

Sentencing Council

Sentencing Council meeting: 20 November 2015
Paper number: SC(15)NOV04 – Assault
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1 ISSUE

1.1 In March of this year the Council decided to revise comprehensively the existing assault guideline, following consideration of early findings from the assessment of the guideline.

1.2 On the 22 October the full assessment of the guideline was published on the Council’s website;¹ the synthesis is attached at **Annex A**. This assessment will be used to inform the revision of the assault guideline. The scheduled date for a consultation on the revised guideline within the work plan is July 2016, with a definitive guideline published in April 2017.

1.3 However, the Council should note that the Law Commission published its final recommendations to Government on 3 November on options to reform offences against the person, which potentially has significant implications for work on a revised assault guideline.

2 RECOMMENDATION

That the Council:

- Decides whether or not to proceed with the work on a revised assault guideline at this time due to the possibility of new legislation on assault offences, as discussed in **para 3.1, page 2**
- Agrees the scope of the project, in particular:
 - not to include child cruelty and domestic violence offences within the scope of a new assault guideline, as discussed at **para 3.3, page 3 onwards;**

¹ <http://www.sentencingcouncil.org.uk/publications/item/assault-offences-assessment-of-guideline/>.

- whether or not to include threats to kill within a revised assault guideline, as discussed at **para 3.6, page 4**;
- to include all of the offences covered by the existing guideline in a new guideline, drawing on the detailed analysis of the guideline already undertaken;
- Decides its approach towards culpability and harm:
 - whether to include three categories of harm and culpability, as discussed at **para 3.10, page 6 onwards**; and
 - The overall balance between culpability and harm in the guideline.

3 CONSIDERATION

Timing

Law Commission recommendations on offences against the person

3.1 On 3 November the Law Commission published its final recommendations² to Government on reforms to offences against the person. An overview of the recommendations is attached at **Annex B**. In summary, the Commission has carried out a project, at the request of the Ministry of Justice (MOJ), to look at modernising and restating the main offences of violence. It recommends the adoption of a modified version of the Home Office's 1998 draft Bill to replace the outdated Offences Against the Person Act of 1861, which would include a logical hierarchy of offences and a requirement that the defendant must have foreseen the level of harm caused. In addition, they propose including within the new legislation a new summary only offence of aggravated assault, carrying a maximum sentence of 12 months custody. This new offence is intended to bridge the gap between the existing offences of common assault and Actual Bodily Harm (ABH). However this would require implementation of the legislation giving magistrates the power to sentence offenders for up to 12 months for a single offence, in addition to the creation of the new offence.

3.2 The process for Law Commission reports is that the Government has to provide an interim response within six months and a full response, setting out what they plan to do, within 12 months. There has been no indication from Government as to what their likely response to the recommendations will be. The possibility of new legislation for assault offences means that the Council may wish to postpone starting

² <http://www.lawcom.gov.uk/project/offences-against-the-person/>.

work on a comprehensive review of the guideline, until the position is clear. Work could be postponed until June 2016, when the Council may be better informed as to the Government's position.

Question 1: Does the Council wish to proceed with work to revise the assault guideline at this time, given the Law Commission's recommendations? As an alternative, does the Council wish to pause work on the guideline and review in June 2016, by which time the Government should have provided an interim response to the recommendations?

Scope

Child Cruelty/Domestic Violence offences

3.3 Regardless of the decision on timing, it would be helpful to confirm the scope of the project. During the discussion in March on plans for a revised assault guideline, consideration was given to the inclusion of revised and updated guidance on child cruelty and domestic violence offences within the new guideline. There is an existing SGC guideline '*Overarching Principles: Assaults on children and cruelty to a child*', published in 2008, which is still up to date. At the time of the March discussion it was thought that there was going to be a new child cruelty offence created, which would possibly require the guideline to be updated. However, it has since been confirmed that the recent legislation on child cruelty was only to clarify the existing offences, not to create a new offence. While we are aware of some political interest in amending these offences, we are unaware of any Government plans to do so.

3.4 In its consideration of the 2015-18 work plan at the April meeting, the Council indicated that it was content for this to be pursued as a separate project, rather than incorporated in the revised assault guideline, so long as it did not get overlooked. As a result, the Council is due to consider revision of the child cruelty guideline from June 2016. It is recommended that this remains a separate project, which may yet be accelerated.

Question 2: Does the Council agree not to include guidance on child cruelty offences within the revised assault guideline, but undertake this revision as a separate project?

3.5 In the March meeting, the Council also discussed whether to include revised guidance on domestic violence offences within a new assault guideline. The existing SGC guideline '*Overarching Principles: Domestic Violence*' was published in 2006 and is broadly still current. Since the March meeting further consideration has been

given to the scope of the project regarding the domestic violence guideline and it is recommended that due to the very particular issues within these offences, the guidance should be kept separately within an overarching guideline, and not subsumed within an assault guideline. The assessment of the assault guideline did show that some users wanted domestic violence to be referenced more explicitly within the guidelines, which could be considered when revising the assault guideline. Revision of the overarching principles on domestic violence is also currently scheduled around June 2016.

Question 3: Does the Council agree not to include guidance on domestic violence within a revised assault guideline?

Threats to kill

3.6 The current work to revise the Magistrates' Court Sentencing Guidelines (MCSG) has identified some offences, such as threats to kill and arson, for which guidance does not sit neatly within the MCSG, given their seriousness and statutory maxima, (threats to kill carries a maximum of 10 years, and arson a maximum of life imprisonment.) It would not be appropriate to include arson within a revised assault guideline, but consideration could be given to including threats to kill. This offence is also prosecuted under the Offences Against the Person Act and the Law Commission has recommended expanding threats to kill to include threats to cause serious injury and threats to rape. In 2014 there were 488 threats to kill cases sentenced, 344 in the Crown Court and 144 in magistrates' courts, of which the large majority received a custodial sentence.

Question 4: Does the Council wish to include threats to kill within a revised assault guideline?

Possible amendments arising from the findings of the assessment of the assault guideline

3.7 The assessment of the guideline showed that most users were positive about the guideline, the first definitive guideline the Sentencing Council published in 2011. However, the following issues merit consideration as part of revision of the guideline:

- Despite the overall decrease in sentence severity, two offences, Grievous Bodily Harm (GBH) s18 and ABH s47 were found to have impacts different to those expected. For GBH, the guideline resulted in offences increasing in excess of that estimated and for ABH sentences increased, despite the estimate that the guideline would result in less severe sentences.

- There was general confusion on how to interpret and apply the step one factors of *'injury which is serious in the context of the offence'* and *'injury which is less serious in the context of the offence'*, across all the assault offences.
- Whether there is potential to double count victim vulnerability in the guideline (victim vulnerability is both a factor in harm and culpability in the guideline).
- That the guideline cannot currently accommodate cases of 'medium' harm: harm that is neither the most or the least serious, which may lead to an inaccurate categorisation of harm when using the guideline.
- Whether *'spitting'* should be reintroduced as a factor increasing seriousness, particularly within the assault on a police officer (s89) cases, where there has been a shift towards less severe disposal types (although this was anticipated).
- Whether the starting points/ranges within the GBH s18 guideline are too high, particularly the starting point in category one of 12 years.
- Whether the sentence ranges in ABH s47 cases are too low (the ranges were lower than those in the preceding SGC guideline) possibly causing some sentencers to go outside the category range.

3.8 The existing assault guideline is attached at **Annex C**, and contains six separate guidelines, all of which have the same structure and use very similar factors:

- Causing grievous bodily harm (GBH) with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (s18)
- Inflicting grievous bodily harm/Unlawful wounding (s20) and racially/religiously aggravated GBH/Unlawful wounding (s 29)
- Assault occasioning actual bodily harm (ABH) (s47) and racially/ religiously aggravated ABH (s 29)
- Assault with intent to resist arrest (s38)
- Assault on a police constable in execution of his duty (s89)
- Common assault (s39) and racially/religiously aggravated common assault

3.9 Current sentencing statistics are attached at **Annex D**. The volumes of assault offences sentenced in 2014 were high, with the exception of assault with

intent to resist arrest, section 38, for which only 136 were sentenced in 2014. It is recommended that the revised guideline still covers these offences, but that they are revised in light of the findings from the evaluation listed above.

