

Sentencing Council

Sentencing Council meeting: 16 April 2021
Paper number: SC(21)APR04 – Assault
Lead Council member: Rosa Dean
Lead officials: Lisa Frost
0207 071 5784

1 ISSUE

1.1 This meeting is the final meeting to consider outstanding issues and sign off the definitive Assault guidelines. It is intended that the guidelines be published in May and come into force in July 2021.

2 RECOMMENDATION

2.1 That the Council:

- considers the summary of changes made to the Assault guidelines based on consultation responses and additional research;
- finalises a number of outstanding issues including consideration of statistical evidence and responses relating to Equality and Diversity issues and;
- sign off the definitive guidelines.

3 CONSIDERATION

3.1 The draft revised Assault guidelines are included at Annex A. Changes made since consideration of consultation responses commenced in October are highlighted for ease of review. This paper summarises the changes agreed by the Council and seeks confirmation of outstanding issues and sign off the definitive guidelines subject to considering the resource assessment, for which a verbal update will be provided at the meeting. The full resource assessment will be finalised and circulated after the meeting.

3.2 There are a number of substantive issues to consider. These include sentences for the offence of assault with intent to resist arrest; finalising factors for the common assault guideline and the aggravated offence of common assault of an emergency worker and; considering equality and diversity issues and how evidence of sentencing disparity for some offences should be highlighted in the definitive guidelines.

Common Assault and related offences

3.3 The Council considered issues raised in respect of the common assault guideline and emergency workers guideline at the last meeting. As well as considering a number of changes to factors, significant discussion regarding the approach to uplifting sentences for assaults on emergency workers were discussed in light of the likelihood that these will shortly share the same statutory maximum sentence with racially and religiously aggravated common assault. The Council considered the difficulty in justifying different approaches to sentencing the offences if there is parity between their same statutory maximum sentences, and legislation provides in the same way for them to be aggravated forms of the basic offence. It was therefore agreed the uplift approach should be adopted for the emergency workers offence, to avoid criticism that racially and religiously aggravated offences are not considered to be as serious by the Council, and to avoid the need to significantly revise the guideline at the point further legislative changes are made. A digital presentation of the revised guideline will be available for review at the meeting.

3.4 Annex A illustrates changes agreed.

Culpability factors

3.5 Amendments made to the consultation version of culpability factors were as follows:

- The vulnerable victim factor wording was aligned with the ABH and GBH guideline wording to remove the 'targeting' element. This will provide for any victim vulnerable by circumstances or characteristics to be captured.
- It was agreed that prolonged assault should be rephrased to 'prolonged/persistent assault'
- the strangulation factor should be expanded to include suffocation and asphyxiation and.

- The working group considered a number of outstanding issues from the last meeting and agreed that 'Excessive self-defence' should be included as a step one culpability factor.

3.6 No other changes to culpability factors were made, although the Council is asked to consider the factors in light of the decision to amend the approach to sentencing assaults on emergency workers. In the draft emergency workers guideline the vulnerable victim factor was not included as it was considered that the increased statutory maximum sentence took the vulnerability of the emergency worker and the greater risk they are exposed to into account. However, if the seriousness assessment will be undertaken with reference to common assault factors it may be inappropriate to qualify the vulnerability factor as not applicable to emergency workers, and to allow for capturing of those who are vulnerable by circumstances, such as medical staff alone in a treatment room. The factor would be applicable to racially and religiously aggravated offences.

Question 1: Does the Council agree the vulnerable victim factor should be applicable to the standard and aggravated offences?

Harm

3.7 It was agreed that the harm model should be amended to include enhanced guidance on factors to be considered in undertaking the harm assessment. These amendments are illustrated at Annex A.

Sentences

3.8 It was agreed that sentences should be increased in the lower seriousness categories, due to concerns raised in respect of fines being too low as a starting point for these offences. These will also provide for increased sentences for emergency worker offences.

Aggravating factors

3.9 The Council did not have sufficient time at the last meeting to consider all questions raised in respect of aggravating factors, so these have been considered by the working group. The working group considered whether 'spitting/coughing' should be qualified as deliberate; if biting should be included as an aggravating factor and; if

the factor 'presence of children' should be expanded to 'presence of children or relatives of the victim'. The working group have decided that;

- The aggravating factor 'Presence of children' should not be expanded to include other relatives.

3.10 Views of the working group were split on the other two issues, which the full Council is asked to consider. The first is whether biting should be included as an aggravating factor. It is thought that as the common assault guideline will be used to assess the seriousness of assaults on emergency workers and biting is a common feature of assaults on police officers, that it should be explicitly provided for.

Question 2: Does the Council think that biting should be included as an aggravating factor in the common assault guideline?

3.11 The second issue was whether spitting/coughing should be qualified as 'deliberate'. One working group member thought that to add 'deliberate' would give rise to problems if, for example, the defendant showers his victim with spittle when shouting abuse and threats. It was thought that sentencers will be able to recognise if the defendant coughed because of a medical condition (which was a concern of some consultation respondents) and would not take the factor into account in such circumstances. A different view was that a 'reckless' cough or spit is frequently offered as a basis of plea, so it could be useful to clarify.

