

# Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

# Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the  
Criminal Justice Act 2003

Triable either way

## Section 20

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 5 years' custody

## Section 29

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 7 years' custody

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

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<p><b>Factors indicating greater harm</b></p> <p>Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)</p> <p>Victim is particularly vulnerable because of personal circumstances</p> <p>Sustained or repeated assault on the same victim</p>	<p>Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)</p> <p>Intention to commit more serious harm than actually resulted from the offence</p> <p>Deliberately causes more harm than is necessary for commission of offence</p> <p>Deliberate targeting of vulnerable victim</p>
<p><b>Factors indicating lesser harm</b></p> <p>Injury which is less serious in the context of the offence</p>	<p>Leading role in group or gang</p> <p>Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)</p>
<p><b>Factors indicating higher culpability</b></p> <p><i>Statutory aggravating factors:</i></p> <p>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)</p> <p>Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)</p> <p><i>Other aggravating factors:</i></p> <p>A significant degree of premeditation</p>	<p><b>Factors indicating lower culpability</b></p> <p>Subordinate role in a group or gang</p> <p>A greater degree of provocation than normally expected</p> <p>Lack of premeditation</p> <p>Mental disorder or learning disability, where linked to commission of the offence</p> <p>Excessive self defence</p>

## STEP TWO

### Starting point and category range

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.

Offence Category	Starting Point ( <i>Applicable to all offenders</i> )	Category Range ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	Crown Court	Crown Court
<b>Category 2</b>	Crown Court	Crown Court
<b>Category 3</b>	High level community order	Low level community order – Crown Court (51 weeks' custody)

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

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Single blow
Offence committed whilst on bail	Remorse
<i>Other aggravating factors include:</i>	Good character and/or exemplary conduct
Location of the offence	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Timing of the offence	Serious medical conditions requiring urgent, intensive or long-term treatment
Ongoing effect upon the victim	Isolated incident
Offence committed against those working in the public sector or providing a service to the public	Age and/or lack of maturity where it affects the responsibility of the offender
Presence of others including relatives, especially children or partner of the victim	Lapse of time since the offence where this is not the fault of the offender
Gratuitous degradation of victim	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
In domestic violence cases, victim forced to leave their home	Sole or primary carer for dependent relatives
Failure to comply with current court orders	
Offence committed whilst on licence	
An attempt to conceal or dispose of evidence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Commission of offence whilst under the influence of alcohol or drugs	
Abuse of power and/or position of trust	
Exploiting contact arrangements with a child to commit an offence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Offences taken into consideration (TICs)	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

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

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

### **STEP FIVE**

#### **Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

# Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

**Triable either way**

## **Section 47**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 5 years' custody

## **Section 29**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 7 years' custody

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

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

## STEP TWO

### Starting point and category range

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.

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

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

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	
<i>Statutory aggravating factors:</i>	Exploiting contact arrangements with a child to commit an offence
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	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Offence committed whilst on bail	Offences taken into consideration (TICs)
<i>Other aggravating factors include:</i>	Factors reducing seriousness or reflecting personal mitigation
Location of the offence	No previous convictions <b>or</b> no relevant/recent convictions
Timing of the offence	Single blow
Ongoing effect upon the victim	Remorse
Offence committed against those working in the public sector or providing a service to the public	Good character and/or exemplary conduct
Presence of others including relatives, especially children or partner of the victim	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Gratuitous degradation of victim	Serious medical conditions requiring urgent, intensive or long-term treatment
In domestic violence cases, victim forced to leave their home	Isolated incident
Failure to comply with current court orders	Age and/or lack of maturity where it affects the responsibility of the offender
Offence committed whilst on licence	Lapse of time since the offence where this is not the fault of the offender
An attempt to conceal or dispose of evidence	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Sole or primary carer for dependent relatives
Commission of offence whilst under the influence of alcohol or drugs	
Abuse of power and/or position of trust	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

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

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

### **STEP FIVE**

#### **Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault with intent to resist arrest

## Offences against the Person Act 1861 (section 38)

**This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003**

**Triable either way**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 2 years' custody

**Offence range: Fine – 51 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

#### Factors indicating greater harm

Sustained or repeated assault on the same victim

#### Factors indicating lesser harm

Injury which is less serious in the context of the offence

#### Factors indicating higher culpability

##### *Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

##### *Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

#### Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

## STEP TWO

### Starting point and category range

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.

