preparing to defend himself against an Islamist uprising. He has in his possession a quantity of black powder and chemicals. He has no immediate plans for their use but would use them should the need arise. The anarchist handbook contains instructions useful for a terrorist attack.  | Explosive offensive 5 years and 2 years concurrent.<br>Collection of terrorist information: <b>2 years</b> concurrent | B2*                                |
| Nathan SAUNDERS<br>May 2017 | 5 counts of possession of Daesh publications. One includes the article: 'Just Terror Tactics: Choosing the right weapon'. It focuses on the knife as a weapon of choice for carrying out lone-wolf attacks, which it calls 'a just terror operation'. Count two, includes an article entitled 'Just Terror Tactics'. The article gives advice on how to plan a vehicle attack using a truck to drive at large crowds of people in order to kill and maim them. count three, contains an article entitled 'Just Terror Tactics – knife attacks' and provides advice on how knife attacks can be carried out with the greatest effect in terms of technique and choice of weapons, and where and when such attacks should be conducted. | <b>3.5 years</b> on each concurrent   | B2*                                |

## Annex A – Case Summaries

|                                 |  |   |      |
|---------------------------------|--|---|------|
|                                 | <p>Count four, contains instructions on how to make Molotov cocktails and napalm bombs. The instructions provide sufficient information to make viable devices, as well as identifying targets to be attacked, including places of worship of non-Muslims. Count five relates to possession of the anarchists' cookbook.</p> <p>The offender had terrorist motivations.</p>  |   |      |
| Hussein YUSEF<br>September 2017 | <p>Offender shared on Facebook a post stating 'all praise to Allah alone date 700 US army pigs completely hacked'. He added his own words, 'God be praised'. The material contained the names and addresses of the United States armed forces. It was said that the offender knew very well that his audience contained a number of people who, if not disposed to carry out attacks themselves, were in touch with those who were.</p>  | <b>7.5 years</b>  | B1/2 |
| Mohamed AWAN<br>December 2017   | <p>3 counts; 2 x s58 and 1 x s5.</p> <p>The possession of information offences related to a guidebook which explains how to become a sleeper cell. The second was a half hour instructional video depicting techniques for garrotting, beheading and other instructions for kidnapping, firing weapons et cetera.</p> <p>The s5 offence related to conduct in researching, planning and sourcing materials with a view to the commission of some unspecified act of terrorism. The allegation related to a great deal of extremist material found on the offender's USB, mobile phone and laptop and material of a more practical nature such as instructional videos on the making of a folding ring knife, a matchbox fuse igniter and a booby-trap wire. Finally, the offender had ordered, amongst other things, a large number of ball bearings, which had been specifically identified in 'How to Survive in the West' as suitable for use as shrapnel in the bomb-making process.</p> | <p>For the s5 offence an extended sentence of 13 years' imprisonment.</p> <p>S58 offences: <b>4 years</b> on each count, concurrent with one another and concurrent with the first count.</p> | B2   |

Annex A – Case Summaries

| POST GUIDELINE                          |  |  |                       |
|---|--|--|-----------------------|
| Name                                    | Description  | Actual Sentence  | Actual starting point |
| Christopher PARTINGTON<br>December 2018 | <p>6 offences under s58 and 1 firearms offence.</p> <p>The s58 offences related to a document; “How to make black powder and other explosives”. The second item was a file entitled “FM5-31 booby trap”, a document describing how charges and materials intended innocently for use in demolition can be employed to make explosive booby trap devices.</p> <p>The third item, entitled “Poor man’s James Bond, volume 1”, contained information on DIY explosives, related electronics, automatic weapons, unarmed combat and the use of poisons. The 4th item entitled “Poor man’s James Bond, volume 4”, a document covering techniques of warfare including explosives, booby traps, ballistics and survival techniques. The 5th item “Improvised munitions handbook”, a reference book concerning IEDs and other weapons, timing devices and an altimeter switch which could be used to detonate a device in an aircraft in flight. The 6th item “Amateur pyrotechnics by Dan Williams”, a document which included instructions on the application of black powder.</p> <p>The firearms offence related to the possession of two live or unfired shotgun cartridges.</p> <p>In addition, the offender had a great number of IRA related documents. He had expressed to the probation service his support for the IRA, apparent hatred of the British Government and the Crown.</p> | <p><b>4 years</b> on each s58 offence to run concurrently. 2months for the firearms offence (concurrent)</p> | B2                    |
| Jack COULSON<br>July 2018               | <p>19-year-old defendant pleads guilty (just before trial) to 1 x s58. The book in the offender’s possession (‘Big Book of Mischief’) provides sufficient detail to assist in the preparation and use of component parts necessary to form an IED. There are practical tips on how to acquire the materials, a list of suppliers is provided and a list of chemicals available to buy. It</p>  | <p><b>Five and a half years’</b> (before reduction for guilty plea)</p>                                      | B1                    |

**Annex A – Case Summaries**

| <b>PRE- GUIDELINE</b> |  |  |  |
|-----------------------|--|--|--|
|                       | <p>also advises that orders should be placed for large quantities of a few unrelated chemicals at each of several companies and that separate addresses should be used for each order. This book clearly contains instructions for specific terrorist activity, endangering life and harm is very likely to be caused. Those reading this material are unlikely to be discouraged by warnings as to illegality, etc.</p> <p>The offender came to the attention of the police after posting on a social media site of images of him wearing a camouflage jacket with a German flag alongside an exploding mosque with the words “It’s time to enact retribution upon the Muslim filth”. There were other images of a racist nature and the pictures included a Nazi swastika.</p> |  |  |

**Encouragement (Sections 1 & 2 TACT 06)**

| <b>Name</b>                    | <b>Description</b>  | <b>Actual Sentence</b>  | <b>Predicted guideline starting point</b> |
|--------------------------------|---|---|---|
| Mijanul HAQUE<br>December 2017 | Convicted of three counts. The first related to material circulated to friends clearly intended to encourage them to commit or prepare or instigate similar acts within this country. The material included messages such as assassination is allowed in Islam; killing somebody who insults Mohammad is a religious duty; anybody who insults Mohammad is Kafir. The message | <b>Three and a half years</b> (counts one and five concurrent), reduced to three years due to the age of the offences. Two years on count four (concurrent) | <b>A2*</b>                                |