3.12 A further point made in relation to the spitting factor which was not addressed at the last meeting was that a number of respondents highlighted the risk of double counting where this is the method of the high culpability factor relating to threat of disease transmission. It is proposed that this risk should be highlighted and the standard wording included (where not taken into account at step one) for this factor.

Question 3: Does the Council think that spitting/coughing should be qualified as 'deliberate', and should the factor also be qualified with 'where not taken into account at step one'?

Aggravated common assault – Racially and religiously aggravated and Emergency workers

3.13 The approach to sentencing aggravated offences in guidelines is that the seriousness of the substantive offence is assessed and the aggravation is then considered after the provisional sentence has been determined.

3.14 A visual illustration of the proposed digital guideline will be presented at the meeting. It is proposed that the approach instruct sentencers as follows;

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now apply an appropriate uplift to the sentence in accordance with the guidance below. The sentence uplift may considerably exceed the standard offence category range.

Question 4: Is the Council content with the instruction that the sentence uplift may considerably exceed the category range?

3.15 The Council will be asked to consider on viewing the guideline at the meeting if assessing the aggravation should be defined as a step in the guideline and constitute step 3. This will give greater prominence to the section when viewed digitally and explanatory text can be included to signpost sentencers of where they will consider the uplift for the aggravated offence. This would require the same approach to be taken in other guidelines with separate racial and religiously aggravated offences, although this will not be a difficult change to effect.

Question 5: Should assessment of aggravation constitute step 3 of the common assault guideline?

3.16 While the factors relevant to determining the level of racially and religiously aggravated offences are already determined and are included in other guidelines, the Council is asked to confirm which element of the offence should be considered in identifying the appropriate uplift for emergency worker offences. At the last meeting it was proposed that the level of aggravation could be assessed with reference to either the harm category, or the full offence category but the Council did not fully consider and is asked to confirm the basis of the aggravation assessment.

Harm Category 1 OR A1	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial
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	sentence, if not already considered for the basic offence.
Harm Category 2 OR A2/B1	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
Harm Category 3 OR A3/B2/B3	Consider a more onerous penalty of the same type identified for the basic offence.

Question 6: Should the level of aggravation in an assault on an emergency worker offence be determined by the full offence category or the harm category?

Question 7: Does the Council agree to sign off the common assault guideline?

Assault with Intent to Resist Arrest

3.17 Decisions on the assault with intent to resist arrest guideline were subject to the approach to be taken for assaults on emergency workers. The evaluation of the existing guideline did not include assault with intent to resist arrest due to low volumes of offences, but the offence was included in the revised guideline.

3.18 Culpability and harm factors for this offence were the same as for the emergency workers offence. The consultation explained as follows;

Although this offence can be charged where an assault is committed against any individual seeking to apprehend or detain an offender, the most likely victims would be police officers assaulted in the course of their duty. Given the similarity between offences and that the offence is effectively assault on an emergency worker with the additional element of intending to resist arrest, the Council decided that the same culpability and harm factors as agreed for the Assault on emergency workers guideline should be included for this offence.

The Council did consider whether the resisting arrest element of the offence represented broader harm than for common assault in that it may relate to an offender resisting arrest and evading justice. However, the Council decided that the same principle applied as for the emergency workers offence in that this broader harm is

inherent in the higher statutory maximum sentence. The offence will still be common assault as a more serious offence would otherwise be charged; it is the circumstances in which the assault is committed which differs.

3.19 The guideline does not include the vulnerable victim factor for the same reason as it was not included in the emergency workers guideline. The decision in respect of whether that factor should now be qualified in respect of emergency workers will also be relevant here, although this offence could be committed against a non-emergency worker.

Sentences

3.20 Volumes of this offence are low with 106 offenders sentences in 2019. Statistics on sentence distribution from 2015 onwards are as follows;

Outcome	2015	2016	2017	2018	2019
Absolute and conditional discharge	9%	8%	2%	5%	2%
Fine	26%	19%	22%	22%	28%
Community sentence	21%	26%	27%	31%	32%
Suspended sentence	11%	16%	12%	10%	12%
Immediate custody	31%	27%	35%	26%	20%
Otherwise dealt with	1%	4%	1%	6%	6%

3.21 In the draft guideline sentences for this offence were increased considerably from the existing guideline levels purely to achieve relativity with emergency worker sentences, as this offence is effectively the same but with the added element of resisting arrest. The existing sentences are as follows;

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	26 weeks' custody	12 weeks' – 51 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