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' custody – Crown Court (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

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.

When sentencing **category 1** offences, the court should consider whether the sentence can be suspended.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Single blow
Offence committed whilst on bail	Remorse
<i>Other aggravating factors include:</i>	Good character and/or exemplary conduct
Location of the offence	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Timing of the offence	Serious medical conditions requiring urgent, intensive or long-term treatment
Ongoing effect upon the victim	Isolated incident
Gratuitous degradation of victim	Age and/or lack of maturity where it affects the responsibility of the defendant
Failure to comply with current court orders	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
Offence committed whilst on licence	Sole or primary carer for dependent relatives
An attempt to conceal or dispose of evidence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Commission of offence whilst under the influence of alcohol or drugs	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Offences taken into consideration (TICs)	

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

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

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

### **STEP FIVE**

#### **Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

## **Triable only summarily**

Maximum: Level 5 fine and/or 26 weeks' custody

## **Offence range: Fine – 26 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

#### Factors indicating greater harm

Sustained or repeated assault on the same victim

#### Factors indicating lesser harm

Injury which is less serious in the context of the offence

#### Factors indicating higher culpability

##### *Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

##### *Other aggravating factors:*

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

#### Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

## STEP TWO

### Starting point and category range

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.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 weeks' custody	Low level community order – 26 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

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.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

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

Offence committed whilst on bail

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

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

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

Offences taken into consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

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

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

### **STEP FIVE**

#### **Totality principle**

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

### **STEP SIX**

#### **Compensation and ancillary orders**

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

### **STEP SEVEN**

#### **Reasons**

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

### **STEP EIGHT**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Common Assault

Criminal Justice Act 1988 (section 39)

# Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

**Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003**

## **Section 39**

**Triable only summarily**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

## **Section 29**

**Triable either way**

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 2 years' custody

**Offence range: Discharge – 26 weeks' custody**

This guideline applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011. The definitions at page 145 of 'starting point' and 'first time offender' do not apply for this guideline. Starting point and category ranges apply to all offenders in all cases, irrespective of plea or previous convictions.

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> lower culpability; <b>or</b> lesser harm and higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

<b>Factors indicating greater harm</b>	
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Victim is particularly vulnerable because of personal circumstances	Intention to commit more serious harm than actually resulted from the offence
Sustained or repeated assault on the same victim	Deliberately causes more harm than is necessary for commission of offence
<b>Factors indicating lesser harm</b>	Deliberate targeting of vulnerable victim
Injury which is less serious in the context of the offence	Leading role in group or gang
<b>Factors indicating higher culpability</b>	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
<i>Statutory aggravating factors:</i>	<b>Factors indicating lower culpability</b>
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	A greater degree of provocation than normally expected
<i>Other aggravating factors:</i>	Lack of premeditation
A significant degree of premeditation	Mental disorder or learning disability, where linked to commission of the offence
	Excessive self defence

## STEP TWO

### Starting point and category range

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.

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

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

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Single blow
Offence committed whilst on bail	Remorse
<i>Other aggravating factors include:</i>	Good character and/or exemplary conduct
Location of the offence	Determination and/or demonstration of steps taken to address addiction or offending behaviour
Timing of the offence	Serious medical conditions requiring urgent, intensive or long-term treatment
Ongoing effect upon the victim	Isolated incident
Offence committed against those working in the public sector or providing a service to the public	Age and/or lack of maturity where it affects the responsibility of the offender
Presence of others including relatives, especially children or partner of the victim	Lapse of time since the offence where this is not the fault of the offender
Gratuitous degradation of victim	Mental disorder or learning disability, where <b>not</b> linked to the commission of the offence
In domestic violence cases, victim forced to leave their home	Sole or primary carer for dependent relatives
Failure to comply with current court orders	
Offence committed whilst on licence	
An attempt to conceal or dispose of evidence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Commission of offence whilst under the influence of alcohol or drugs	
Abuse of power and/or position of trust	
Exploiting contact arrangements with a child to commit an offence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Offences taken into consideration (TICs)	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

### **STEP THREE**

#### **Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account any rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

### **STEP FOUR**

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

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

### **STEP FIVE**

#### **Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

#### **Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.