**Annex A – Case Summaries**

|  |  |  |                  |
|--|--|--|------------------|
|  | <p>the offender was conveying was that the activities of the terrorists in Paris were justified and should be emanated.</p> <p>Count five related to the offender sending a 38-minute video to another WhatsApp group of friends which clearly sought to glorify the acts of ISIS. In his comments the offender defended the killing of a police officer in Paris as being justified because the officer was enforcing the laws of the Kafir and was implementing democracy which the offender denounced as being a sin. Count four relates to recklessly distributing the live link video entitled 'Blood of Jihad 2'.</p> <p>The volume and content of the material disseminated was small and the immediate target audience was also small.</p> |  |                  |
| <p>Farhana AHMED<br/>November 2017</p> | <p>Opened a FaceBook account in a false name. In the two months that followed the offender published statements which were direct and indirect encouragement to others to commit acts of terrorism. (Count 1). Counts two, three and four concern dissemination of terrorist publications. The offender circulated terrorist publications on a Facebook page which attracted a large number of followers. The posts were made within a closed Facebook group known as Power Strangers. As part of that group the offender overtly extolled the aims of the so-called Islamic State. It is clear that at the time she shared the group's ideology and aims, which were all published in the name of terrorism.</p>                                  | <p>For all counts <b>3 years</b> (concurrent). Reduced due to guilty plea and significant mitigation to a two year sentence suspended for two years.</p> | <p><b>B2</b></p> |
| <p>Zameer GHUMRA<br/>October 2017</p>  | <p>The defendant showed to a child aged 8 ISIS propaganda videos of beheadings. It was part of a determined effort to indoctrinate and to radicalise the child, and to turn this small boy, into a terrorist. The jury was sure that Zameer Ghumra showed to the child a recording of an Islamic State beheading and that it was his intention to encourage the child to commit an act of terrorism within the foreseeable future, once he was old enough to do so. The defendant created a Twitter account for the boy. It was set up to follow hate preachers such as Abu Baraa and Anjem Choudrey. The defendant spoke of taking the boy to Syria. He taught him how to punch and kick, and to throw a knife.</p>                               | <p><b>6 years</b></p>  | <p>A1</p>        |

**Annex A – Case Summaries**

|  |  |  |            |
|--|--|--|------------|
| <p>Saer SHAKER<br/>September 2017</p>  | <p>Two Counts; count 1, related to a posting on Facebook of a three-and-a-half-minute video with the headline “Who are the Sahawat?” This was reference to a body opposed to the Islamic State. The video depicted images of these opposition leaders; also images of individuals who have been murdered or beheaded. The video contained moving-footage depicting the execution, by shooting, of a number of Iraqi officers. The last piece of footage was both graphic and shocking. When captured by the authorities, the video had been viewed 92 times and had been “liked” on three occasions.</p> <p>Count 2 related to a posting on Facebook of a still image from a video film entitled “Nights of Bureaucracy”. This was a 38-minute video containing propaganda in support of the ISIS cause. In particular, it extolled the asserted virtues of those involved in suicide bombing attacks. Following the posting, the offender engaged in an online dialogue with an audience which evidently approved of his message.</p> <p>His social media accounts, interrogated by investigating officers, contained clear evidence of approval of extremist activity.</p> | <p><b>3 years</b> on each (concurrent)</p>   | <p>A2*</p> |
| <p>Taha HUSSEIN<br/>September 2017</p> | <p>Seven offences of disseminating terrorist publications.</p> <p>Count one posted the link to a post which called for the destruction of the tyrants and the disbelievers, tyrants being Muslim states who are not governing according to Sharia law.</p> <p>Count two relates to a communication celebrating the fighters of so-called Islamic State.</p> <p>Count three was a lecture attempting to justify the killings in Paris by reference to Islamic law.</p> <p>Counts four and five contain information likely to be of use to those contemplating fighting in Syria. The publication gives specific advise to would-be fighters, amongst other things, on how to prepare, how to get past airport security, how to conceal their intention from their parents and how to behave when they arrive in Syria. Chapter eight contains advice to those who could not go to Syria. The advice includes to wait a few months and try again; steal from the Kufar, kill local Kufar in their own</p>  | <p><b>Six years’</b> (counts 4 and 5), <b>4 years</b> on the remaining counts – all concurrent</p> | <p>A2</p>  |

**Annex A – Case Summaries**

|                                      |  |  |            |
|--------------------------------------|--|--|------------|
|                                      | <p>land. It states: ‘The best of all people to kill are those who work with the government, the politicians, those who have worked in the army, the police officers or anyone else who has any links or ties to the government. You do not need to know much. The kitchen knife is sufficient to send the Kufar to the hereafter, even a petrol bomb is an easy tool one can make and use without the need for research online.’</p> <p>Count five was a document in similar terms.</p> <p>Count six was a video justifying the attack on Charlie Hebdo and count seven was a link that enabled the reader to open and read Dabiq, which was the magazine containing ISIS propaganda.</p> <p>The offender clearly intended to encourage others to engage in terrorist activity.</p>  |  |            |
| <p>Mehdi BIRA<br/>September 2017</p> | <p>Two offences of distributing a terrorist publication relating to section 2 of the Terrorism Act 2006. two videos were posted on his Facebook account on separate days. The defendant also researched and downloaded issues of Dabiq, a terrorist publication. ‘I come to the conclusion that it is appropriate to sentence you on the basis of recklessness, rather than intention’.</p>  | <p><b>12 months</b> custody on each concurrent.</p>  | <p>B2*</p> |
| <p>Sabbir MIAH<br/>June 2017</p>     | <p>Counts 1-3 relate to the dissemination of three separate films on Facebook which had some 500 followers. The Judge commented that ‘one at least is gruesome’.</p> <p>The offender maintained that the comments and postings were either conceived by him or were copies of quotes from the Koran, and the postings were sent to him by friends via a WhatsApp chat group, whose details he would not provide.</p> <p>The offender had an Internet-enabled mobile phone in his possession, in contravention of a bail condition. It was found that he was in flagrant breach of the condition of bail because he disseminated two more videos, via Instagram. And that is the conduct reflected in counts four to five.</p> <p>At the time the offender disseminated a terrorist publication, he was reckless as to whether his conduct would have the effect of directly or</p> | <p>Counts 1-3 - <b>Two and a half years’</b> imprisonment on each concurrent.</p> <p>Counts 4-5: <b>Three years’ imprisonment</b>, (concurrent but consecutive to the sentences on counts 1-3).</p> <p>Five and a half years total</p> | <p>B2</p>  |

