

Affray

Public Order Act 1986 (section 3)

Triable either way
Maximum: 3 years' custody

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

This is a violent specified offence for the purposes of section 226A of the Criminal Justice Act 2003

STEP ONE

Determining the offence category

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

Culpability demonstrated by one or more of the following:

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

Harm

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

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

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

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

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

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

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

Factors increasing seriousness**Statutory aggravating factors:**

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

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

Offence committed whilst on bail

Other aggravating factors:

Incident occurred in busy public area

Leading role where offending is part of group activity

Offender threw missiles/objects

Incident occurred in victim's home

Vulnerable persons or children present during incident

Commission of offence whilst under the influence of alcohol or drugs

History of failing to comply with court orders

Prolonged incident

Planning

Significant impact on public resources

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

Large number of persons affected

Offence committed while on licence or subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

No previous convictions

Previous good character

Remorse

Incident shortlived

Evidence of steps initially taken to defuse incident

Low level involvement

Minor/peripheral role where offending is part of group activity

No members of public present other than those participating in violence

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

Mental disorder or learning disability where linked to commission of offence

Sole or primary carer for dependent relatives

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

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

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for time spent on bail**

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

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