Question 5: Does the Council agree to maintain the inclusion of the existing six offences, with revisions as appropriate in light of the findings from the evaluation listed above?

Culpability and harm

3.10 The structure of the existing assault guideline is in the older³ Sentencing Council style of culpability and harm factors at step one, with a combination of those factors leading to three offence categories being identified:

Category one – Greater harm (serious injury must normally be present) **and** higher culpability

Category two – Greater harm (serious injury must normally be present **and** lower culpability; **or** lesser harm **and** higher culpability

Category three – Lesser harm **and** lower culpability

3.11 This structure does not allow for a medium level of culpability and harm, something which more recent guidelines have incorporated, such as fraud, theft, robbery and the revised dangerous dog guideline. In the 2011 assault consultation paper, the Council stated that *'The Council considered levels which could incorporate medium levels of harm and culpability. However, it was thought to be overly complex and it was considered that sentencers should be able to use their discretion to place medium levels of harm and culpability into the category that most resembled the case'*.

3.12 However, this lack of a medium category level was identified as a specific issue from the research, (although the comments mainly related to the absence of a medium harm category, rather than a medium culpability category), as noted on page five. A medium level has been incorporated in more recent guidelines, in response to feedback from sentencers, so to reflect the breadth of offending that exists.

3.13 Accordingly, thought has been given to incorporating a medium level of culpability and harm into a revised guideline and how that change might affect the structure of the guideline. An illustration of this for GBH s18 can be seen at **Annex E**.

³ This structure is used in the early SC guidelines, assault, burglary, drugs, the first version of Dangerous Dogs.

This is at a very early stage of development, and uses the harm and culpability factors from the existing guideline, with new medium categories of culpability and harm included. There are clear implications for the sentencing table, as three levels of harm and culpability gives rise to nine boxes within the table, compared to three within the existing guideline (currently just the top and bottom of the sentence range from the existing guideline has been included). Fully populating this table with ranges could lead to changes in sentencing practice. Alternatively, three levels of harm could be created, but the two culpability levels could be retained, (given that most comments related to the lack of a medium category for harm rather than culpability) which would give rise to six boxes in the table.

3.14 This is an important issue for the Council to note, as the guideline assessment revealed that most users were supportive of the guideline overall, with comments made that the three category approach was 'sensible, intuitive and provided flexibility'. Moreover, the inference from the research was that although users wanted a medium level within the guideline, they did not necessarily want an extra category to accommodate this, but that the wording of the existing categories two and three should be amended to include it instead. Suggested rewording of the categories during the assessment was as follows:

- Category two: Greater harm and lower culpability; or lesser/**medium** harm and higher culpability
- Category three: Lesser/**medium** and lower culpability

3.15 Alternatively, a respondent to the 2011 consultation suggested a way of including a medium level of harm, within the three category model, which leaves the court to reflect the degree of culpability within the category ranges as below:

- Category 1: greater harm, high to low culpability
- Category 2: medium harm, high to low culpability
- Category 3: lesser harm, high to low culpability

3.16 The 2011 consultation response paper notes that this model gives primacy to harm over culpability, whereas the Council felt it was appropriate to give equal weight to harm and culpability within assault offences, and so this suggested model was not adopted. This raises an important issue for the development of the revised guideline as to whether or not harm and culpability should continue to be equally weighted or whether one should have a greater influence over the sentence than the other. In some recent guidelines, for example, fraud, theft and dangerous dogs, culpability,

what the offender intended, has driven the sentence rather than harm, which can be down to a matter of luck. This consideration is particularly important when it comes to developing any new sentence ranges.

3.17 Accordingly, it would be helpful if the Council indicates at this stage whether further work should be undertaken to revise the existing three category approach in order to accommodate a medium level, without radically changing the structure of the guidelines, or whether work should continue to update the guidelines into the newer format, as illustrated within **Annex E**.

Question 6: Does the Council wish to maintain the existing three category structure of the assault guideline, with additions to resolve issues raised from the evaluation, or should the guidelines be comprehensively revised to the structure of newer guidelines, given the risks of that approach?

Question 7: Does the Council want harm and culpability to continue to be equally weighted within a revised guideline? Or should one be given greater influence than the other?

3.18 Work is at a very early stage to consider possible revisions to the culpability and harm factors within the guidelines. This work will be further informed by analysis of around 100 transcripts of Crown Court sentencing remarks, in order to identify and analyse key issues within assault cases, the most common and significant factors which influence sentence levels, and so on, and by observation of assault cases in the magistrates' courts.

4 IMPACT /RISKS

4.1 As discussed in para 3.1, the Law Commission's recommendations have significant implications to the revision of the assault guideline. If work commences on the revised guideline and new legislation is later introduced then this may render a lot of the work the Council has done obsolete. Postponing work on the guideline until it is clear whether new legislation is going to be introduced or not, and what any likely timescales might be, would allow the Council to revise the assault guideline in an informed manner. However, this inevitably creates uncertainty about the timing of the project. The Council has committed to revising the assault guideline in the work plan and on the website when the assault evaluation was published. However, in light of the recent recommendations by the Law Commission, a delay to the start of the project could be justified.

4.2 In the event of a decision to postpone this project, reprioritisation of the three year work plan will be required. The Council had previously decided that work on a

manslaughter guideline should be linked to the work on assault, so that proportionality between the two guidelines could be considered. Work on manslaughter has already started within the office, with the first Council meeting scheduled for April 2016. It would be possible to continue with the work on manslaughter as planned, even if the work on assault is delayed, as any later work on assault could be used to inform the work on manslaughter as it progresses.

Question 8: Is the Council content that the impact and risks have been adequately at this stage? If not, are there any other actions or considerations that should be undertaken at this stage?

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Assessing the impact and implementation of the Sentencing Council's Assault Definitive Guideline

Summary

- A 3-staged approach was undertaken to assess the impact of the Sentencing Council's Assault Definitive Guideline on sentencing outcomes and whether there were any implementation issues.

- The assumption was that where impacts occur that differ from those expected, sentencers may be implementing the guideline in a way not anticipated by the Council.

- Looking at assault offences as a whole, the guideline has slightly decreased sentencing severity. This is likely to be as a result of the downward impact of the guideline on common assault, which makes up the largest group of assault offences.

- However, despite this overall decrease in sentence severity, two offences in particular – GBH with intent (s18) and ABH (s47) – were found to have impacts different to those expected. For GBH with intent, the guideline resulted in sentences increasing in excess of that estimated. For ABH, sentences increased, despite the estimate that the guideline would result in less severe sentences. For both, issues with applying the step 1 factors in the guideline *“injury which is serious in the context of the offence”/ “injury which is less serious in the context of the offence”* may be one explanation for this.

- For assault on a police officer (s89) offences, there was a shift towards less severe disposal types, as anticipated. Sentencers attributed this to the removal of “spitting” as a factor increasing seriousness. The offence range has also slightly decreased. Likewise, for common assault (s39) offences, sentencing severity decreased and was broadly consistent to that anticipated.

- For GBH (s20) offences, there were minor increases in sentencing severity, but these had been anticipated and were within the bounds of historic fluctuations in sentencing levels; as a result there is no strong statistical evidence that the guideline has caused a change in sentencing practice for these offences.

- In interview, sentencers and lawyers were positive about the guideline and cited many benefits it had brought about. However, the evaluation suggests that there are areas where issues with implementation exist and to support this, sentencers and lawyers highlighted a number of areas that may need clarifying.

- The areas for further consideration include:

* when to apply the factor of *“injury which is serious in the context of the offence”/ “injury which is less serious in the context of the offence”*;

* what constitutes *“sustained or repeated assault on the same victim”* and *“a significant degree of pre-meditation”*;

* whether there is the potential to double count victim vulnerability in the guideline and how this should be interpreted in a domestic context;

* whether “spitting” should be reintroduced as a factor increasing offence seriousness.

Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary who sentence criminal offences. The first guideline to be issued was the Assault Definitive Guideline which came into force in June 2011.¹

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.² Research and analysis was therefore undertaken to assess the impact of the guidelines on sentencing outcomes and whether there were any implementation issues.