**Annex A – Case Summaries**

|                           |  |  |     |
|---------------------------|--|--|-----|
|                           | indirectly encouraging, or other inducement to the commission preparation or instigation of acts of terrorism’   |  |     |
| Ashvin GOHILL<br>May 2017 | <p>Two counts of dissemination of terrorist publication. The offender used his Facebook and twitter account to distribute material that could have influenced one of its recipients to act in a way that could have had catastrophic consequences.</p> <p>Count one concerns the Facebook account. On 27 December 2015 he posted a summary of a speech by Abu Bakr al-Baghdadi, the leader of Islamic State. The speech entitled ‘So wait, indeed we, along with you are waiting’. The content of the speech is aimed at Muslims and states that those fighting in Syria are doing so out of obedience to Allah. It goes on to say that from its creation, 10 years ago, the Islamic State is the pillar of the fight against the enemies of Allah and urges those who are fighting on behalf of Daesh, to crush all absolute apostates. It goes on, ‘come to the rescue of your brothers in Sham, Iraq, Egypt, Libya and Turkistan. The material posted, ends with ‘Oh mujahidin, stay firm, you have in front of you, two options, victory or martyrdom. No honour for us if we do not live under Allah’s laws. Read the Quran a lot, repent from your sins, be aware of oppression and obey your messengers. Be patient, for victory comes after patience.’</p> <p>Of particular concern, are the passages that state that every muslim is obliged to carry out Allah’s commands and participate in jihad and those who obey will receive salvation in the name of Allah, but those who disobey will be destroyed and incur Allah’s wrath. Secondly, that every muslim is obliged to engage in war, to defend the religion of Allah and support the oppressed men, women and children. It is an obligation on all Muslims to participate, and if they do not, Allah will punish them and that there are only two good ends to fighters, victory or martyrdom. The speech tells fighters not to fear death and to obey their commanders.</p> | <b>2 years</b> (reduced to 18 months due to guilty plea) | B2* |

**Annex A – Case Summaries**

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|  | <p>There are references to religious texts throughout the speech which are used to justify the speaker’s views. This post was liked 30 times and was shared by 15 followers. This shows the impact that your post had on others.</p> <p>Count two: the offender published a link on his twitter account to a YouTube video- an hour and ninety minutes long. It encourages and justifies extreme violence and the murder of those who commit blasphemy against Allah. The words are persuasive, the voice and the delivery, seductive. ‘Whoever insults the prophet must be killed regardless of who they are and historic texts and stories are used to justify such actions.’</p> <p>Sentenced on a basis of plea that when he disseminated both of these terrorist publications he was acting recklessly and had no specific intent to encourage the commission, preparation or instigation of act of terrorism.</p> |  |  |
|--|---|--|--|

| <b>POST GUIDELINE</b>          |  |  |   |
|--------------------------------|--|--|---|
| <b>Name</b>                    | <b>Description</b>   | <b>Actual Sentence</b>   | <b>Actual starting point</b>            |
| Nourdeen ABDULLAH<br>June 2018 | 4 Counts. Count one related to three videos posted to a YouTube account taking the form of a question and answer session created with Anwar Al-Alaki, using extracts from his speeches to answer questions posed by the offender. They referred to ways to support jihad, providing physical and financial support to ‘our brothers in Afghanistan’. There was a statement that fighting is a duty on all Muslims to free the Muslim lands of occupiers and that the defamation of the prophet will be met by the sword. The most popular of the videos was viewed 1,698 times before its capture by the police. | <b>3 years</b> for count 2, 20 months on all other counts concurrent | A3 for count 2, B3 for the other counts |

**Annex A – Case Summaries**

|                                     |  |  |   |
|-------------------------------------|--|--|---|
|                                     | <p>Count two concerns communications via WhatsApp between late-2016 and early 2017, with an acquaintance who had travelled to Syria to become involved in fighting. It is plain that he was sympathetic to the group called Islamic State. The videos sent included men covered in dust after an attack, reference to a good death is the ultimate success and one video featuring a mass execution. On 8 January he sent a voice message that the State was the people answering Allah’s cause.</p> <p>Counts three and four, in effect subsidiary counts because they relate to the same piece of video, or extracts from the same video footage referred to in count 1, but posted in other ways.</p>   |  |   |
| <p>Mohammed KILJI<br/>June 2018</p> | <p>Convicted of eight counts of sending links to Islamic State propaganda videos by social media so as to encourage support for their terrorist atrocities. The videos glorify terrorism and applaud the brutal and barbaric behaviour for which Islamic State have become infamous. They show, in gruesome and graphic detail, executions by shooting and beheading and celebrate the death and destruction caused by suicide bombers driving vehicle-borne improvised explosive devices.</p> <p>Count eight was a link to a video entitled, ‘We will surely guide them in our way’. It showed vehicle-borne improvised explosive devices being prepared and focused on two particular suicide bombers, one of whom uses scripture to endorse his acts and encourages others to do the same after him.</p> <p>There are further images from the attack on Brussels’ Airport, the Boston Marathon, and the very recently conducted Westminster Bridge attack. The narrator says, ‘Those who cannot get to the Caliphate to fight, you live in the land of Kufr and can strike them in their heartlands’. And the narrator encourages attacks by lone wolves.</p> <p>This video also includes an Islamic State instruction on the best type of truck to use, on having a slightly raised chassis and bumper, being heavy in weight, with a double-wheeled rear axle, and the targets in which to drive it, so as to achieve maximum carnage when driven into pedestrians in a terrorist attack.</p> | <p><b>6 years</b> (reduced to 5 due to his young age) for count 8, 4.5 years’ on counts one to four, (concurrent), for counts 5-7 concurrent</p> | <p>A1 (for count 8), A2 and C2 for the others</p> |

