

345.4 Cases

R v Thompson and Others 2018 EWCA Crim 639 (5-judge court) F pleaded to ten counts of threats to kill. In prison, he passed a letter to a prison officer, P, saying he wanted to kill a fellow prisoner and then have sex with his corpse. The letter also said he wanted to commit various sex offences on P, other officers and prisoners. A week later, he told P that he would slit P's throat if he was ever out of prison. A few days later, there was another letter handed to a prison officer saying he was going to kill two prison staff or the governor and he wanted to have sex with their bodies. Further, he wanted to kill a particular officer. Three weeks later, F handed another letter to an officer, containing similar intentions to kill staff, governors and after an escape F's probation officer. Two further letters were received with similar threats, but this time included a named District Judge and some unidentified children. F was aged 38 and in 2011 and 2013 had convictions for possessing a knife. He was serving a 2½-year prison sentence for possessing a bladed article. He had telephoned police saying he was going to kill someone and then himself. F had repeatedly self-harmed both in and out of custody. F explained he had overwhelming sadistic urges and fantasies of killing men and adolescent boys and sexually interfering with their bodies. He was assessed as possessing a grave and immediate danger to the public. A mental health disposal was not available. The Judge started at the 10-year maximum and with plea passed 9 years on the first five counts, all consecutive making 45 years. Held. The sentence was entirely disproportionate. We pass extended sentences with 6-year custodial terms on all counts. Counts 1-5 will be consecutive to counts 6-10 making in total 20 years' extended sentence (12 years' custody 8 years' extended licence.)

345.6 Relationship etc.

R v Furmage 2018 EWCA Crim 433 D pleaded to two threats to kill. D had been in a relationship with V, aged 17, but it had ended. D tried to reignite the relationship with a series of WhatsApp and Snapchat messages but this plan failed and the messages changed in tone and contained threats to kill V and one of V's friends, T, also aged 17. D made threats such as, "If you make me pull my gun out, I will fucking murder you." There were a number of messages of this kind and they accompanied a photo of a firearm on a sofa. The sofa was identified by V as the sofa in D's house. A message from D to T, who was advising V against re-starting the relationship, read, "Don't get involved and I won't spread your chest." V and T contacted the police immediately. D was aged 20 at the time of the offences and had already had 10 convictions for a variety of offences including battery, assault PC and GBH. For the GBH (16 months' YOI), V was an ex-girlfriend of D's who had rejected his advances. D had punched her in the face causing a double fracture to her jaw. The Judge said that D presented a significant risk of serious harm to the public and said he regarded D as a "very dangerous young man and a very worrying defendant". The Judge failed to pass an extended sentence because he misunderstood the law. He identified the aggravating factors as: a) the previous convictions, b) offence was committed whilst D was on licence, c) the threat involving firearms, d) the vulnerability of V and T, they being only aged 17, and e) the fact that D committed these offences under the influence of alcohol and cocaine. Held. The sentence of 5 years' detention amounted to a sentence of 7½ years after trial. We start at 6 years, 1 given D's very bad previous record and the aggravating factors. With full credit for plea, 4 years not 5.

345.1a Intimidatory Offences Guideline 2018

Intimidatory Offences Guideline 2018 www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 33

Threats to kill [Offences Against the Person Act 1861 s 16](#)

¹ The judgment says this was after a plea, but that cannot be right.

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"> • Significant planning and/or sophisticated offence • Visible weapon • Threat(s) made in the presence of children • History of and/or campaign of violence towards the victim • Threat(s) with significant violence
B – Medium culpability	<p>Cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors described in 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.

Category 1	<ul style="list-style-type: none"> • Very serious distress caused to the victim • Significant psychological harm caused to the victim • Offence has a considerable practical impact on the victim
Category 2	<p>Harm that falls between categories 1 and 3, and in particular:</p> <ul style="list-style-type: none"> • Some distress caused to the victim • Some psychological harm caused to the victim • Offence has some practical impact on the victim
Category 3	<ul style="list-style-type: none"> • Little or no 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.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody

Harm	Culpability		
	A	B	C
	Category range 2 to 7 years' custody	Category range 1 to 4 years' custody	Category range 26 weeks' to 2 years 6 months' custody
Category 2	Starting point 2 years' 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 3	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 high-level community order

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

345.1b [Aggravating and mitigating factors]

Page 36 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:

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

Impact of offence on others, particularly children

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

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. xxx

345.1d *Suggested approach to the guideline*

Note: I suggest sentencers just apply the guideline and ignore the old cases as they may confuse rather than assist. Ed.