A staged approach to evaluation was undertaken in order to ensure that the work covered all aspects necessary and to provide the flexibility needed to tailor resources to these areas. The work therefore comprised:

- Stage 1: Assessment of the resource implications of the assault guideline;³
- Stage 2: A descriptive analysis and time series analysis of changes in sentencing outcomes before and after the guideline came into effect;⁴
- Stage 3: Collection and analysis of qualitative data to explore some of the potential reasons for the issues found in stage 2.

Approach

In conducting this assessment, a distinction has been made between ***impact*** and ***implementation*** issues. The Council's resource assessments are concerned with anticipating any *impact* on sentencing practice that is expected to occur as a result of the guideline, over and above any changes caused by unrelated issues (e.g. changes in the volume and nature of cases coming before the courts).

In this sense, some of the observed impacts of the guideline outlined below were expected and were identified in the resource assessment. Where this is the case, the evaluation has therefore gone no further in investigating these. Likewise, where the guideline has had no impact and none was expected, no further work has been conducted.

However, in cases where either an impact has occurred that was not expected in the Council's resource assessment, or no impact has occurred where one was expected, further work has been conducted; the assumption is that where impacts differ from those expected, this is as a result of sentencers *implementing* the guideline in a way not anticipated by the Council.⁵

¹ See <http://www.sentencingcouncil.org.uk/publications/item/assault-definitive-guideline/>

² The Council must (a) monitor the operation and effect of its sentencing guidelines, and (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a) (*Coroners and Justice Act 2009, Section 128*).

³ The resource assessment associated with the definitive assault guideline can be found at: <http://www.sentencingcouncil.org.uk/publications/item/assault-final-resource-assessment/>

⁴ All offences in the guideline except assault with intent to resist arrest, due to the low volume of these offences.

⁵ This assessment did not explore the issue of consistency in sentencing in any quantitative way. Previous research on this issue has been published (Pina-Sanchez, J. and Linacre, R. (2013) *Sentence Consistency in England and Wales*, British Journal of Criminology; Pina-Sanchez, J. and Linacre, R.

Methodology

Stage 1

A resource assessment to accompany the publication of the assault definitive guideline was issued in March 2011. This was undertaken as part of guideline development work and to fulfil the Sentencing Council's statutory duties under s.127 of the Coroners and Justice Act 2009 to consider the likely effect of its guidelines on prison, probation and youth justice resources.

To do this, an analytical model was developed to estimate the change in sentencing practice which might result from the new sentencing guideline. As part of this, the aims and objectives of the new guideline were taken into account.⁶ Assumptions were also made about how sentencers would respond to, and interpret, the new guideline and what sentencing practice would be in the absence of a new guideline. The outcomes were then combined with information on the costs of sentencing to produce an estimation of likely resource impact.

More detail on the methodology employed for this resource assessment can be found at: <http://www.sentencingcouncil.org.uk/publications/item/assault-final-resource-assessment/> and for resource assessments in general at: <http://www.sentencingcouncil.org.uk/publications/item/the-sentencing-council-resource-model/>.

Stage 2

The second stage of the work initially used the Ministry of Justice's Court Proceedings Database⁷ to produce descriptive statistics to observe changes in the type of disposals being imposed for different types of assault offences and the Average Custodial Sentence Length (ACSL)⁸ for each offence, in the 12 months before and the 12 months after the guideline came into effect.

However, this does not account for any fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines – e.g. the changing number and seriousness of cases coming before the courts, changing in charging practice etc. The data was therefore used to produce time series models to help distinguish between the normal fluctuations which are inherent in all sentencing data, and changes in sentencing that, statistically speaking, within the model parameters can be attributed to the new assault guideline. This was designed to assess whether it was likely that the observed changes to sentencing practice would have occurred if no guideline had been released.⁹

(2014) *Enhancing Consistency in Sentencing: Exploring the Effects of Guidelines in England and Wales*, Journal of Quantitative Criminology.

⁶ The principal aims were to promote greater consistency in sentencing and increase public confidence in sentencing; sentences should also relate appropriately to the differing degrees of gravity within the specific offence, the context of other offences of violence and the wider sentencing framework relating to other offences.

⁷ Data covers sentences in all courts, for offenders aged 18 or over. Data has been adjusted to account for potential differences in the rate of guilty pleas between the periods. This adjustment was made using guilty plea rates and reductions from the Crown Court Sentencing Survey database, to estimate pre-guilty plea sentences, to make the figures presented comparable to the sentence ranges in the guideline.

⁸ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the CCSS to provide estimates of the sentence length *before* the application of a reduction for any guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

⁹ Additional analyses were also undertaken to ascertain whether the guideline consultation period, beginning on 13 October 2010, affected actual sentencing practice.

The type of time series models which were used required sentencing data to be comparable - but the data was a mix of sentences comprising different sentence types and sentence lengths. To overcome this, sentences were converted into a continuous “severity scale” with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years’ custody (represented by 100); this allowed the creation of a consistent and continuous measure of sentencing severity that could be used to evaluate changes in sentencing. However, the scale should **not** be interpreted as an absolute objective measure of sentencing severity.¹⁰

Several time series models were created in order to forecast the likely range of values, and size of average changes, that sentencing severity could take for 18 months after the guideline came into force (the period June 2011 to December 2012), assuming no guideline had been released. These estimates are represented on the graphs in this document as the “*forecasted severity region*”. The actual trend in sentence severity is represented by the red line; by comparing the two, the difference between actual and expected sentencing changes can be seen. This can then be referenced back to the changes (or absence of changes) estimated in the resource assessment. Where differences were found between actual practice and that estimated, regression analysis of Crown Court Sentencing Survey (CCSS)¹¹ data relating to these offences was undertaken to explore whether any of the guideline factors might have been influencing these outcomes.¹²

Stage 3

The third stage of the assessment comprised qualitative research, conducted by Opinion Research Services (ORS), to gather evidence about the operation and perceived effectiveness of the assault definitive guideline and to explore some of the issues emerging from the earlier strands of work.¹³ Sixty-nine individual depth telephone interviews and three small group discussions were conducted with 30 Crown Court judges, 28 magistrates, 14 district judges, six prosecution lawyers and six defence lawyers.¹⁴ Interviewees came from all seven court regions in England and Wales and had varying degrees of experience in their role.

Around half (14) of the Crown Court judges were recruited from the Office of the Sentencing Council’s existing ‘research pool’ and the remainder through a ‘snowballing’ approach whereby those already interviewed were asked to nominate fellow judges to take part. For district judges, a member of the Sentencing Council facilitated recruitment. Six magistrates were accessed via the Magistrates’ Association e-bulletin, and the remainder via a sample of magistrates’ court clerks in each judicial region asking for volunteers (five) and then ‘snowballing’ from these individuals.

To stimulate discussion, participants were presented with a scenario – either representing a case of grievous bodily harm with intent (Crown Court judges only),

¹⁰ The sentencing severity scale was created with reference to previous sentencing guidelines to try to ensure it had an empirical basis. However, there is no single, straightforward way to do this, so there is no guarantee of its robustness.

¹¹ See <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/> for further information on the Crown Court Sentencing Survey.

¹² This analysis used unadjusted CCSS data (see footnote 8).

¹³ Some data collection was also undertaken in the magistrates’ courts in January 2015 to complement the CCSS data from the Crown Court and examine some of the factors taken into account by sentencers when sentencing common assault, actual bodily harm, assault on a PC and assault with intent to resist arrest. The methodology largely followed that of the CCSS. In total, 339 sentencing forms were returned, of which 82 per cent (278) related to common assault offences. Due to the low volume of forms returned, it has not been possible to undertake any detailed analysis on this data; however, the findings are available on request.

¹⁴ The individual depth discussions typically lasted between 30 and 45 minutes and the group sessions for around an hour.

actual bodily harm (all interviewees) or assault on a police officer (magistrates and district judges only).¹⁵ They were then asked to outline which offence category they would have placed the defendant into and why, and what harm and culpability factors would have influenced their decision. Participants' more general views on the guideline were also discussed and noted.¹⁶

Overall findings

In the 12 months after the guideline came into force, there was a slight increase in the use of some less severe sentencing options, compared to the 12 months before; discharges increased from 10 per cent to 12 per cent and fines from 9 per cent to 12 per cent. On the other hand, community orders reduced (from 38 per cent to 36 per cent) as did suspended sentence orders (from 17 per cent to 15 per cent) while the use of immediate custody remained unchanged at 22 per cent. The adjusted average custodial sentence length also remained broadly unchanged at 2.7 years.