Annex A – Case Summaries

**Failure to Disclose Information (section 38B TACT 00)**

| <b>PRE- GUIDELINE</b>                     |  |  |   |
|---|--|--|---|
| <b>Name</b>                               | <b>Description</b>   | <b>Actual Sentence</b>   | <b>Predicted guideline starting point</b> |
| <b>Siraj ALI</b><br>November 2018         | <p>Ali failed to disclose information about the attempted detonation of a suicide bomb by Yassin Omar on an underground train near Warren Street station and by Muktar Ibrahim on the number 26 bus. Ali was convicted of two offences of failure to disclose information that he had prior to the intended bombings, two offences of failing to disclose information after the intended bombings, and one offence of assisting Ibrahim, namely by removing and disposing of incriminating property.</p> <p>Ali was a good friend of Omar and both were very good friends of Ibrahim. Ali allowed Omar and Ibrahim to stay at his flat when the concentrating process necessary to build the bombs had rendered Omar's flat uninhabitable. Found in Ali's flat was a notepad bearing Ibrahim's fingerprints, with calculations relating to detonators, as well as a note detailing the steps to 'martyrdom', a list of bomb making equipment and business cards from two different suppliers of hydrogen peroxide, the essential ingredient in the men's explosives.</p> | Total of 9 years: <b>5 years</b> for each of the two prior knowledge offence (concurrent); <b>4 years</b> for each of the two post event offences (consecutive to the first offences but concurrently to each other) and 2 years for assisting an offender (concurrent). (After trial) | A1  |
| <b>Ismail ABDURAHMAN</b><br>November 2018 | <p>Convicted of one charge of assisting Osman (who attempted to detonate a suicide bomb at Shepherd's Bush), and four charges of failing to disclose information after the event, relating to all the bombers.</p> <p>The offender met Osman at Clapham Junction station on 23/7/05 and took him to his home where Osman stayed for a couple of days. He also collected Abdul Sherif's passport and a video camera that had been used by the bombers to record suicide messages and gave them both to Osman.</p>   | Total of 8 years: 4 years for assisting an offender and <b>4 years</b> for failing to provide information (on each concurrent, but consecutive to the assisting an offender conviction). (After trial)   | B1  |
| <b>Abdul SHERIF</b><br>November 2008      | <p>Brother of Osman, convicted of one count of assisting him, and one count of failing to disclose information after the bombings. Provided a passport to his brother which assisted him to escape to Italy. The prosecution demonstrated</p>  | Total of 6 years and 9 months: 6 years 9 months for assisting an offender and <b>4 years</b> for failing to disclose information   | B1  |

## Annex A – Case Summaries

|   |  |  |    |
|---|--|--|----|
|   | that Sherif had relevant knowledge about the terrorist offences due to the numerous phone calls and attempted calls between him and Osman.   | after the event (concurrent).<br>(After trial)   |    |
| <p><b>Wahbi MOHAMED</b><br/>November 2008</p> | <p>Convicted of four counts of offences concerning prior knowledge relating to each of the 4 bombers. Convicted on two counts of assisting an offender, one relating to Osman and the second relating to his brother, Ramzi Mohamed (who had attempted to detonate a bomb on an underground train near Oval). Convicted of one count of failing to provide information post event.</p> <p>The Crown’s case was that he was present at the same address as the bombers on the morning of the 21<sup>st</sup> July as the bombers prepared to set off. He took away the video camera used by them to make their suicide videos and handed the camera to Abdurahman to give to Osman after the bombings. Also after the bombings he provided his brother with a mobile phone, SIM card, charger and food whilst he was in hiding. There was also evidence of considerable telephone contact between him and his brother and with Osman before the bombings.</p> | <p>Total 17 years: <b>5 years</b> for each of the prior knowledge offences (concurrent), 2 years for one offence of assisting an offender, 5 years for another offence of assisting an offender and <b>5 years</b> for failing to give information post event. (After trial)</p> | A1 |
| <p><b>Muhedin ALI</b><br/>November 2018</p>   | <p>Convicted of one count of assisting an offender which related to Osman and two counts of failing to disclose information after the bombings, relating to Osman and Ramzi Mohamed. The offender was a close friend of Osman’s. He received Ramzi Mohammed’s suicide note. In the hours and days after the bombings he was involved in a number of telephone calls with Ramzi Mohamed and Osman’s wife. He also offered Osman the opportunity to stay in his flat- which formed the basis of the count of assisting an offender.</p>  | <p>Total 7 years: 2 years for assisting an offender and <b>5 years</b> for failure to give information post event. After trial</p>   | B1 |
| <p><b>Yashiemebet GIRMA</b><br/>May 2009</p>  | <p>Convicted in June 2008 of failing to disclose information that might have prevented an act of terrorism by her husband, Hussain Osman, namely the attempted detonation of a suicide bomb at Shepherd’s Bush Underground station. She was also convicted of assisting him, namely by collecting him from Wandsworth and, with her brother, driving him to the house of their sister in Brighton; providing him with a SIM card; removing evidence from his flat in London and withdrawing cash for him. She was also convicted of failing to disclose information after the attacks.</p>   | <p>Total 11 years 9 months: 6 years 9 months for assisting an offender and 2x <b>5 years</b> for failing to disclose information after the attacks. (After trial).</p>   | B1 |



**Annex A – Case Summaries**

| <b>POST GUIDELINE</b>                |   |   |                              |
|--------------------------------------|---|---|------------------------------|
| <b>Name</b>                          | <b>Description</b>  | <b>Actual Sentence</b>  | <b>Actual starting point</b> |
| <b>Khwala BARGHOUTH</b><br>June 2018 | The offender had befriended another woman, Rizlaine Boular, who was a supporter of ISIS and had developed a plan to carry out a knife attack on members of the public in London, even becoming a martyr herself if that proved necessary. Boular had told Barghouth of her plans and they had met on a number of occasions, on one occasion Boular practised getting the knife out of her rucksack and stabbing, using Barghouth as a pretend victim. | Starting point of <b>four years</b> , reduced by a third for the guilty plea and adjustments for aggravating and mitigating features. | A1                           |

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**Annex B Sentence Comparison**

| <b>S58 Collection (increased from 10 to 15 yrs)</b>  |   | <b>S1&amp;2 Encouragement (increased from 7 to 15 yrs)</b>  |   | <b>S57 Possession for terrorist purposes</b>  |  |
|--|---|---|---|---|--|
| <p><b>A:</b> • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act</p>   | <p><b>A1:</b><br/><b>Proposed</b><br/>10 years'<br/>(8-14 years')</p> | <p><b>A:</b> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete</p> <ul style="list-style-type: none"> <li>• Offender is a significant participant in the commission, preparation or instigation of an act of terrorism</li> </ul>  | <p><b>A1:</b><br/><b>Proposed</b><br/>10 years'<br/>(8-14 years')</p> | <p><b>A:</b> • Offender in position of trust, authority or influence and abuses their position to encourage others</p> <ul style="list-style-type: none"> <li>• Intended to encourage others to engage in any form of terrorist activity</li> <li>• Intended to provide assistance to others to engage in terrorist activity</li> </ul> | <p><b>A1:</b><br/><b>Current</b><br/>12 years'<br/>(9-14 years')</p> |
| <p><b>1:</b> • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused</p>   | <p><b>Current</b><br/>7 years'<br/>(5-9 years')</p>                   | <p><b>1:</b> • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused</p>  | <p><b>Current</b><br/>5 years'<br/>(4 – 6 years')</p>                 | <p><b>1:</b> • Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life</p> <ul style="list-style-type: none"> <li>• Statement or publication provides instruction for specific terrorist activity endangering life</li> </ul>   |  |
| <p><b>A:</b> • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act</p>   | <p><b>A2:</b><br/><b>Proposed</b><br/>7 years'<br/>(5-9 years')</p>   | <p><b>A:</b> • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete</p> <ul style="list-style-type: none"> <li>• Offender is a significant participant in the commission, preparation or instigation of an act of terrorism</li> </ul>  | <p><b>A2:</b><br/><b>Proposed</b><br/>7 years'<br/>(5-9 years')</p>   | <p><b>A:</b> • Offender in position of trust, authority or influence and abuses their position to encourage others</p> <ul style="list-style-type: none"> <li>• Intended to encourage others to engage in any form of terrorist activity</li> <li>• Intended to provide assistance to others to engage in terrorist activity</li> </ul> | <p><b>A2:</b><br/><b>Current</b><br/>8 years'<br/>(7-9 years')</p>   |
| <p><b>2:</b> • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property,</li> </ul> | <p><b>Current</b><br/>6 years'<br/>(4 – 8 years')</p>                 | <p><b>2:</b> • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul> | <p><b>Current</b><br/>4 years'<br/>(3 – 5 years')</p>                 | <p><b>2:</b> • Evidence that others have acted on or been assisted by the encouragement to carryout activities not endangering life</p> <ul style="list-style-type: none"> <li>• Statement or publication provides non-specific content encouraging support for terrorist activity endangering life</li> </ul>                          |  |