3.22 Given the decision made in respect of the emergency workers offence which removes the need for relativity to be illustrated, the Council is asked to consider if sentences should be revised from consultation proposals as it may now be difficult to justify such significant increases and a number of respondents raised concerns about them. The statutory maximum sentence for this offence is two years' custody. It is possible that these sentences may be looked to as an indication of appropriate sentences for an assault on emergency workers offence if the statutory maximum

sentences are aligned, so relativity remains an important consideration. If the Council thinks that sentences should not now be increased, alternative sentences are included below for consideration;

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 26 weeks' custody</p> <p>Category Range 12 weeks – 1 year's custody</p>	<p>Starting point 12 weeks' custody</p> <p>Category Range High level community order - 26 weeks' custody</p>
Harm 2	<p>Starting point 12 weeks' custody</p> <p>Category Range High level community order - 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Category Range Low level community order – 26 weeks custody</p>
Harm 3	<p>Starting point High level community order</p> <p>Category Range Low level community order – 26 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category Range Band C fine – High level community order</p>

Question 8: Does the Council think that sentences for Assault with intent to resist arrest should be revised?

Question 9: Subject to question 8, does the Council agree to sign off the Assault with intent to resist guideline?

ABH and GBH s20: Culpability factors

3.23 The GBH s20 and ABH revised guideline culpability factors are the same. The Council considered responses relating to a number of cross cutting factors relevant to

these offences in November 2020, and other responses in January 2021. The following amendments were agreed:

- As for common assault, it was agreed that the strangulation factor should be expanded to include suffocation and asphyxiation and prolonged assault should be rephrased as 'prolonged/persistent assault'.
- An additional lesser culpability factor of 'Impulsive/spontaneous and short-lived assault' was included, in response to concerns that culpability for unplanned offences was not provided for in the assessment.
- A very minor amendment was made to the explanatory text regarding highly dangerous weapons to clarify examples of highly dangerous weapon equivalents.

ABH Harm

3.24 At the January meeting the Council considered responses raising concerns regarding the harm model for ABH which included High/Medium/Low factors, and it was agreed that the factors should be revised as follows:

Category 1:	Serious physical injury or serious psychological harm and/or substantial impact upon victim
Category 2:	Cases falling between categories 1 and 3.
Category 3:	Some level of physical injury or psychological harm with limited impact upon victim

3.25 It was agreed that testing of this model would be undertaken to identify if this improved consistency of harm assessment, and importantly if category 3 was used as the previous model wording of 'low' was found to be avoided.

A digital survey was completed by 207 sentencers who were asked to categorise a list of injuries. The injuries and categorisations are included at Annex B. These were actual injuries taken from ABH transcripts. Comments were also sought on whether there were any difficulties with categorising injuries. Responses were broadly positive, although a number did highlight that they would require additional information or to know the full facts of the case to be confident of assessment, particularly in respect of psychological harm;

'It is difficult to categorise injuries when you have not seen an impact statement. Some victims are more badly impacted than others especially psychologically.'

'In determining psychological harm, I would require a victim impact statement as a minimum requirement and would wish if time and resources were available to have a proper psychological report to deal with the extent of the long term harm suffered by the victim.'

'The guideline requires an assessment of victim impact. Most of the questions said nothing about that which rather diminishes any conclusions which may be drawn from the exercise. I always seek a VPS and if the new guideline is thus drafted my practice will be essential.'

Other comments indicated general satisfaction with the categories;

'This was fairly straightforward. We would probably have a few more details if actually working on the case which could help where the decision was borderline.'

'The most severe and least severe group were easier. The middle group was less clear.'

'I found for many of the described injuries that I could possibly have fitted the answers into two categories. However, the injuries alone may well have been expanded on in a real Court situation. With that view in mind I feel that the descriptors were general enough to allow the required flexibility needed for sentencing and would be content should they be promulgated.'

3.26 While the exercise was limited it did identify that Category 3 assessments were made, and while subjectivity remains an issue in assessments, the responses did indicate the model would be preferable to the consultation harm model.

Sentences

3.27 No revisions were proposed to ABH sentences. As the existing guideline included three starting points and ranges and the revised guideline includes nine, starting points were revised to distribute sentences appropriately according to offence seriousness. The starting points were identified according to transcript analysis and the estimated custodial sentence lengths prior to a guilty plea are as follows:

Sentence length band	2015	2016	2017	2018	2019
1 year or less	37%	37%	36%	36%	36%
Between 1 and 2 years	42%	41%	38%	39%	38%
Between 2 and 3 years	16%	16%	18%	19%	19%

Between 3 and 4 years	4%	4%	5%	5%	5%
Between 4 and 5 years	1%	1%	2%	1%	2%

3.28 A number of respondents recognised and approved of the greater range of starting points, while others did not as they thought sentences were being increased. We are unable to publish the relevant statistics on sentence distribution to illustrate the basis of sentences, but it will be further clarified in the consultation response document that these reflect analysis and statistical data on sentences. It is not proposed sentences are revised from the consultation proposals, and the resource assessment anticipates a decrease in sentences overall.

Aggravating and mitigating factors

3.29 In developing the guideline the Council considered whether revenge should be provided for as an aggravating factor. Based on road testing findings it was agreed it should not be included in the definitive guideline as it was taken into account even where not explicitly referenced.

