

## Assault on an emergency worker

This is a **simplified version** of the guideline **Common assault/Racially or religiously aggravated common assault/Battery/Common assault on emergency worker**. You can see the full version of the guideline on the Sentencing Council website

**Common Assault and battery (sometimes described as assault by beating)**, Criminal Justice Act 1988 (section 39)

**Racially/religiously aggravated common assault**, Crime and Disorder Act 1998 (section 29)

**Assaults on emergency workers**, Assaults on Emergency Workers (Offences) Act 2018 (section 1)

### **Section 39**

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

### **Racially or religiously aggravated offence – Section 29**

Triable either way

Maximum: 2 years' custody

### **Offence committed against an emergency worker – Section 1**

Triable either way

Maximum: 2 years' custody (1 year's custody for offences committed before 28 June 2022)

Racially or religiously aggravated common assault is a specified offence for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

This guideline applies to all offenders aged 18 and older, who are sentenced on or after the effective date of this guideline, regardless of the date of the offence. The maximum sentence

that applies to an offence is the maximum that applied at the date of the offence.

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Guideline users should be aware that the Equal Treatment Bench Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

**For racially or religiously aggravated offences and aggravated assaults on emergency workers the category of the offence should be identified with reference to the factors below, and the sentence increased in accordance with the guidance at Step Three**

## Step 1 – 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**.

### Culpability

The level of culpability is determined by weighing 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.**

#### A – High culpability

- Intention to cause fear of serious harm, including disease transmission
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Prolonged/ persistent assault
- Use of substantial force
- Strangulation/ suffocation/ asphyxiation
- Threatened or actual use of weapon or weapon equivalent\*
- Leading role in group activity

## **B – Lesser culpability**

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- Excessive self defence
- All other cases not captured by category A factors

\*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

## **Harm**

In assessing the level of harm, consideration should be given to:

- the number of injuries
- severity of injury and pain suffered
- duration or longevity of any psychological harm or distress caused

### **Category 1**

- More than minor physical or psychological harm/distress

### **Category 2**

- Minor physical or psychological harm/distress

### **Category 3**

- No/very low level of physical harm and/or distress

## **Step 2 – 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.

Harm	Culpability	
	A	B
Harm 1	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> Low level community order – 26 weeks’ custody	<b>Category range</b> Low level community order – 16 weeks’ custody
Harm 2	<b>Starting point</b> Medium level community order	<b>Starting point</b> Low level community order
	<b>Category range</b> Low level community order – 16 weeks’ custody	<b>Category range</b> Band C fine – High level community order
Harm 3	<b>Starting point</b> Low level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> Band C fine – High level community order	<b>Category range</b> Discharge – Low 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.

## 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: disability, sexual orientation or transgender identity
- Offence was committed against person providing a public service, performing a public duty or providing services to the public

### **Other aggravating factors:**

- Deliberate spitting or coughing (where not taken into account at step one)
- Biting
- Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker
- Offence committed in prison
- Presence of children
- Offence committed in a domestic abuse context
- Gratuitous degradation of victim
- Abuse of power and/or position of trust
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed whilst on licence or subject to post sentence supervision
- Failure to comply with current court orders

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Remorse
- Positive character and/or exemplary conduct (regardless of previous convictions)
- Significant degree of provocation
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Pregnancy, childbirth and post-natal care

- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

## Step 3 – Aggravated offences

### RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES

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 racially or religiously aggravated offence is 2 years' custody**

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<p>Racial or religious aggravation was the predominant motivation for the offence.</p> <p>Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</p> <p>Aggravated nature of the offence caused severe distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</p> <p>Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</p>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT

<p>Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</p> <p>Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</p>	<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>
<p>Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family <b>(over and above the distress already considered at step one)</b>.</p>	<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.**

## **ASSAULT ON EMERGENCY WORKER AGGRAVATED OFFENCES**

**Maximum sentence for the aggravated offence of assault on an emergency worker is 2 years' custody (1 year's custody for offences committed before 28 June 2022)**

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now apply an appropriate uplift to the sentence in accordance with the guidance below. **The uplifted sentence may considerably exceed the basic offence category range.**

Category A1	Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.
Category A2 or B1	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
Category A3 or B2 or B3	Consider a more onerous penalty of the same type identified for the basic offence.

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 the victim being an emergency worker, and should also state what the sentence would have been without that element of aggravation.**

## **Step 4 – Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other 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 5 – Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

## **Step 6 – Dangerousness**



Racially or religiously aggravated common assault is a specified offence. The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

## Step 7 – 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. See Totality guideline.

## Step 8 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation (Sentencing Code, s.55).

## Step 9 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

## Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code. Offence content to be added