## Annex B Sentence Comparison

|  |   |   |   |  |  |
|--|---|---|---|--|--|
| or economic interest or substantial impact upon civic infrastructure   |   |   |   | <ul style="list-style-type: none"> <li>Statement or publication provides instruction for specific terrorist activity not endangering life</li> </ul>   |  |
| A: • Offender collected, made a record of, or was in possession of information for use in a specific terrorist act   | <b>A3: Proposed</b><br>5 years'<br>(3 – 6 years')   | A: • Possession of article(s) indicates that offender's preparations for terrorist activity are complete or almost complete<br>• Offender is a significant participant in the commission, preparation or instigation of an act of terrorism | <b>A3: Proposed</b><br>4 years'<br>(3-5 years')   | A: • Offender in position of trust, authority or influence and abuses their position to encourage others<br>• Intended to encourage others to engage in any form of terrorist activity<br>• Intended to provide assistance to others to engage in terrorist activity | <b>A3: Current</b><br>6 years'<br>(4-7 years') |
| 3: • All other cases   | <b>Current</b><br>5 years'<br>(3 – 6 years')  | 3: • All other cases  | <b>Current</b><br>3 years'<br>(2-4 years')  | 3: • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life<br>• Other cases where characteristics for categories 1 or 2 are not present   |  |
| B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations<br>• Offender repeatedly accessed extremist material (where not falling within A) | <b>B1: Proposed</b><br>7 years'<br>(5-9 years')<br><br><b>Current</b><br>5 years'<br>(3 – 6 years') | B: • Cases falling between A and C  | <b>B1: Proposed</b><br>7 years'<br>(5-9 years')<br><br><b>Current</b><br>4 years'<br>(3-5 years') | B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)         | <b>B1: Current</b><br>7 years'<br>(6-9 years') |
| 1: • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused   |   | 1: • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused  |   | 1: • Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life<br>• Statement or publication provides instruction for specific terrorist activity endangering life   |  |

**Annex B Sentence Comparison**

|  |   |  |   |  |  |
|--|---|--|---|--|--|
| <p>B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</p> <ul style="list-style-type: none"> <li>• Offender repeatedly accessed extremist material (where not falling within A)</li> </ul>                           | <p><b>B2:</b><br/><b>Proposed</b><br/>4 years'<br/>(3-5 years')</p> | <p>B: • Cases falling between A and C</p>  | <p><b>B2:</b><br/><b>Proposed</b><br/>4 years'<br/>(3-5 years')</p> | <p>B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)</p>  | <p><b>B2:</b><br/><b>Current</b><br/>6 years'<br/>(4-7 years')</p> |
| <p>2: • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Material provides instruction for specific terrorist activity intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul> | <p><b>Current</b><br/>4 years'<br/>(3-5 years')</p>                 | <p>2: • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused</p> <ul style="list-style-type: none"> <li>• Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure</li> </ul> | <p><b>Current</b><br/>3 years'<br/>(2-4 years')</p>                 | <p>2: • Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life</p> <ul style="list-style-type: none"> <li>• Statement or publication provides non-specific content encouraging support for terrorist activity endangering life</li> <li>• Statement or publication provides instruction for specific terrorist activity not endangering life</li> </ul> |  |
| <p>B: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism and the offender had terrorist connections or motivations</p> <ul style="list-style-type: none"> <li>• Offender repeatedly accessed extremist material (where not falling within A)</li> </ul>                           | <p><b>B3:</b><br/><b>Proposed</b><br/>3 years'<br/>(2-5 years')</p> | <p>B: • Cases falling between A and C</p>  | <p><b>B3:</b><br/><b>Proposed</b><br/>2 years'<br/>(1-3 years')</p> | <p>B: • Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely to a large or targeted audience (if via social media this can include both open or closed groups)</p>  | <p><b>B3:</b><br/><b>Current</b><br/>4 years'<br/>(2-5 years')</p> |

**Annex B Sentence Comparison**

|  |   |   |   |  |  |
|--|---|---|---|--|--|
| 3: • All other cases   | <b>Current</b><br>3 years'<br>(2-5 years')                | 3: • All other cases  | <b>Current</b><br>2 years'<br>(1-3 years')      | 3: • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life<br>• Other cases where characteristics for categories 1 or 2 are not present |  |
| C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations | <b>C1: Proposed</b><br>3 years'<br>(1-5 years')           | C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity<br>• Offender is of limited assistance or encouragement to others who are preparing for terrorist activity         | <b>C1: Proposed</b><br>3 years'<br>(2-4 years') | C: • Other cases where characteristics for categories A or B are not present   | <b>C1: Current</b><br>4 years'<br>(3-6 years') |
| 1: • Material provides instruction for specific terrorist activity endangering life and harm is very likely to be caused   |   | 1: • Article(s) had potential to facilitate an offence endangering life and harm is very likely to be caused  |   | <b>Current</b><br>3 years'<br>(2-4 years')   |  |
| C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations | <b>C2: Proposed</b><br>1 year 6 mths<br>(6mth - 3 years') | C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity<br>• Offender is of limited assistance or encouragement to others who are preparing for terrorist activity         | <b>C2: Proposed</b><br>2 years'<br>(1-3 years') | C: • Other cases where characteristics for categories A or B are not present   | <b>C2: Current</b><br>3 years'<br>(2-4 years') |
| 2: • Material provides instruction for specific terrorist activity endangering life but harm is not very likely to be caused<br>• Material provides instruction for specific terrorist activity            |   | 2: • Article(s) had potential to facilitate an offence endangering life but harm is not very likely to be caused<br>• Article(s) had potential to facilitate an offence causing widespread or serious damage to property, or economic |   | <b>Current</b><br>2 years'<br>(1-3 years')   |  |

