

270.2a Intimidatory Offences Guideline 2018

Intimidatory Offences Guideline 2018 www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 5

Harassment: [Protection from Harassment Act 1997 s 4](#)

Stalking: [Protection from Harassment Act 1997 s 4A](#)

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:

<b>A</b>	<b>Very high culpability</b> – the extreme nature of one or more culpability B factors or the extreme culpability indicated by a combination of culpability B factors may elevate to category A.
<b>B</b>	<b>High culpability:</b> <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>• 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>C</b>	<b>Medium culpability:</b> Cases that fall between categories B and D, and in particular: <ul style="list-style-type: none"> <li>• Conduct intended to cause some fear or distress</li> <li>• Some planning</li> <li>• Scope and duration of offence that falls between categories B and D</li> </ul>
<b>D</b>	<b>Lesser culpability:</b> <ul style="list-style-type: none"> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Conduct unlikely to cause significant fear or distress</li> <li>• Little or no planning</li> <li>• Offence was limited in scope and duration</li> </ul>

<b>Harm</b> The level of harm is assessed by weighing up all the factors of the case	
<b>Category 1</b>	<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>
<b>Category 2</b>	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>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Limited distress or harm caused to the victim</li> </ul>

## STEP TWO

### Starting point and category range

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

**Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this consideration may be relevant.**

**Maximum: 10 years' custody (basic offence)**

<b>Culpability</b>				
<b>Harm</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Category 1</b>	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody
	<b>Category range</b> 3 years 6 months' to 8 years' custody	<b>Category range</b> 1 to 4 years' custody	<b>Category range</b> 12 weeks to 1 year 6 months' custody	<b>Category range</b> High-level community order to 36 weeks' custody
<b>Category 2</b>	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order
	<b>Category range</b> 1 to 4 years' custody	<b>Category range</b> 12 weeks' to 1 year 6 months' custody	<b>Category range</b> High-level community order to 36 weeks' custody	<b>Category range</b> Low-level community order to 12 weeks' custody
<b>Category 3</b>	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order	<b>Starting point</b> Low-level community order
	<b>Category range</b> 12 weeks' to 1 year 6 months' custody	<b>Category range</b> High-level community order to 36 weeks' custody	<b>Category range</b> Low-level community order to 12 weeks' custody	<b>Category range</b> Band C fine to high-level community order

For the meaning of high-level and low-level community orders, see **15.12** in Volume 1. A Band C fine is 150% of net weekly income, see **58.27**.

## **270.2b [Aggravating and mitigating factors]**

Page 8 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, STEP FIVE and STEP SIX relate to assistance to the prosecution, guilty plea reduction, dangerousness and the totality principle.

## STEP SEVEN

### **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 EIGHT and STEP NINE relate to giving reasons and tag time.

### **270.5a Racially or religiously aggravated Intimidatory Offences Guideline 2018**

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**Racially or religiously aggravated harassment** [Crime and Disorder Act 1998 s 32\(1\)\(b\)](#)

**Racially or religiously aggravated stalking** [Crime and Disorder Act 1998 s 32\(1\)\(b\)](#)

[Note: The racially or religiously aggravated sections of the guideline for the section 2 and section 2A offence are the same as the section of the guideline for the section 4 and section 4A offence except that the two guidelines have different titles and a statement giving their different maximums. Ed.]

## **RACIALLY OR RELIGIOUSLY AGGRAVATED HARASSMENT/STALKING 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 14 years' custody (maximum for the basic offence is 10 years' custody)**

[Note: In the non-aggravated offence, this section reads: **Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum for the basic offence is 6 months' custody).** Ed. ]

<b>HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>
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<b>SENTENCE UPLIFT</b>
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<ul style="list-style-type: none"> <li>• Racial or religious aggravation was the predominant motivation for the offence.</li> <li>• Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence).</li> <li>• 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).</li> <li>• Aggravated nature of the offence caused serious fear and distress throughout local community or more widely</li> </ul>	<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>
<p><b>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>• Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>• Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one).</li> <li>• Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.</p>
<p><b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b></p>	<p><b>SENTENCE UPLIFT</b></p>
<ul style="list-style-type: none"> <li>• Aggravated element formed a minimal part of the offence as a whole.</li> <li>• 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).</li> </ul>	<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.**

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

## 270.6 Racially or religiously aggravated Cases

*R v Misalati* 2017 EWCA Crim 2226 D pleaded to racially aggravated harassment and racially aggravated common assault. D was in the waiting area of a Jobcentre drinking a cup of coffee. V1, a customer care officer, approached D and told him that he would need to finish his coffee before he could attend his appointment. D swore at V1 and said “You Pakis clean toilets. Are you a Paki?” When V1 said that he was not, D said “So you are a sand nigger.” D attended his appointment with V2, a work coach. She had interviewed D before and had warned him about his language. V2 examined D’s record and said to him that it appeared he had not actually been looking for work. D became abusive saying, “You have stolen my money. You Pakis stole my passport. You’re a fucking devil. You’re a motherfucker. You open your pussy to niggers.” Referring to V2’s hijab, D said, “you wear all of this, but you are the devil inside.” A security guard asked D to leave. D spat at him and called him a Paki. V2 was frightened by the event and, in her victim impact statement, said that she required security to be close by when she saw men. D was in his early 30s at the time of the sentence and had no previous convictions but had three cautions in respect of damage to property and possession of drugs. He was

from Libya and had been in the UK for some 15 years. The Judge said that without the racial aggravation the offences would have attracted a sentence of 6 months, but the racial aggravation required an uplift of 9 months. Held. The maximum sentence is 2 years. The Judge must have started at 22½ months. We start at 15 months and take into account there were three public servant victims, so with plea, **10 months**, not 15.