3.30 No other changes were made to aggravating and mitigating factors.

Question 10: Does the Council agree to sign off the ABH guideline?

GBH s20

Culpability factors

3.31 The GBH s20 and ABH revised guideline culpability factors are the same, and revisions to s20 factors were as set out in paragraph 3.22.

Harm

3.32 A very minor revision was made to the GBH harm model, with the word 'their' included before 'day to day activities' to clarify that the assessment should be based on the victim's activities rather than generic activities.

Sentences

3.33 As for ABH offences, a number of respondents considered the proposed sentences were an increase on the current guideline as did not seem to have noted

the consultation explanation of the revised sentence distribution. As for ABH, the sentences reflect current sentencing practice and it is not proposed these are revised.

Aggravating and mitigating factors

3.34 No revisions were made to aggravating and mitigating factors.

Question 11: Does the Council agree to sign off the GBH S20 guideline?

GBH S18

3.35 Culpability factors differ slightly for s18 offences with some factors more in line with the attempted murder guideline given that a s18 charge may arise in similar circumstances to attempted murder.

3.36 Other than minor revisions to cross cutting factors, no other changes were made to factors consulted on. The Council considered road testing findings on revenge and whether it should be retained as a culpability factor, and decided that while it should not be included as an aggravating factor for less serious offences, it should be retained in the s18 culpability assessment due to the potential for spontaneous acts of revenge in s18 offences.

Sentences

3.37 The consultation document for s18 sentences explained that sentences increased on the introduction of the existing guideline, which transcript analysis identified was due to the way factors were applied resulting in a high proportion of category 1 assessments. The main issue was that use of any weapon or object results in a higher culpability assessment, and it is difficult to assess any GBH level injury as lesser harm. It was decided that revision to factors would provide for appropriate seriousness assessments and proportionate sentences.

3.38 No revision to sentences were proposed. These have been carefully aligned and calibrated with relative attempted murder and s20 sentences where appropriate and the resource assessment, which is informed by extensive transcript resentencing, confirms that sentences are likely to decrease for this offence as a result of revisions made. This was an objective of revising the guideline as the evaluation highlighted that sentences for this offence increased following the introduction of the existing

guideline, which it was identified was due to factor placement and seriousness categorisations.

Question 12: Does the Council agree to sign off the GBH S18 guideline?

Attempted Murder

Culpability factors

3.39 Extensive testing of the attempted murder guideline was undertaken in development, with testing at the serious crime seminar to achieve a consultation version, and this was tested again post consultation and confirmed that revisions made had assisted in resolving issues identified with the early version. The consultation highlighted broad approval of the more nuanced approach to assessing seriousness and no changes were proposed or made to factors.

3.40 The most prominent issue raised by consultation respondents which the Council was asked to consider in respect of attempted murder was lack of maturity and the potential impact of poor decision making of offenders, such as young people using knives. The Council considered this at length and decided that lack of maturity should not be provided for at step one but retained at step two.

Harm

3.41 The harm model for attempted murder includes the same high harm GBH factor relating to permanent, irreversible injuries, and the minor amendment made to the GBH harm factor was reflected.

Sentences

3.42 During the development of the guideline significant work was undertaken on sentences. The Council wished to increase sentences for some offences and to align sentences for attempted murder more closely with murder offences involving weapons taken to the scene, which are provided for by paragraph 5A of schedule 21 of the Criminal Justice Act 2003 (now paragraph 4 of Schedule 21 of the Sentencing Code).

3.43 Extensive analysis and resentencing of transcripts identified that the revised sentences would achieve the same or higher sentences than currently imposed, and a version including lower sentences would likely decrease sentences from current sentencing practice.

3.44 Post consultation considerations based on consultation responses included whether the revised sentences would have a greater impact upon young people, given that lack of maturity is provided for at step two so will not be as influential on the sentence as it would be if included at step one. It was agreed that further work would be undertaken to consider the impact of revised guideline sentences on this category of offender.

3.45 Analysis of transcripts for offenders aged 25 and under was undertaken after the October meeting to identify if lack of maturity was a feature apparent or taken into account in sentencing. In all cases reviewed the intention of the offender to murder was clear, and lack of maturity was not evident or relevant to the intention formed or assessment of the offence seriousness. In applying the culpability and harm factors in those cases to the existing guideline, sentences would be the same as or lower than currently imposed if starting points were reduced. It is therefore not proposed that sentences should be reconsidered.

Question 13: Does the Council agree to sign off the Attempted Murder guideline?

Equality and Diversity issues

3.46 The consultation highlighted the Public Sector Equality Duty and the intention that the guidelines apply equally to all offenders. Views were sought on whether any factors or their expression could risk interpretation causing discrimination, or if there were any other equality and diversity issues.