**Annex B Sentence Comparison**

|  |  |   |  |   |  |
|--|--|---|--|---|--|
| intended to cause widespread or serious damage to property, or economic interest or substantial impact upon civic infrastructure   | (6mth - 3 years')  | interest or substantial impact upon civic infrastructure  |  | support for terrorist activity endangering life<br>• Statement or publication provides instruction for specific terrorist activity not endangering life   |  |
| C: • Offender collected, made a record of, or was in possession of information likely to be useful to a person committing or preparing an act of terrorism but had no terrorist connections or motivations | <b>C3:</b><br><b>Proposed</b><br>1 year<br>(High CO – 2 years) | C: • Possession of article(s) indicates that offender has engaged in limited preparation toward terrorist activity<br>• Offender is of limited assistance or encouragement to others who are preparing for terrorist activity | <b>C3:</b><br><b>Proposed</b><br>1 year<br>(High CO – 2 years) | C: • Other cases where characteristics for categories A or B are not present  | <b>C3:</b><br><b>Current</b><br>2 years'<br>(1-3 years') |
| 3: • All other cases   | <b>Current</b><br>1 year<br>(High CO – 2 years)                | 3: • All other cases  | <b>Current</b><br>1 year<br>(High CO – 2 years)                | <b>3:</b> • Statement or publication provides non-specific content encouraging support for terrorist activity not endangering life<br>• Other cases where characteristics for categories 1 or 2 are not present |  |

**Annex B Sentence Comparison**

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**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 principles<sup>1</sup> 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

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<sup>1</sup> *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 offences<sup>2</sup>. 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

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<sup>2</sup> 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)

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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:

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

\* *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.

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm       | Culpability                                   |   |
|------------|---|---|
|            | A   | B   |
| Category 1 | <b>Starting point</b><br>7 years' custody     | <b>Starting point</b><br>6 years' custody     |
|            | <b>Category range</b><br>6 – 9 years' custody | <b>Category range</b><br>4 – 7 years' custody |
| Category 2 | <b>Starting point</b><br>6 years' custody     | <b>Starting point</b><br>5 years' custody     |
|            | <b>Category range</b><br>4 – 7 years' custody | <b>Category range</b><br>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.

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# Violent disorder

## Public Order Act 1986 (section 2)

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Triable either way  
Maximum: 5 years' custody

Offence range: Community order – 4 years' 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

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

\* *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.

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm       | Culpability                                   |   |   |
|------------|---|---|---|
|            | A   | B   | C   |
| Category 1 | <b>Starting point</b><br>3 years' custody     | <b>Starting point</b><br>2 years' custody                                 | <b>Starting point</b><br>1 year's custody   |
|            | <b>Category range</b><br>2 – 4 years' custody | <b>Category range</b><br>1 – 3 years' custody                             | <b>Category range</b><br>High level community order –<br>2 years                    |
| Category 2 | <b>Starting point</b><br>2 years' custody     | <b>Starting point</b><br>1 year's custody                                 | <b>Starting point</b><br>26 weeks' custody  |
|            | <b>Category range</b><br>1 – 3 years' custody | <b>Category range</b><br>High level community order –<br>2 years' custody | <b>Category range</b><br>Medium level community order<br>– 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.

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# Affray

## Public Order Act 1986 (section 3)

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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:

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

**Harm**

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

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



**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm       | Culpability  |  |  |
|------------|--|--|--|
|            | A  | B  | C  |
| Category 1 | <b>Starting point</b><br>2 years' custody                                | <b>Starting point</b><br>1 years' custody                                | <b>Starting point</b><br>26 weeks' custody                               |
|            | <b>Category range</b><br>1 year 6 months' – 2 years 6 months' custody    | <b>Category range</b><br>26 weeks' – 1 year 6 months' custody            | <b>Category range</b><br>Medium level community order – 1 year's custody |
| Category 2 | <b>Starting point</b><br>1 years' custody                                | <b>Starting point</b><br>26 weeks' custody                               | <b>Starting point</b><br>High level community order                      |
|            | <b>Category range</b><br>26 weeks' – 1 year 6 months' custody            | <b>Category range</b><br>Medium level community order – 1 year's custody | <b>Category range</b><br>Low level community order – 36 weeks' custody   |
| Category 3 | <b>Starting point</b><br>26 weeks' custody                               | <b>Starting point</b><br>High level community order                      | <b>Starting point</b><br>Medium level community order                    |
|            | <b>Category range</b><br>Medium level community order – 1 year's custody | <b>Category range</b><br>Low level community order – 36 weeks' custody   | <b>Category range</b><br>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.

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

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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))

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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:

|                               |   |
|-------------------------------|---|
| <b>A – High culpability</b>   | <ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Intention to cause fear of serious violence</li> <li>• Sustained incident</li> <li>• Use of substantial force</li> <li>• Production of weapon</li> <li>• Missiles thrown</li> </ul> |
| <b>B – Lesser culpability</b> | <ul style="list-style-type: none"> <li>• All other cases</li> </ul>   |

**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.

|                   |   |
|-------------------|---|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>• Victim feared serious violence</li> <li>• Fear of immediate violence caused to multiple persons present</li> <li>• Incident escalated into violence</li> </ul> |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• All other cases</li> </ul>   |