Looking at assault offences as a whole, the guideline has slightly decreased sentencing severity. This is likely to be as a result of the downward impact of the guideline on common assault, which makes up the largest group of assault offences.

Offence specific findings

Despite the overall effect of the guideline being a slight decrease in sentencing severity, different outcomes were found when specific assault offences were analysed. The following outlines the key findings relating to individual assault offences,¹⁷ followed by some general issues highlighted through the qualitative work with sentencers.

Causing grievous bodily harm with intent (GBH with intent)¹⁸

Almost all sentences imposed for causing GBH with intent are immediate custody. It was found that adjusted average custodial sentence lengths (ACSLs) rose by 17 per cent between the 12 months before and 12 months after the definitive guidelines came into force (from 5.9 years to 6.9 years).¹⁹ This was substantially in excess of the small increase anticipated by the resource assessment (a rise of 2 per cent and a requirement for between 20 and 60 additional prison places). In addition, the proportion of sentences greater than seven years increased. The increase in ACSLs occurred in June 2011, and coincided very closely with the guideline coming into force.

There was also an increase in severity of sentences in the month after the guideline came into force²⁰ (see figure 1). The "forecasted severity region" indicates the range of values the sentencing severity might have taken in the absence of the guideline, taking into account the general increase in sentencing severity since 2008. As can be seen, the actual increase in sentencing severity was in excess of that predicted in the resource assessment and may therefore indicate that the guideline is not being implemented in the way anticipated.

¹⁵ Short scenarios were used to reduce the burden on participants, however it is recognised that the details provided were restricted for this reason and that they will thus have some limitations as a research tool.

¹⁶ More information on the methodology, including the scenarios used, and the findings, can be found at <http://www.sentencingcouncil.org.uk/analysis-and-research/>

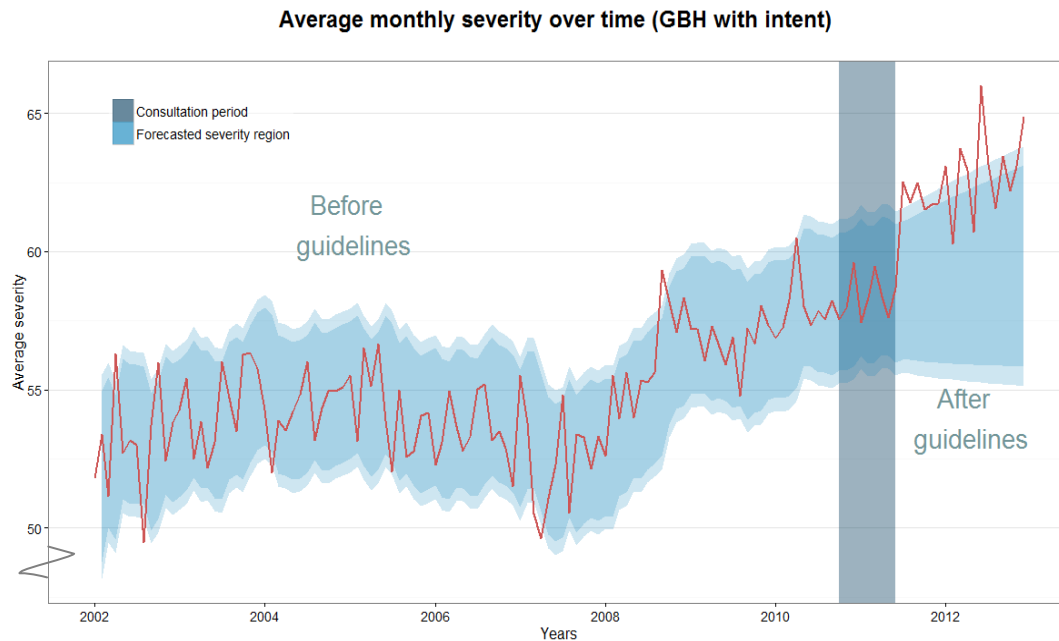
¹⁷ It was not possible to undertake an evaluation of the impact and implementation of the assault with intent to resist arrest guideline. This was due to the small number of sentences for this offence.

¹⁸ Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm; Offences against the Person Act 1861 (section 18).

¹⁹ During this period the use of IPPs for this offence declined by around 2.4 per cent. This could have caused some of the observed changes in sentence lengths. However, further investigation showed that a substantial difference in ACSLs persists even after including the minimum terms for IPPs in average sentence length calculation.

²⁰ There was no equivalent increase during the consultation period for the guideline.

Figure 1



A regression analysis of CCSS data was undertaken to examine why this might have occurred. This indicated that the factor in the new guideline which had the greatest effect on sentences was the step 1 factor “*injury which is serious in the context of the offence*”. The presence of this factor added around 29 per cent (1.7 years) to the average custodial sentence length.

In addition, it was found that there had been an increase in the use of the most serious offence category in the new guideline (from 17 per cent before the guideline to 33 per cent after), when compared to the old guideline. Furthermore, amongst the category 1 cases under the new guideline, the most frequent step 1 factor was “*injury which is serious in the context of the offence*”, which was present in 76 per cent of cases. Again, this suggests that this factor may be the reason for the increase in sentence levels for GBH with intent cases.

The data from the quantitative analysis was supplemented by the qualitative research which further indicated that application of the step 1 factors “*injury which is serious in the context of the offence*” and “*injury which is less serious in the context of the offence*” could be an issue.²¹ Some participants felt that for higher end cases the factor relating to greater harm may lead to double counting and an inflation in sentences (because, for GBH with intent, a high level of harm is required in all instances for the defendant to have been charged with this offence in the first place). For others, it may be that the factor relating to lesser injury (within lesser harm) is not applied when it should be for the same reason:

Under section 18, I'm not quite clear...how the injury can be less serious in the context of the offence where the alleged injury has to be a very serious bodily injury... (Crown Court judge)

Crown Court judges also felt that sentences might have risen due to the increased starting points and ranges in the guideline. Although some thought this was appropriate, others felt the starting points were too high, particularly in relation to category 1:

²¹ Sentencers reported being unclear about when they should apply the factor in general.

I think the level of sentencing has gone up immensely because of the guidelines (Crown Court judge)

The starting point in category 1 is quite high at 12 years (Crown Court judge)

Some judges admitted that they will often go outside the category range to reduce a sentence for GBH with intent.²²

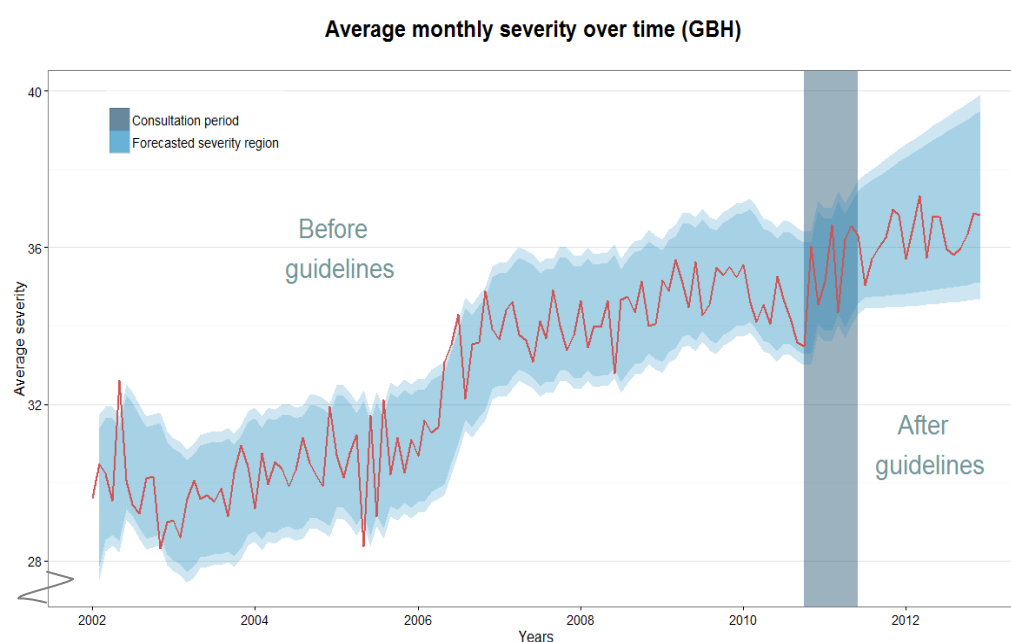
Grievous bodily harm (GBH):²³

There was a small increase in adjusted ACSLs, from 2.1 years in the 12 months before June 2011 to 2.3 years in the 12 months after June 2011. There was also a 2.7 per cent increase in the use of immediate custody, alongside a decrease in the use of community orders and suspended sentences.