3.47 The Birmingham Law Society response thought that alcoholism may be considered an illness and that the factor 'offence committed while under the influence of alcohol' could therefore be discriminatory. This factor is included in nearly all guidelines, and the general guideline includes the following in the expanded explanation of the factor which is linked to relevant guidelines;

In the case of a person addicted to drugs or alcohol the intoxication may be considered not to be voluntary, but the court should have regard to the extent to which the offender has sought help or engaged with any assistance which has been offered or made available in dealing with the addiction.

This will be highlighted in the consultation response document.

3.48 Dr. Carly Lightowlers, an academic who has published research related to alcohol related violence and sentencing, raised concerns that female offenders may be at risk of higher sentences as are considered 'doubly deviant' for engaging in violent

offences. She highlighted statistics for assaults on against emergency workers, noting that 30% of offenders sentenced for this offence are female. She suggested further work should be undertaken to understand the extent to which such women may be responding to their own trauma and victimisation when coming into contact with emergency workers, or are perhaps attempting to protect their children. She also made the point that female offenders who commit violent offences may be more likely to use a weapon against a physically superior male victim. Guidelines are intended to apply equally to demographics of offenders which reflects the principle that offenders are treated equally. Where a female offender commits an offence in the context of being a victim responding to abuse or in self-defence, the guidelines provide for those circumstances to reduce culpability or to mitigate. It is not thought that it would be appropriate to include mitigating factors relevant to other points made, and the Imposition guideline requires sentencers to consider broader issues in considering the most appropriate sentence to impose on an offender.

3.49 A number of respondents noted the statistical information on sentence outcomes for differing demographics of offenders, noting higher sentences are currently imposed for some offences for ethnic minority offenders.

3.50 Annex C includes a summary of statistical analysis of sentence distribution according to demographic of offenders. Disparity is highlighted across all offences with the exception of common assault and racially and religiously aggravated offences. It is proposed that the wording highlighting evidence of disparity included across other guidelines recently is included where relevant. This has been included in relevant guidelines at Annex A for ease of review.

Question 14: Does the Council agree that evidence of racial disparity should be highlighted for relevant offences?

4 IMPACT /RISKS

4.1 The main objective of revising the Assault guidelines was to address the evaluation findings that the overall impact of the existing guideline was inflationary. Revisions made to the guidelines seek to achieve proportionate and appropriate seriousness categorisations and sentences. Significant work has been undertaken to test their application during development to ensure these objectives are achieved.

4.2 The Council has considered risks associated with approaches throughout the development of the revised guidelines and has considered a number of challenging and complex issues. There is a risk that the approach to sentencing emergency

workers in particular will not be approved of, given that the consultation included a full guideline for the offence which would likely be the preference of the majority of sentencers. However, given proposals to align the statutory maximum sentences with other aggravated offences the alternative risk is that the guidelines do not treat offences in the same way, which will invite criticism regarding equality issues and the Council's commitment to addressing these in its work.

The consultation response document will provide clear and robust rationales for revisions made to the draft version of the guidelines which will be circulated for consideration and approval of the Council prior to publication.

Common assault / Racially or religiously aggravated Common Assault

Crime and Disorder Act 1998, s.29, Criminal Justice Act 1988, s.39

Effective from: 1 July 2021

Common Assault, Criminal Justice Act 1988 (section 39)

Racially/religiously aggravated common assault, Crime and Disorder Act 1998 (section 29)

Section 39

Triable only summarily

Maximum: 6 months' custody

Section 29

Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 26 weeks' custody

Racially or religiously aggravated common assault is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

STEP ONE**Determining the offence category**

Culpability demonstrated by one or more of the following:

The level of culpability is determined by weighing up all the factors of the case. **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.**

A - High culpability:

- Intention to cause fear of serious harm, including disease transmission
- ~~Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances~~
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Prolonged/persistent assault
- Use of substantial force
- Strangulation/Suffocation/Asphyxiation
- Threatened or actual use of weapon or weapon equivalent*
- Leading role in group activity

B – Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- Excessive self defence
- All other cases not captured by category A factors

*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

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. **In assessing the level of harm, consideration should be given to:**

- the number of injuries
- severity of injury and pain suffered and
- the duration or longevity of any psychological harm or distress caused.

Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

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 before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point High level community order</p> <p>Category Range Low level community order - 26 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category Range Low level community order - 16 weeks' custody</p>
Harm 2	<p>Starting point Medium level community order</p> <p>Category Range Low level community order - 16 weeks' custody</p>	<p>Starting point Band B fine Low level community order</p> <p>Category Range Band C Fine – High level community order</p>
Harm 3	<p>Starting point Band B fine Low level community order</p> <p>Category Range Band C Fine - High level community order</p>	<p>Starting point Band A Fine Band C Fine</p> <p>Category Range Discharge – Low level community order</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the 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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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.

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<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>

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

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 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

Racially or religiously aggravated common assault is a specified offence. The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 6 – 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 offending behaviour. See [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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 and [section 325 of the Sentencing Code](#).