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. 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 | <b>Starting point</b><br>12 weeks' custody                                | <b>Starting point</b><br>High level community order               |
|            | <b>Category range</b><br>Medium level community order – 26 weeks' custody | <b>Category range</b><br>Band C fine – 12 weeks' custody          |
| Category 2 | <b>Starting point</b><br>High level community order                       | <b>Starting point</b><br>Low level community order                |
|            | <b>Category range</b><br>Band C fine – 12 weeks' custody                  | <b>Category range</b><br>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                     | <b>Starting point</b><br>36 weeks' custody                                 | <b>Starting point</b><br>26 weeks' custody                                   | <b>Starting point</b><br>16 weeks' custody                                 |
|                        | <b>Category range</b><br>16 weeks' –<br>1 year 6 months' custody           | <b>Category range</b><br>6 weeks' – 1 year's custody                         | <b>Category range</b><br>High level community order –<br>36 weeks' custody |
| A2 or B1               | <b>Starting point</b><br>12 weeks' custody                                 | <b>Starting point</b><br>6 weeks' custody                                    | <b>Starting point</b><br>High level community order                        |
|                        | <b>Category range</b><br>6 weeks' – 1 year's custody                       | <b>Category range</b><br>Medium level community order<br>– 26 weeks' custody | <b>Category range</b><br>Low level community order –<br>16 weeks' custody  |
| B2                     | <b>Starting point</b><br>6 weeks' custody                                  | <b>Starting point</b><br>High level community order                          | <b>Starting point</b><br>Medium level community<br>order                   |
|                        | <b>Category range</b><br>High level community order –<br>26 weeks' custody | <b>Category range</b><br>Low level community order –<br>12 weeks' custody    | <b>Category range</b><br>Band C fine – High level<br>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)

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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))

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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:

|                               |  |
|-------------------------------|--|
| <b>A – High culpability</b>   | <ul style="list-style-type: none"> <li>• Targeting of individual(s) by a group</li> <li>• Sustained incident</li> <li>• Use of substantial force</li> <li>• Production of weapon</li> <li>• Missiles thrown</li> </ul> |
| <b>B – Lesser culpability</b> | <ul style="list-style-type: none"> <li>• All other cases</li> </ul>  |

**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.

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm       | Culpability  |  |
|------------|--|--|
|            | A  | B  |
| Category 1 | <b>Starting point</b><br>High level community order                          | <b>Starting point</b><br>Low level community order             |
|            | <b>Category range</b><br>Medium level community order –<br>26 weeks' custody | <b>Category range</b><br>Band C fine – 12 weeks' custody       |
| Category 2 | <b>Starting point</b><br>Low level community order                           | <b>Starting point</b><br>Band C fine                           |
|            | <b>Category range</b><br>Band C Fine – 12 weeks' custody                     | <b>Category range</b><br>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                     | <b>Starting point</b><br>26 weeks' custody                                | <b>Starting point</b><br>12 weeks' custody                                | <b>Starting point</b><br>6 weeks' custody                                 |
|                        | <b>Category range</b><br>6 weeks' – 1 year 3 months' custody              | <b>Category range</b><br>High level community order – 36 weeks' custody   | <b>Category range</b><br>Medium level community order – 26 weeks' custody |
| A2 or B1               | <b>Starting point</b><br>6 weeks' custody                                 | <b>Starting point</b><br>High level community order                       | <b>Starting point</b><br>Medium level community order                     |
|                        | <b>Category range</b><br>High level community order – 36 weeks' custody   | <b>Category range</b><br>Medium level community order – 26 weeks' custody | <b>Category range</b><br>Band C fine – 16 weeks' custody                  |
| B2                     | <b>Starting point</b><br>High level community order                       | <b>Starting point</b><br>Medium level community order                     | <b>Starting point</b><br>Low level community order                        |
|                        | <b>Category range</b><br>Medium level community order – 12 weeks' custody | <b>Category range</b><br>Band C fine – 6 weeks' custody                   | <b>Category range</b><br>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)

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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))

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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:

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

**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.

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. 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 | <b>Starting point</b><br>Band C fine          | <b>Starting point</b><br>Band B fine                         |
|            | <b>Category range</b><br>Band B – Band C fine | <b>Category range</b><br>Band A – Band C fine                |
| Category 2 | <b>Starting point</b><br>Band B fine          | <b>Starting point</b><br>Band A fine                         |
|            | <b>Category range</b><br>Band A – Band C fine | <b>Category range</b><br>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><b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Racial or religious aggravation was the predominant motivation for the offence</li> <li>• Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)</li> <li>• Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> <li>• Aggravated nature of the offence caused serious fear and distress throughout local community or more widely</li> </ul> | <p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 2.5</li> <li>• 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</li> </ul> |
| <p><b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Racial or religious aggravation formed a significant proportion of the offence as a whole</li> <li>• Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> <li>• Aggravated nature of the offence caused some fear and distress throughout local community or more widely</li> </ul>  | <p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 2</li> <li>• Discharge for basic offence: impose fine at mid-top of basic offence category range</li> </ul>  |
| <p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p> <ul style="list-style-type: none"> <li>• Aggravated element formed a minimal part of the offence as a whole</li> <li>• Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one)</li> </ul>   | <p><b>SENTENCE UPLIFT</b></p> <ul style="list-style-type: none"> <li>• Fine for basic offence: Multiply basic fine by 1.5</li> <li>• Discharge for basic offence: impose fine at low-mid of basic offence category range</li> </ul>  |

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))

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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

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

**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:

|                   |  |
|-------------------|--|
| <b>Category 1</b> | <ul style="list-style-type: none"> <li>• Statement/publication/performance or broadcast directly encourages activity which threatens or endangers life</li> <li>• Widespread dissemination of statement/publication/performance or broadcast and/or strong likelihood that many would be influenced</li> </ul> |
| <b>Category 2</b> | <ul style="list-style-type: none"> <li>• All other cases</li> </ul>  |



**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm       | Culpability                                   |   |   |
|------------|---|---|---|
|            | A   | B   | C   |
| Category 1 | <b>Starting point</b><br>3 years' custody     | <b>Starting point</b><br>2 years' custody             | <b>Starting point</b><br>1 year's custody                                 |
|            | <b>Category range</b><br>2 – 6 years' custody | <b>Category range</b><br>1 – 4 years' custody         | <b>Category range</b><br>26 weeks' – 3 years' custody                     |
| Category 2 | <b>Starting point</b><br>2 years' custody     | <b>Starting point</b><br>1 year's custody             | <b>Starting point</b><br>26 weeks' custody                                |
|            | <b>Category range</b><br>1 – 4 years' custody | <b>Category range</b><br>26 weeks' – 3 years' custody | <b>Category range</b><br>High level community order –<br>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.

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# **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**.

| <b>Culpability</b>  |  |
|---|--|
| A   | <ul style="list-style-type: none"> <li>• Offender used or intended to use petrol bomb or incendiary device</li> <li>• Offender used or intended to use firearm or other highly dangerous weapon*</li> <li>• Offender was an instigator or carried out a leading role</li> <li>• Offenders actions escalated level of violence and/or disorder</li> </ul> |
| B   | <ul style="list-style-type: none"> <li>• Any incident of riot not including category A factors</li> </ul>  |
| <p><i>* The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case. The dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon, which is 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'.</i></p> |  |

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

| Harm              | Culpability   |   |
|-------------------|---|---|
|                   | A   | B   |
| <b>Category 1</b> | <p><b>Starting point</b><br/>7 years' custody</p> <p><b>Category range</b><br/>6 – 9 years' custody</p> | <p><b>Starting point</b><br/>6 years' custody</p> <p><b>Category range</b><br/>4 – 7 years' custody</p> |
| <b>Category 2</b> | <p><b>Starting point</b><br/>6 years' custody</p> <p><b>Category range</b><br/>4 – 7 years' custody</p> | <p><b>Starting point</b><br/>5 years' custody</p> <p><b>Category range</b><br/>3 – 6 years' custody</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.