Sentence severity also increased, but this was well within the bounds of historic fluctuations in sentencing levels (the “forecasted severity region”) as shown in figure 2. Therefore there is no strong statistical evidence that the guideline caused a change in sentencing practice for GBH. Analysis also indicated that the consultation period did not appear to have a statistically significant effect on sentencing.

This is broadly consistent with the minor changes to sentencing practice anticipated in the resource assessment which estimated increases in ACSLs of 3 per cent, (the result of rises in sentences at the most severe end of the sentencing scale) and a requirement for between 10 and 20 additional prison places.²⁴

Figure 2



Further analysis using CCSS data to explore whether the factor “*injury which is serious in the context of the offence*” was influencing outcomes in a similar way to GBH with

²² See Lock, K. (2015). *Assault Definitive Guideline: Findings from discussions with sentencers and practitioners*.

²³ Inflicting grievous bodily harm/unlawful wounding; Offences against the Person Act 1861 (section 20); Racially/religiously aggravated GBH/Unlawful wounding; Crime and Disorder Act 1998 (section 29).

²⁴ It should be noted, however, that the resource assessment also indicated overall, fewer custodial sentences and more community orders, which has not been observed.

intent showed it added 20 per cent (0.3 years) to the length of immediate custodial sentences.

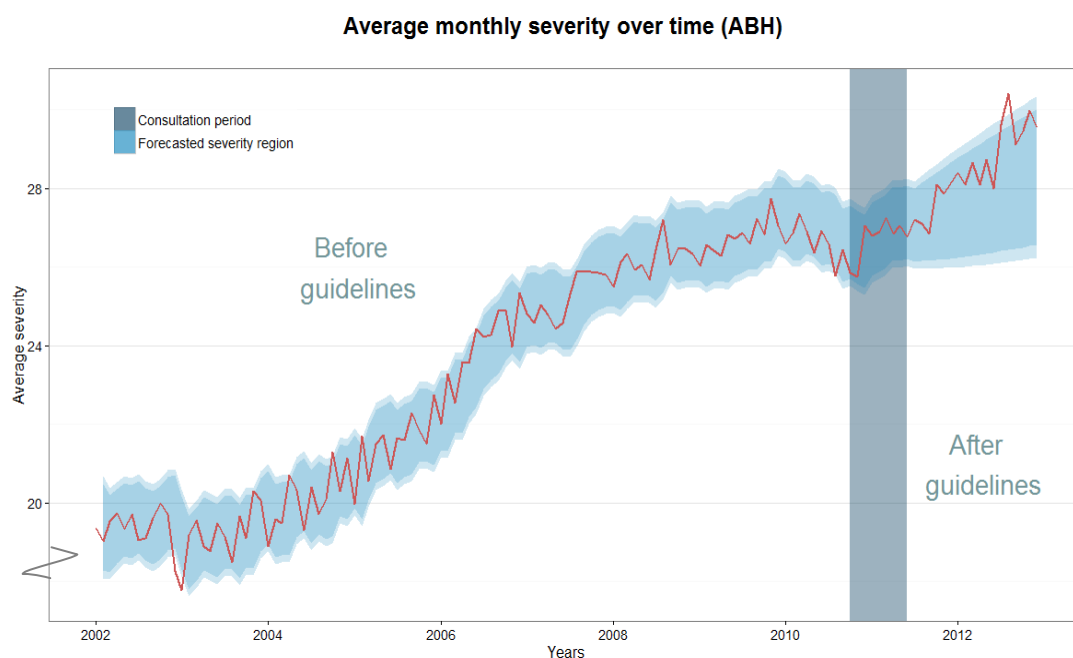
Actual Bodily Harm (ABH):²⁵

Analysis showed that there was a shift towards more serious disposal types being given – an increase in the use of custodial sentences (immediate and suspended) and a corresponding decrease in the use of community orders. The distribution of sentence lengths for immediate custody also changed, with relatively fewer shorter sentences (half a year or less) and an increase in the proportion in the range 0.5 to two years.

A regression analysis using CCSS data was carried out and showed that “*injury which is serious in the context of the offence*” was the most important factor for ABH and added 26 per cent (0.2 years) to the length of immediate custodial sentences.

These findings are in contrast to the prediction in the resource assessment which envisaged a drop in the severity of sentencing, due to the decrease in the sentencing range in the Sentencing Council guideline when compared to the previous guideline.²⁶ This equated to an estimate of between 400 and 900 fewer custodial sentences and 400 to 1,000 community orders becoming fines. The fact that the actual increase in sentence severity was almost entirely within the bounds of that expected if no guideline had come into force (see figure 3), indicates that there is no strong evidence that the guideline had an impact, despite the expectations that it would.

Figure 3



In contrast to the data showing no strong evidence that the guideline had an impact on sentence severity, the perceptions of the sentencers who were interviewed was that sentences had decreased, particularly for the lower level ABH offences. This view may reflect participants’ awareness that the sentencing range had decreased; many felt these were now too low and in interviews, several Crown Court judges said that they

²⁵ Assault occasioning actual bodily harm; Offences against the Person Act 1861 (section 47); Racially/religiously aggravated ABH; Crime and Disorder Act 1998 (section 29).

²⁶ The range was previously a community order to 4 years’ custody and is now a fine to 3 years’ custody.

often go outside the category range to increase a sentence for an actual bodily harm offence:

Section 47...I will probably go outside the guidelines between 20 per cent and 25 per cent of the time because the ranges aren't appropriate in my opinion; they are too low (Crown Court judge)

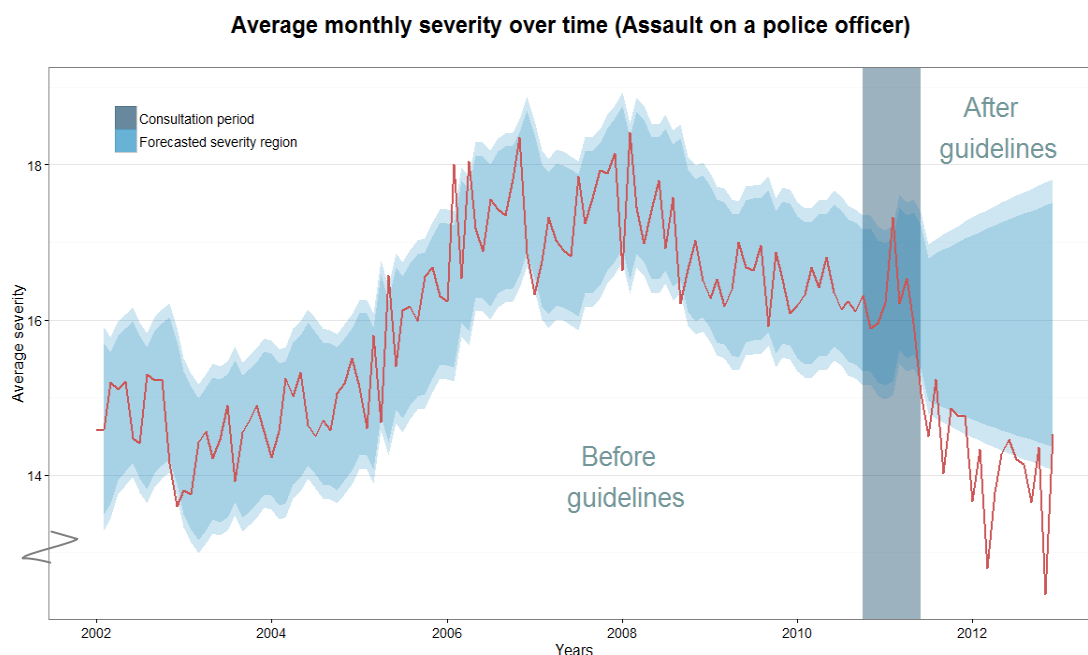
The factors of “injury which is serious in the context of the offence” and “injury which is less serious in the context of the offence” were also again cited²⁷ as factors that may be open to interpretation, due to the wide range of injuries that can be covered within this offence. This could therefore be a potential source of variation in the application of step 1 factors.

