

## HARASSMENT SECTION 2 VOLUME 2

### 269.1a Intimidatory Offences Guideline 2018

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[Harassment Protection from Harassment Act 1997 s 2](#)

[Stalking Protection from Harassment Act 1997 s 2A](#)

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	High culpability: <ul style="list-style-type: none"><li>• Conduct intended to maximise fear or distress</li><li>• High degree of planning and/or sophisticated offence</li><li>• Persistent action over a prolonged period</li><li>• Threat of serious violence</li><li>• Offence motivated by, or demonstrating, hostility based on any of the following characteristics or presumed characteristics of the victim: age, sex, disability, sexual orientation or transgender identity</li></ul>
B	Medium culpability: Cases that fall between categories A and C, in particular: <ul style="list-style-type: none"><li>• Conduct intended to cause some fear or distress</li><li>• Some planning</li><li>• Threat of some violence</li><li>• Scope and duration of offence that falls between categories A and C</li></ul>
C	Lesser culpability: <ul style="list-style-type: none"><li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li><li>• Little or no planning</li><li>• Offence was limited in scope and duration</li></ul>

#### Harm

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

Category 1	<ul style="list-style-type: none"><li>• Very serious distress caused to the victim</li><li>• Significant psychological harm caused to the victim</li><li>• Victim caused to make considerable changes to lifestyle to avoid contact</li></ul>
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Category 2	Harm that falls between categories 1 and 3, and in particular: <ul style="list-style-type: none"> <li>• Some distress caused to the victim</li> <li>• Some psychological harm caused to the victim</li> <li>• Victim caused to make some changes to lifestyle to avoid contact</li> </ul>
Category 3	• Limited distress or harm caused to the victim

## 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.

Maximum: 6 months' custody (basic offence)

Culpability			
Harm	A	B	C
Category 1	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order	<b>Starting point</b> Medium-level community order
	<b>Category range</b> High-level community order to 26 weeks' custody	<b>Category range</b> Medium-level community order to 16 weeks' custody	<b>Category range</b> Low-level community order to 12 weeks' custody
Category 2	<b>Starting point</b> High-level community order	<b>Starting point</b> Medium-level community order	<b>Starting point</b> Low-level community order
	<b>Category range</b> Medium-level community order to 16 weeks' custody	<b>Category range</b> Low-level community order to 12 weeks' custody	<b>Category range</b> Band B fine to medium-level community order
Category 3	<b>Starting point</b> Medium-level community order	<b>Starting point</b> Low-level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Low-level community order to 12 weeks' custody	<b>Category range</b> Band B fine to medium-level community order	<b>Category range</b> Discharge to low-level community order

For the meaning of high-level, medium-level and low-level community orders, see [15.12](#) in Volume 1. A Band B fine is 100% of net weekly income, see [58.27](#).

### 269.1b [Aggravating and mitigating factors]

Page 16 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

Other aggravating factors:

Using a position of trust to facilitate the offence

Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)

Grossly violent or offensive material sent

Impact of offence on others, particularly children

Exploiting contact arrangements with a child to commit the offence

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

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.

### **269.5 *Racially or religiously aggravated***

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The guideline is the main guideline, see **269.1a** and the Racially or Religiously Aggravated Harassment/Stalking section of this guideline, see **270.5a**.