ASSAULT ON EMERGENCY WORKER**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 level of culpability is determined by weighing up all the factors of the case. **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:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Prolonged/persistent assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation/Suffocation/Asphyxiation • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

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	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

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 before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 8 months</p> <p>Category Range 26 weeks' – 1 years' custody</p>	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>
Harm 2	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>
Harm 3	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>	<p>Starting point ML CO</p> <p>Category Range Band B Fine – HL CO</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 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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

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

Assault with intent to resist arrest

Offences against the Person Act 1861, s.38

Effective from:

Triable either way

Maximum: 2 years' custody

Offence Range: Fine –1 year 3 months' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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:
 The level of culpability is determined by weighing up all the factors of the case. **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.**

A - High culpability:

- Intention to cause fear of serious harm, including disease transmission
- Prolonged/persistent assault
- Use of substantial force
- Threatened or actual use of weapon or weapon equivalent*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity

B – Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category A factors

*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

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. **In assessing the level of harm, consideration should be given to:**

- the number of injuries
- severity of injury and pain suffered and

the duration or longevity of any psychological harm or distress caused.

Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

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 before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Mixed ethnicity offenders receive an immediate custodial sentence than White, Asian and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 36 weeks' custody</p> <p>Category Range 26 weeks' custody – 1 year 3 months' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range High level community order - 36 weeks' custody</p>
Harm 2	<p>Starting point 26 weeks' custody</p> <p>Category Range High level community order - 36 weeks' custody</p>	<p>Starting point High level community order</p> <p>Category Range Low level community order – 26 weeks' custody</p>
Harm 3	<p>Starting point High level community order</p> <p>Category Range Low level community order – 26 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category Range Band B Fine – High 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 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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

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 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 6 – 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 offending behaviour. See [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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 and [section 325 of the Sentencing Code](#).

Assault occasioning actual bodily harm / Racially or religiously aggravated ABH

Crime and Disorder Act 1998, s.29, Offences against the Person Act 1861, s.47

Effective from: 1 July 2021

Assault occasioning actual bodily harm, Offences against the Person Act 1861 (section 47)

Racially or religiously aggravated ABH, Crime and Disorder Act 1998 (section 29)

Triable either way

Section 47 Maximum: 5 years' custody

Section 29 Maximum: 7 years' custody

Offence range: Fine – 4 years' custody

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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:

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose 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*'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
To assess the level of harm caused by the offence, the court must consider;	
<ul style="list-style-type: none"> • The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm • Where in that range of injuries the injury caused falls 	
Category 1	High level of physical or psychological harm Serious physical injury or serious psychological harm and/or substantial impact upon victim
Category 2	Medium level of physical or psychological harm Harm falling between categories 1 and 3
Category 3	Low level of physical or psychological harm Some level of physical injury or psychological harm with limited impact upon victim

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 before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Mixed ethnicity offenders receive an immediate custodial sentence than White, Asian and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point</p> <p>2 years 6 months' custody</p> <p>Category Range 1 year 6 months' – 4 years' custody</p>	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High level community order - 1 year 6 months' custody</p>
Harm 2	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High level community order - 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category Range Low level community order – 36 weeks' custody</p>
Harm 3	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High level community order - 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category Range Low level community order – 36 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category Range Band B Fine – 26 weeks' custody</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 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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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.

Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<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>

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

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 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 6 – 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 offending behaviour. See [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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 and [section 325 of the Sentencing Code](#).

Inflicting grievous bodily harm/ Unlawful wounding/ Racially or religiously aggravated GBH/ Unlawful wounding

Offences against the Person Act 1861, s.20, Crime and Disorder Act 1998, s.29

Effective from: 1 July 2021

Inflicting grievous bodily harm/unlawful wounding, Offences against the Person Act 1861 (section 20)

Racially or religiously aggravated GBH/unlawful wounding, Crime and Disorder Act 1998 (section 29)

Triable either way

Section 20

Maximum: 5 years' custody

Section 29

Maximum: 7 years' custody

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

These are specified offences for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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:

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose 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*'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work</p>
Category 2	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

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 before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black, Mixed and Chinese or Other ethnicity offenders receive an immediate custodial sentence than White and Asian offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 4 years' custody</p> <p>Category Range 3 years– 4 years 6 months' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>
Harm 2	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category Range High level community order - 2 years' custody</p>
Harm 3	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category Range High level community order - 2 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range Medium level community order – 1 year's custody</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 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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offences taken into consideration (TICs)

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

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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.

Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one
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HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<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>

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

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 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

Racially or religiously aggravated common assault is a specified offence. The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 6 – 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 offending behaviour. See [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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 and [section 325 of the Sentencing Code](#).

Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH

Offences against the Person Act 1861, s.18

Effective from: 1 July 2021

Triable only on indictment

Maximum: Life imprisonment

Offence range: 2–16 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

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:

The level of culpability is determined by weighing up all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation/Suffocation/Asphyxiation
- Leading role in group activity
- Prolonged/persistent assault
- Revenge

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
 - Factors in both high and lesser categories are present which balance each other out; **and/or**
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon **can include** weapons such as knives and firearms. **Highly dangerous** weapon equivalents can include corrosive substances (such as acid), whose 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'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>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 their normal day to day activities or on their ability to work</p>
Category 2	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

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 before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders immediate custodial sentence lengths have on average been longer than for White, Mixed and Chinese or Other ethnicity offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 12 years' custody</p> <p>Category Range 10-16 years' custody</p>	<p>Starting point 7 years' custody</p> <p>Category Range 6-10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>
Harm 2	<p>Starting point 7 years' custody</p> <p>Category Range 6-10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category Range 3 – 6 years' custody</p>
Harm 3	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category Range 3-6 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2-4 years' custody</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 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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker

Offence committed in prison (where not taken into account as a statutory aggravating factor)

Offence committed in domestic context

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

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

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

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 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

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 6 – 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 offending behaviour. See [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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 and [section 325 of the Sentencing Code](#).

Attempted murder

Criminal Attempts Act 1981, s.1(1)

Effective from: 1 July 2021

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 – 40 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

Where the offence has a terrorist connection this is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

STEP ONE
Determining the offence category

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

Culpability demonstrated by one or more of the following:

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

Harm	
Category 1	<p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>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 their normal day to day activities or on their ability to work</p>
Category 2	Serious physical or psychological harm not in category 1
Category 3	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 before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders custodial sentence lengths have on average been longer than for White offenders. There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

For offences involving an extreme nature of one or more very high or 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.

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

Offence committed in domestic context

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

Abuse of position of trust

Gratuitous degradation of victim

Others put at risk of harm by the offence

Use of duress or threats against another person to facilitate the commission of the offence

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

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

Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)

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

Attempt by offender to give assistance/summon help when the attempted murder failed

Remorse

Good character and/or exemplary conduct

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)

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

Step 3 – Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

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 6 – Required special sentence for certain offenders of particular concern

Where the offence has a terrorist connection and satisfies the criteria in section [278](#) of the Sentencing Code 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 (sections [265](#) and [278](#) of the Sentencing Code).

Step 7 – 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 offending behaviour. See [Totality](#) guideline.

Step 8 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – 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 and [section 325 of the Sentencing Code](#).

Annex B

	Category 1	Category 2	Category 3
Knocked out victim's front teeth. Victim had to undergo dental treatment, and now feels reluctance to go out/nervous in the street and public places.	81.6% (169)	16.4% (34)	1.9% (4)
Spat in victim's face and beat up victim in a sustained assault resulting in a head injury (subarachnoid haemorrhage).	88.9% (184)	9.7% (20)	1.4% (3)
Bite marks to victim's arm causing pain and reddening of skin for a few days.	4.8% (10)	36.2% (75)	58.9% (122)
Injuries amounted to severe bruising and swelling and took 3 weeks to be completely healed and no longer visible.	9.2% (19)	59.9% (124)	30.9% (64)
Injuries included weakness to knee, head injury caused temporary blurred vision, and symptoms to the soft tissue of the neck caused discomfort for one week.	13.5% (28)	68.1% (141)	18.4% (38)
Deep two-inch cut to the back of victim's neck and other small cuts and scratches.	34.3% (71)	49.8% (103)	15.9% (33)
Bit victim's finger causing fracture. Significant pain and required pinning and wiring.	66.2% (137)	32.9% (68)	1.0% (2)
Pierced victim's neck with a sharp object stating it was a dirty heroin needle. Victim feared contracting HIV and/or Hepatitis B and on medication which has caused side effects making him sick. Deep distress suffered.	97.1% (201)	1.4% (3)	1.4% (3)
Injuries caused by punching and kicking, bruising from head to toe; sustained bruising to the upper left shoulder and neck, bruising to lower back, bruising to the back of right arm, bruising to the left arm, bruising to the left side of the face and neck including a black eye, bruising to legs, bruising to the side of torso.	60.9% (126)	37.2% (77)	1.9% (4)
Swollen wrist and pain to hand. Victim suffered panic attacks and needed to take 2 months off work.	42.5% (88)	54.6% (113)	2.9% (6)
Superficial cuts to neck and finger, swollen knee.	2.4% (5)	7.7% (16)	89.9% (186)
Soft tissue injuries to face; no permanent physical injury but ongoing psychological effects, waking up with nightmares and suffers anxiety.	30.9% (64)	64.3% (133)	4.8% (10)
Injuries to victim's hands causing serious discomfort but no lasting effects.	1.9% (4)	24.6% (51)	73.4% (152)
Injuries to leg; not broken but nerve damage and permanent scar, affects victim's walking and causes pain.	76.8% (159)	21.7% (45)	1.4% (3)
Multiple injuries including bruising, black eye, a bleed below the skin of the eye and a haemorrhage in inner ear.	49.3% (102)	48.8% (101)	1.9% (4)
Cuts and bruises and victim very distressed and scared to be in house alone.	22.2% (46)	66.2% (137)	11.6% (24)
Dislocated elbow, anaesthetic required to treat at hospital.	30.4% (63)	57.0% (118)	12.6% (26)
Bleeding and injury to eye, bruising and grazing to groin and leg.	9.2% (19)	61.4% (127)	29.5% (61)
Broken nose which is still deviated and several broken teeth which will require operations and medical treatment to rectify.	85.5% (177)	13.5% (28)	1.0% (2)
Pain and bruising to thighs and buttocks lasted for a week.	2.4% (5)	19.8% (41)	77.8% (161)