Assault on a police officer:²⁸

There was a shift towards less severe disposal types for assault on a police officer after the release of the guideline, with a smaller proportion of custodial sentences and community orders being imposed. The adjusted average custodial sentence length was 0.3 years in the 12 months prior to the guideline and just under 0.3 years in the 12 months afterwards.

Statistical analysis showed that this decrease in sentencing severity was unlikely to have occurred if the definitive guideline had not been released – as can be seen in figure 4, the actual decrease was considerably below that which might have been expected just taking into account historical changes in sentencing.

Figure 4



This impact is broadly consistent with that anticipated in the resource assessment – of between 200 and 600 fewer custodial sentences per year and a shift of some community orders to fines – and so indicates that the guideline is likely to have been implemented in the way anticipated by the Council.²⁹

²⁷ Lock, K. (2015).

²⁸ Assault on a police constable in execution of his duty; Police Act 1996 (section 89).

²⁹ It would not be possible currently to explore the reasons for any changes quantitatively, as this offence is triable only summarily, and it has not been possible to collect data from the magistrates' courts.

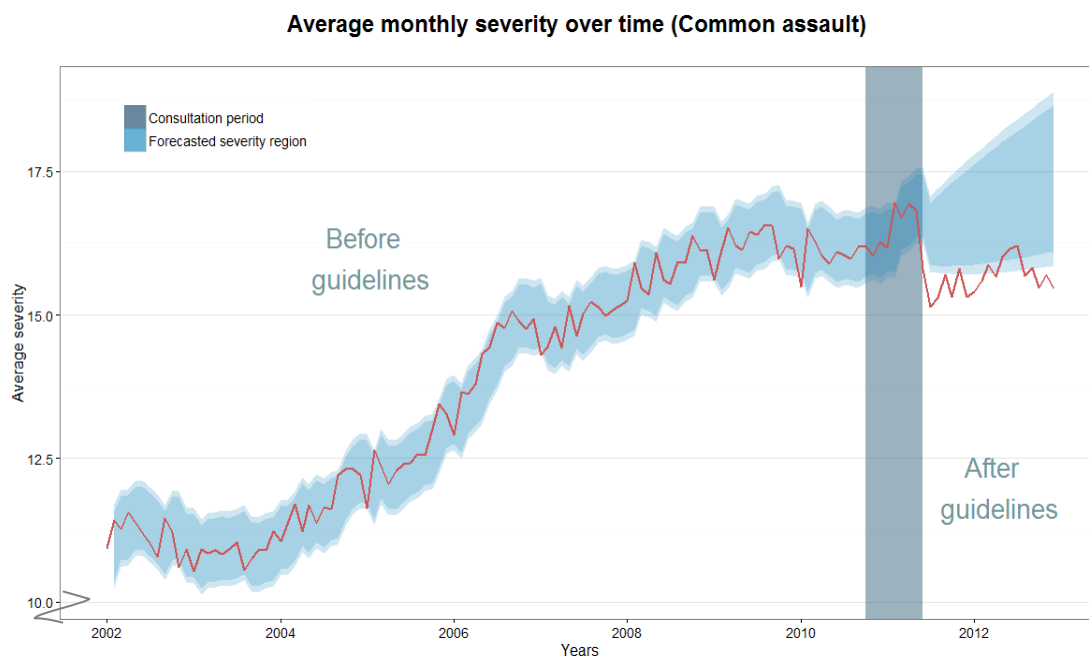
The pattern of changes in sentencing also aligns with the perceptions of the impact of the guideline raised in the interviews with sentencers. However, these perceived reductions in sentences were not always welcomed and the removal of spitting as a factor increasing offence seriousness in the Sentencing Council’s guideline was seen by some to contribute to this reduction:³⁰

I think it must have reduced sentencing in terms of assault on a police officer because a spit in the face can’t be identified as a sustained or repeated assault for greater harm. Yet in my view it is one of the most serious ways of assaulting (district judge)

Common assault:³¹

For common assault, there was a shift away from suspended sentences and community orders, and towards fines and discharges. The use of immediate custody was broadly similar before and after the guideline came into force, as was the adjusted ACSL of 0.3 years. Figure 5 shows that sentence severity also decreased, despite the overall trend of a steady increase since 2004. Analysis suggests these changes were caused by the new guideline, with actual sentencing going outside the “forecasted severity region”.

Figure 5



This impact of the guideline in decreasing sentence severity is broadly consistent with the impact anticipated in the resource assessment – which included between 400 to 900 fewer community orders and additional fines and conditional discharges (between 1,200 and 2,900, and 400 and 900, respectively). However, while the resource assessment anticipated between 1,300 and 3,000 fewer custodial sentences,³² analysis shows there was no change in the use of custodial sentences before and after the guideline came into force. It was also broadly in line with sentencers’ perceptions that sentences have decreased for common assault, which was attributed to the

³⁰ The slight decrease in the sentencing range for this offence may also contribute to this.

³¹ Common Assault; Criminal Justice Act 1988 (section 39); Racially/religiously aggravated common assault; Crime and Disorder Act 1998 (section 29).

³² Overall it was anticipated that between 150 and 350 fewer prison places would be needed.

difficulty in establishing injury in cases of common assault, especially “*in the context of the offence*”.³³

It's often hard to get into category 1 because there really has to be some injury...and common assault doesn't usually involve injury (district judge)

We find that if you follow the guidelines properly that a lot of common assaults end up category 3...if there is no injury then you are automatically down a category (magistrate)

Other issues

Other issues relating to the guideline emerged in the interviews with sentencers and practitioners, which provide useful information relating to the drafting of the guideline and the way in which it might be interpreted.³⁴

Overall, most participants felt that the three category approach in step 1³⁵ was sensible, intuitive and provided flexibility. This was welcomed and most were not in favour of any further categories. However, a very small minority of Crown Court judges and magistrates considered the offence categories to be overly restrictive and prescriptive, thus curbing judicial discretion. These participants suggested that a fourth category might allow them more flexibility in this regard.

Despite the general feeling that three categories were sufficient, a significant number of Crown Court and district judges also felt the guideline should be amended to accommodate cases of ‘neutral’ or ‘middling’ harm (where the injury is neither more nor less serious in the context of the offence).

There's the argument that if a case isn't greater harm then it has to be lesser harm. However, there is a whole spectrum of injury between greater and lesser harm...how do you appropriately fit a case that has medium harm? (Crown Court judge)

Again, most did not desire an extra category to accommodate this inclusion, the inference being that the wording of existing categories could be amended to cater for this.

The actual step 1 harm and culpability factors were generally considered appropriate by the majority of participants and there was no general call for further factors to be added; however, issues with the interpretation of some of the factors were raised and included:

- Significant difficulties with the harm factors “***injury that is serious in the context of the offence***” and “***injury which is less serious in the context of the offence***”; many Crown Court and district judges and magistrates admitted to not knowing exactly what it means or what types of injuries should take a case into greater or lesser harm:

I don't understand what they mean by in the context of the offence. I honestly don't know what it means (magistrate)

Injury more or less serious in the context of the offence is inherently ambiguous...It's such a nebulous issue (magistrate)

³³ It is not possible currently to explore the reasons for any changes quantitatively, as common assault is triable only summarily, and it has not been possible to collect data from the magistrates' courts. Whilst section 29 offences are triable either way, volumes for this offence are low.