**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**.

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

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

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

**Harm**

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

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

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

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

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

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

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

### Factors reducing seriousness or reflecting personal mitigation

- Minor/peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

|   |
|---|
| <b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b> |
|---|

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 |
|---|

| <b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>   | <b>SENTENCE UPLIFT</b>   |
|--|--|
| <ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul> | <p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p> |
| <b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>   | <b>SENTENCE UPLIFT</b>   |
| <ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>  | <p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>                                    |

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

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

**The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE (RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY)**

#### **Dangerousness**

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

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail**

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

**Disorderly behaviour with intent to cause harassment, alarm or distress**

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

---

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



The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### Statutory aggravating factors:

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

#### Other aggravating factors:

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

### Factors reducing seriousness or reflecting personal mitigation

- Peripheral role in group activity
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

|   |
|---|
| <b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b> |
|---|

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"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul> | <p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p> |
| MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION  | SENTENCE UPLIFT  |
| <ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress</li> </ul>  | <p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>                                    |

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

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

**The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

#### **STEP THREE**

##### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

#### **STEP FOUR**

##### **Reduction for guilty pleas**

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

#### **STEP FIVE**

##### **Dangerousness (RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY)**

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

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**STEP EIGHT**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

**Consideration for time spent on bail**

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

## **Disorderly behaviour**

### **Public Order Act 1986 (section 5)**

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**Triable only summarily**

**Maximum: Level 3 fine**

**Offence range: Discharge – Fine**

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

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**Triable only summarily**

**Maximum: Level 4 fine**

**STEP ONE**  
**Determining the offence category**

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

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

| <b>Harm</b>   |  |
|---|--|
| The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. |  |
| <b>Category 1</b>   | <ul style="list-style-type: none"> <li>• Serious distress or alarm caused</li> <li>• Distress or alarm caused to multiple persons present</li> </ul> |
| <b>Category 2</b>   | <ul style="list-style-type: none"> <li>• All other cases</li> </ul>  |

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**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

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

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

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

- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Commission of offence whilst under the influence of alcohol/drugs
- Vulnerable persons or children present
- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- History of antagonising the victim
- Victim(s) had no opportunity to escape situation (eg: offence occurred on public transport)
- Offence committed whilst on licence or post sentence supervision
- Failure to comply with current court orders

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives



|   |
|---|
| <b>RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY</b> |
|---|

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

Having determined the category of the basic offence to identify the sentence of a non aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

| <b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>  | <b>SENTENCE UPLIFT</b>  |
|---|---|
| <ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul> | <p>Fine for basic offence: Multiply basic fine by 2.5</p> <p>Discharge for basic offence: impose fine at top of basic offence category range or for particularly severe cases move to sentence in next basic offence category</p> |
| <b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>  | <b>SENTENCE UPLIFT</b>  |
| <ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> </ul>  | <p>Fine for basic offence: Multiply basic fine by 2</p>   |

|   |  |
|---|--|
| <ul style="list-style-type: none"> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul> | <p>Discharge for basic offence: impose fine at mid-top of basic offence category range</p>   |
| <b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>   | <b>SENTENCE UPLIFT</b>   |
| <ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one).</li> </ul>                              | <p>Fine for basic offence: Multiply basic fine by 1.5</p> <p>Discharge for basic offence: impose fine at low-mid of basic offence category range</p> |

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

**STEP FIVE**

**Totality principle**

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

**STEP SIX**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

**STEP SEVEN**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail**

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

**Racial hatred offences**

**Public Order Act 1986**

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

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

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**Triable either way**

**Maximum: 7 years' custody**

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

**STEP ONE**  
**Determining the offence category**

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

**Culpability** demonstrated by one or more of the following:

**A - High culpability:**

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

**B – Medium culpability**

- Factors in categories A and C not present

**C – Lesser culpability**

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

**Harm**

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

**Category 1**

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

**Category 2**

- All other cases

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

| Harm              | Culpability  |  |  |
|-------------------|--|--|--|
|                   | A  | B  | C  |
| <b>CATEGORY 1</b> | <b>Starting point</b><br>3 years' custody<br><br><b>Category range</b><br>2 – 6 years' custody | <b>Starting point</b><br>2 years' custody<br><br><b>Category range</b><br>1 – 4 years' custody | <b>Starting point</b><br>1 years' custody<br><br><b>Category range</b><br>1 – 3 years' custody |
| <b>CATEGORY 2</b> | <b>Starting point</b><br>2 years' custody<br><br><b>Category range</b><br>1 – 4 years' custody | <b>Starting point</b><br>1 years' custody<br><br><b>Category range</b><br>1 – 3 years' custody | <b>Starting point</b><br>HL CO<br><br><b>Category range</b><br>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**

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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 <sup>1</sup> | 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%         |
| <b>Total</b>                      | <b>236</b>                    | <b>172</b> | <b>100%</b>                       | <b>100%</b> |

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.

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<sup>1</sup> 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

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

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

| <b>Year</b> | <b>Absolute Discharge</b> | <b>Conditional Discharge</b> | <b>Fine</b> | <b>Community Order</b> | <b>Suspended Sentence</b> | <b>Immediate Custody</b> | <b>Otherwise dealt with<sup>1</sup></b> |
|-------------|---------------------------|------------------------------|-------------|------------------------|---------------------------|--------------------------|---|
| <b>2013</b> | 0%                        | 17%                          | 38%         | 26%                    | 6%                        | 9%                       | 4%                                      |
| <b>2014</b> | 0%                        | 18%                          | 40%         | 23%                    | 6%                        | 8%                       | 4%                                      |
| <b>2015</b> | 0%                        | 18%                          | 38%         | 25%                    | 7%                        | 9%                       | 3%                                      |
| <b>2016</b> | 0%                        | 15%                          | 39%         | 25%                    | 7%                        | 10%                      | 3%                                      |
| <b>2017</b> | 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, 2008-2018<sup>2</sup>

| 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?**

<sup>2</sup> 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.

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