

DOMESTIC VIOLENCE VOLUME 2

245.1

[Serious Crime Act 2015 s76](#) (Controlling or coercive behaviour in an intimate or family relationship)¹

Mode of trial Triable either way

Maximum sentence On indictment 5 years. Summary maximum 6 months and an unlimited fine. There are maximum fines for those aged under 18, see [13.42](#) in Volume 1.

Criminal Behaviour Orders Where a defendant has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any persons and a Criminal Behaviour Order will help in preventing the offender from engaging in such behaviour, the court may make this order.²

245.2a *Controlling or coercive behaviour Intimidatory Offences Guideline 2018*

Intimidatory Offences Guideline 2018 www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 27

Controlling or coercive behaviour in an intimate or family relationship

[Serious Crime Act 2015 s 76](#)

Where [the] offence [was] committed in a domestic context, also refer to the [*Domestic Violence Guideline 2006*.]

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 – Higher culpability	<ul style="list-style-type: none">• Conduct intended to maximise fear or distress• Persistent action over a prolonged period• Use of multiple methods of controlling or coercive behaviour• Sophisticated offence• Conduct intended to humiliate and degrade the victim
B – Medium culpability	<ul style="list-style-type: none">• Conduct intended to cause some fear or distress• Scope and duration of offence that falls between categories A and C• All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none">• Offender's responsibility substantially reduced by mental disorder or learning disability• Offence was limited in scope and duration

Harm

The level of harm is assessed by weighing up all the factors of the case

¹ In force 29/12/15, see [Serious Crime Act 2015 \(Commencement No. 4\) Regs 2015/1976](#) para 2.

² [Anti-social Behaviour, Crime and Policing Act 2014 s 22\(1\)-\(4\)](#)

Category 1	<ul style="list-style-type: none"> • Fear of violence on many occasions • Very serious alarm or distress which has a substantial adverse effect on the victim • Significant psychological harm
Category 2	<ul style="list-style-type: none"> • Fear of violence on at least two occasions • Serious alarm or distress which has a substantial adverse effect on the victim

245.2b

STEP TWO Starting point and category range

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

Culpability	A	B	C
Category 1	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 1 to 4 years' custody	Category range 26 weeks' to 2 years 6 months' custody	Category range High-level community order to 1 year's custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point Medium-level community order
	Category range 26 weeks' to 2 years 6 months' custody	Category range High-level community order to 1 year's custody	Category range Low-level community order to 26 weeks' custody

For the meaning of high-level, medium-level and low-level community orders, see [15.12](#) in Volume 1.

245.2c [Aggravating and mitigating factors]

Page 30 The court should then consider any adjustment for any aggravating or mitigating factors. Below is 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.

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: religion, race, disability, sexual orientation, or transgender identity

Other aggravating factors:

Steps taken to prevent the victim reporting an incident

Steps taken to prevent the victim obtaining assistance
A proven history of violence or threats by the offender in a domestic context
Impact of offence on others particularly children
Exploiting contact arrangements with a child to commit the offence
Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
Victim left in debt, destitute or homeless
Failure to comply with current court orders
Offence committed on licence or post sentence supervision
Offences taken into consideration
Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity
Mental disorder or learning disability (where not taken into account at step one)
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE, STEP FOUR and STEP FIVE relate to assistance to the prosecution, guilty plea reduction and the totality principle.

STEP SIX

Compensation and ancillary orders

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

STEP SEVEN and STEP EIGHT relate to giving reasons and tag time.