³⁴ See Lock, K. (2015).

³⁵ Category 1: Greater harm (serious injury must normally be present) **and** higher culpability; Category 2: Greater harm (serious injury must normally be present) **and** lower culpability; or lesser harm **and** higher culpability; Category 3: lesser harm **and** lower culpability. There had been four categories in the previous SGC guideline.

I think that's probably the biggest issue with the guidelines...it's the one that causes the most amount of discussion at court (Crown Court judge)

This was supported by the findings of the exercise using offence scenarios which indicated disagreements between participants regarding whether the injuries outlined in the scenarios were more or less serious in the context of the offence.

- The potential for differing interpretations of “**sustained or repeated assault on the same victim**” in greater harm:

I genuinely have no idea what that means! Is that saying it's more than one punch or does it have to go on for 20 or 30 minutes? (Crown Court judge)

Some people will call two punches a sustained assault...to me the terms sustained or repeated assault means that it goes on for a long time; even three or four punches is not sustained to me (Defence lawyer)

More explicit guidance was desired on what exactly is meant by both “sustained” and “repeated” to reduce the subjectivity with which it is applied.

- General satisfaction that a shod foot or head should be considered a **weapon equivalent** – though a small minority felt the latter is not (certainly no more than a fist would be). It was also said that the premeditated act of bringing a weapon to the scene of an offence should be considered more seriously than lashing out during the course of a fight.
- Concerns from some participants over the potential to double-count **victim vulnerability** as it is included in both greater harm (*‘victim is particularly vulnerable because of personal circumstances’*) and higher culpability (*‘deliberate targeting of a vulnerable victim’*) – albeit with a different emphasis.
- Difficulties reported from a small number of judges in interpreting **vulnerability**, particularly in a domestic violence context where it seems there are differing views as to which victims should be considered vulnerable and which should not.

The guidelines are quite vague when it comes to victims who are vulnerable. I'm not entirely sure what a “victim who is particularly vulnerable” means. For example, is a woman in a domestic violence case who has fought back particularly vulnerable? (Crown Court judge)
- The wish from many participants to see **domestic violence** – and its psychological effects – referenced more explicitly within the guideline. However, a minority disagreed and felt that domestic violence could be adequately covered by current (albeit mostly non-domestic violence specific) step one and two factors.³⁶

³⁶ ‘Deliberate targeting of vulnerable victim’, ‘location of the offence’, ‘gratuitous degradation of victim’, ‘ongoing effect upon the victim’; and ‘in domestic violence cases, victim forced to leave their home’.

- The potential to interpret the phrase “**a significant degree of premeditation**” in different ways; it was suggested that the word ‘pre-planning’ may be more suitable for situations when the defendant has planned the assault well in advance of perpetrating it.
- The wish from several participants to see ‘**spitting**’ reintroduced as an important consideration within the guideline (particularly in the context of Assault on a Police Officer). Most felt it should be a greater harm or higher culpability factor at step one.

Spitting used to be an aggravating factor; it's gone and I don't know why. It's serious enough to justify a custodial sentence in my view, but it's absent (district judge)

It can be one of the most distressing things that victims experience...most say they would rather be punched. It needs to be highlighted (Prosecution lawyer)

- Further consideration (raised by a small number only) of culpability factors such as “a greater degree of **provocation** than normally expected” – “how can being provoked ever justify GBH?” (Crown Court judge) and anything referencing a **group or gang** as the number making this up can be interpreted differently.

In terms of views on the impact of the assault definitive guideline, participants were generally positive, especially in relation to the consistency they felt it has brought to the sentencing process while still allowing a degree of judicial discretion and flexibility. It should, however, be noted that some responses to the scenario exercise³⁷ indicated that some variation in approach remains. This seemed to be due to the wording and differing interpretation of certain factors, for example, “*injury that is more or less serious in the context of the offence*”; “*sustained or repeated assault*”; and “*use of weapon or weapon equivalent*”, as outlined above.

Participants also felt that the guideline enabled more structured, logical sentencing; gave judges and magistrates confidence in their ‘instinct’; helped guide and build the confidence of inexperienced sentencers; helped mitigate against the potential for overly harsh or lenient sentences; and ensured better transparency in terms of explaining sentencing.

There was also a general view that the guideline allowed judges and magistrates to reach fair and proportionate outcomes, although as already highlighted some participants felt that some of the starting points and ranges were not appropriate. In addition, several Crown Court judges said that they often go outside the category range to reduce a GBH with intent sentence or increase one for ABH.

Conclusion

This exercise has enabled an assessment of the impact and implementation of the Sentencing Council’s assault guideline. By estimating any changes to sentencing practice that are likely to have occurred without the guideline and then comparing this to what actually happened in practice after the guideline came into force in June 2011, it has been possible to ascertain if there has been any change to sentencing

³⁷ Participants were presented with a scenario - either representing a case of grievous bodily harm with intent, actual bodily harm or assault on a police officer - and asked to outline which offence category they would have placed the defendant into and why.

outcomes.³⁸ This has then been compared to the impact estimated as part of producing the resource assessment for the guideline.

Where an impact has been observed but was anticipated, this indicates that the guideline is being implemented in the way anticipated by the Council. However, where an impact/scale of impact has been observed *but was not anticipated* (e.g. GBH with intent and ABH), this suggests there may be an issue with implementation. The further quantitative and qualitative data outlined in this document highlights potential reasons for this, which includes differing interpretation of some factors in the guideline and changing starting points and ranges. Where this leads to outcomes that some sentencers do not regard as appropriate, it may encourage some to go outside of the guideline range and not adhere to it.

This indicates the need to revisit the guideline and consider whether any changes are needed. Although those interviewed tended to view the guideline positively and highlighted a number of benefits it had brought about, some aspects are worthy of consideration, both to address some of the issues highlighted here and also to bring the guideline up-to-date with later guidelines produced by the Sentencing Council. Consequently, the Council has committed to reviewing the guideline again as part of its 2015-2018 work plan.

Acknowledgements

The Sentencing Council would like to acknowledge Opinion Research Services for their work in undertaking data collection and where necessary, analysis and reporting. The quantitative analysis was undertaken by Meng Le Zhang and Robin Linacre and the resource assessment by Robin Linacre. Particular thanks go to all the sentencers and practitioners who took part in various aspects of this evaluation and who provided valuable insights into the impact and implementation of the guideline.

³⁸ However, it is not statistically possible to attribute any changes observed to the guideline.

Introduction

This is a project for the modernisation and restatement of the main offences of violence. These are:

- (a) the offences contained in the Offences Against the Person Act 1861 (“the 1861 Act”),
- (b) the offences of assault and battery, which are common law offences, and
- (c) assault on a constable, which is an offence under the Police Act 1989.

The purpose of the project is to replace all these offences with a single modern and easily understandable statutory code. We recommend that this should be based on a draft Bill published by the Home Office in 1998, with some changes and updating.

The need for reform

Most of the law concerning offences of violence is set out in the 1861 Act. This is in very old-fashioned language and hard to understand. Particular points are as follows:

- the grading of the offences is not clear and is not always reflected in sentencing powers; for example, the offence under s 20 (“GBH”) is meant to be more serious than that under s 47 (“ABH”), but both have the same maximum sentence, 5 years;
- there are too many narrowly specialised offences, involving factual scenarios described in great detail; some of these are of rare occurrence and almost all are covered by more general offences in any case;
- the same section often describes many alternative ways of committing an offence, and it is not clear whether these are meant to be one offence or several;
- there are references to concepts that no longer exist, such as “felony” and “penal servitude”, and some of the offences do not even state the penalty for the offence.

Outline of the reforms

The proposed changes are set out in brief in the following table. In this table “D” means the person said to have committed an offence and “V” means the person said to have been harmed.