Annex B

	Category 1	Category 2	Category 3
Pain to head and some hair loss from hair pulling and pain to shoulder lasted a few days.	1.9% (4)	30.4% (63)	67.6% (140)
Bruising and reddening to neck from strangulation, victim feared death.	60.4% (125)	36.7% (76)	2.9% (6)
Broken nose, fully recovered after 3 weeks.	10.6% (22)	72.5% (150)	16.9% (35)
Loss of consciousness for a few minutes and temporary lump and swelling to back of head.	18.4% (38)	62.8% (130)	18.8% (39)
Victim punched 3 times in face, causing broken nose, black eyes and split lip.	37.7% (78)	53.6% (111)	8.7% (18)

Assault Offences Sentencing Outcomes by Ethnicity

This paper highlights the statistics on the distribution of sentencing outcomes and the average (mean) custodial sentence lengths (ACSL) for assault offences by ethnicity, this information has been used to inform the disparity wording that has been included within the guidelines.

Please note:

- The proportions presented below have been calculated excluding offenders recorded as 'otherwise dealt with'.
- Offences marked with an asterisk (*) are those for which we have included disparity wording within the guideline. Where no asterisk is present, it denotes that no obvious evidence of disparity was found.
- For most offences, figures are presented for 2019 only, for offences with low volumes, data from 2015-2019 has been grouped together to allow for more meaningful analysis.
- Offenders with unknown or unrecorded ethnicity have been excluded from the analysis.

Common Assault

- In 2019, there were generally similar outcomes across all ethnicity, the most common outcome across all ethnic groups was a community sentence.
- The ACSL was broadly similar across ethnicities (ranging between 2.8 and 3 months).

Racially of religiously aggravated common assault

- Sentencing outcomes were broadly similar across all ethnicities in 2019, and as seen for common assault, the most frequent outcome was a community sentence.

Assault on emergency workers

- In 2019, around 60 per cent of offenders of all ethnicities received a fine or community order.
- For those sentenced to immediate custody, the ACSL was similar across all ethnicities (2.6 months for all ethnicities except Asian which was 2.0 months)

Assault with intent to resist arrest *

- Between 2015 and 2019, a higher proportion of Black and Mixed offenders (36 per cent and 38 per cent) received an immediate custodial, compared to 28 per cent of White offenders, 24 per cent of Asian offenders and 20 per cent of Chinese or Other ethnicity offenders.
- For those receiving an immediate custodial sentence, the ACSL was broadly similar across all ethnicities.

Assault occasioning actual bodily harm *

- In 2019, a higher proportion of Black (50 per cent) and Mixed offenders (57 per cent) received an immediate custodial sentence, compared to White (43 per cent), Asian (40 per cent) and Chinese or Other ethnicity offender (34 per cent).
- The ACSL's were very similar across ethnicities (around 13 months in 2019).

Racially/religiously aggravated assault occasioning actual bodily harm

- Between 2015 and 2019, there were very low volume of Black, Asian, Mixed and Chinese or Other ethnicity offenders sentenced for this offence.
- Of those that were sentenced, outcomes were broadly similar across ethnicities.

Inflicting grievous bodily harm/unlawful wounding (s20) *

- In 2019, a higher proportion of Black (64%), Mixed (69%) and Chinese or Other (65%) ethnicity offenders received an immediate custodial sentence than White and Asian offenders (54% and 55%).
- The ACSL was broadly stable among the ethnicities, ranging between 21 and 23 months.

Racially/religiously aggravated grievous bodily harm/unlawful wounding

- Between 2015 and 2019, there were very few offenders sentenced for this offence and nearly all were White.

Grievous bodily harm/wounding with intent (s18) *

- In 2019, almost all offenders were sentenced to immediate custody (around 96%).
- The ACSL was approximately a year higher for Black and Asian offenders (7.7 years and 7.5 years), than for White, Mixed and Chinese or Other ethnicity offenders (6.7 years, 6.4 years and 6.5 years respectively).

Attempted murder *

- Between 2015 and 2019, nearly all offenders received immediate custody (1 White offender received a suspended sentence).
- The ACSL for Black and Asian offenders was higher than for White offenders (14.8 and 21.1 years compared to 13.8 years).¹

¹ Mixed and Chinese or Other ethnicity offenders have been excluded from this due to very small volume of offenders sentenced.