Current offence	Replaced by
Wounding or causing grievous bodily harm, with intent to do grievous bodily harm (life)	Intentionally causing serious injury (life)
Malicious wounding or causing grievous bodily harm (GBH): D must intend or foresee a risk of some harm, not necessarily grievous (5 years)	Recklessly causing serious injury: D must foresee a risk of <i>serious</i> injury (7 years)
Assault occasioning actual bodily harm (ABH): D need not intend or foresee any harm at all (5 years)	1. Intentionally or recklessly causing injury, not necessarily by assault: D must foresee a risk of some injury (5 years) 2. Aggravated assault, meaning assault causing injury: no need to foresee risk of injury (12 months)
Assault and battery, sometimes collectively called “common assault” (6 months)	1. Physical assault (6 months) 2. Threatened assault (6 months)

Assaulting police: D need not know or suspect that V is a police officer (6 months)	Assaulting police: D must know or be reckless about whether V is a police officer (12 months)
Assaulting clergy (2 years); assaulting magistrate preserving wrecks (7 years)	Abolished
Grievous bodily harm with intent to resist arrest (life); assault with intent to resist arrest (2 years)	Causing serious injury with intent to resist arrest (sentence not decided, but should be more than 7 years and less than life); assault with intent to resist arrest (2 years)
Various offences of causing injury or danger by means of poisons or explosives or on railways	Replaced by fewer and simpler offences of causing danger (causing actual injury is covered by the main injury offences)
Soliciting murder (life)	Encouraging murder (life)
Threats to kill (10 years)	Threats to kill, cause serious injury or rape (10 years)
Attempting to choke, preventing escape from a shipwreck, failing to feed servants and apprentices	Abolished
Exposing children to danger, setting man-traps, causing harm by furious driving	Left in 1861 Act

A more detailed table is attached both to the full summary and to the full report.

The main changes

The most important offences as recommended by us are about causing injury. This can mean injury of any kind (including disease), caused by any means. In general, when an offence in the draft Bill consists of causing “serious injury” or “injury”, D must also intend or foresee serious injury or injury, as the case may be. This is significantly different from the present law, where there is often a mismatch between what must happen and what must be foreseen by D.

The new offence of “aggravated assault” is intended to bridge the gap between the existing offences of common assault and ABH. There are many cases involving low level injuries which do not fit conveniently into either offence:

- If charged as ABH, they may be tried in the Crown Court and receive a sentence of up to 5 years. In practice, however, over a third of all sentences passed by the Crown Court for this offence are for 6 months or less. We believe that the Crown Court should not be dealing with cases of this kind.
- If charged as common assault, these cases remain in the magistrates’ court and the maximum sentence is 6 months. Victims will rightly feel aggrieved that their injuries are not reflected in the charge.

The new offence of aggravated assault is designed to cover these low level injury cases, in a way that reflects and acknowledges the fact that an injury has been caused. At the same time, these cases will remain in the magistrates’ court and the sentence is limited to 12 months. This ensures that cases are tried in a court of the appropriate level, and avoids incurring the expensive and time-consuming procedures of the Crown Court when they are not necessary.

Assault Definitive Guideline

Contents

Applicability of guideline	2
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (section 18)	3
Inflicting grievous bodily harm/Unlawful wounding (section 20)	7
Assault occasioning actual bodily harm (section 47)	11
Assault with intent to resist arrest (section 38)	15
Assault on a police constable in execution of his duty (section 89)	19
Common assault (section 39)	23
Annex: Fine bands and community orders	27

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified three *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. **Starting points apply to all offences within the corresponding category and are applicable to all offenders in all cases irrespective of plea or previous convictions.** Once the starting point is established the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Credit for a guilty plea is taken into consideration only at step 4 in the process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 27.

Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

This is a serious specified offence for the purposes of section 224
of the Criminal Justice Act 2003

Triable only on indictment
Maximum: Life imprisonment

Offence range: 3–16 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

STEP TWO**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.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

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

Other aggravating factors include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Previous violence or threats to the same victim

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination, and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm is a serious offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**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.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 20): 5 years

Maximum (section 29): 7 years

Offence range: Community order – 4 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in a group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO**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.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	3 years' custody	2 years 6 months' – 4 years' custody
Category 2	1 year 6 months' custody	1 – 3 years' custody
Category 3	High level community order	Low level community order – 51 weeks' custody

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.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Location of the offence	Offences taken into consideration (TICs)	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions or no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Gratuitous degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
Failure to comply with current court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Age and/or lack of maturity where it affects the responsibility of the offender	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Mental disorder or learning disability, where not linked to the commission of the offence	
Abuse of power and/or position of trust	Sole or primary carer for dependent relatives	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

STEP SIX**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.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 47): 5 years' custody

Maximum (section 29): 7 years' custody

Offence range: Fine – 3 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO**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.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	1 year 6 months' custody	1 – 3 years' custody
Category 2	26 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band A fine – High 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.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	
<i>Statutory aggravating factors:</i>	Exploiting contact arrangements with a child to commit an offence
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	Established evidence of community impact
Offence committed whilst on bail	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
<i>Other aggravating factors include:</i>	Offences taken into consideration (TICs)
Location of the offence	Factors reducing seriousness or reflecting personal mitigation
Timing of the offence	No previous convictions or no relevant/recent convictions
Ongoing effect upon the victim	Single blow
Offence committed against those working in the public sector or providing a service to the public	Remorse
Presence of others including relatives, especially children or partner of the victim	Good character and/or exemplary conduct
Gratuitous degradation of victim	Determination and/or demonstration of steps taken to address addiction or offending behaviour
In domestic violence cases, victim forced to leave their home	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Isolated incident
Offence committed whilst on licence	Age and/or lack of maturity where it affects the responsibility of the offender
An attempt to conceal or dispose of evidence	Lapse of time since the offence where this is not the fault of the offender
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Mental disorder or learning disability, where not linked to the commission of the offence
Commission of offence whilst under the influence of alcohol or drugs	Sole or primary carer for dependent relatives
Abuse of power and/or position of trust	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

STEP SIX**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.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault with intent to resist arrest

Offences against the Person Act 1861 (section 38)

This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 51 weeks' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

STEP TWO**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.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	26 weeks' custody	12 weeks' – 51 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

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.

When sentencing **category 1** offences, the court should consider whether the sentence can be suspended.

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the defendant

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

STEP SIX**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.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

Triable only summarily
Maximum: 26 weeks' custody

Offence range: Fine – 26 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender’s culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm
Sustained or repeated assault on the same victim
Factors indicating lesser harm
Injury which is less serious in the context of the offence

Factors indicating higher culpability
<i>Statutory aggravating factors:</i>
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)
<i>Other aggravating factors:</i>
A significant degree of premeditation
Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Intention to commit more serious harm than actually resulted from the offence
Deliberately causes more harm than is necessary for commission of offence
Leading role in group or gang
Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)
Factors indicating lower culpability
Subordinate role in group or gang
Lack of premeditation
Mental disorder or learning disability, where linked to commission of the offence

STEP TWO**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.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 weeks' custody	Low level community order – 26 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

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.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE

Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

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.

STEP SIX

Compensation and ancillary orders

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Common Assault

Criminal Justice Act 1988 (section 39)

Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable only summarily

Maximum (section 39): 26 weeks' custody

Triable either way

Maximum (section 29): 2 years' custody

Offence range: Discharge – 26 weeks' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (injury or fear of injury must normally be present) and higher culpability
Category 2	Greater harm (injury or fear of injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO**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.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	High level community order	Low level community order – 26 weeks' custody
Category 2	Medium level community order	Band A fine – High level community order
Category 3	Band A fine	Discharge – Band C fine

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.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Location of the offence	Offences taken into consideration (TICs)	
Timing of the offence		
Ongoing effect upon the victim		
Offence committed against those working in the public sector or providing a service to the public		
Presence of others including relatives, especially children or partner of the victim		
Gratuitous degradation of victim		
In domestic violence cases, victim forced to leave their home		
Failure to comply with current court orders		
Offence committed whilst on licence		
An attempt to conceal or dispose of evidence		
Failure to respond to warnings or concerns expressed by others about the offender's behaviour		
Commission of offence whilst under the influence of alcohol or drugs		
Abuse of power and/or position of trust		
	Factors reducing seriousness or reflecting personal mitigation	
	No previous convictions or no relevant/recent convictions	
	Single blow	
	Remorse	
	Good character and/or exemplary conduct	
	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
	Serious medical conditions requiring urgent, intensive or long-term treatment	
	Isolated incident	
	Age and/or lack of maturity where it affects the responsibility of the offender	
	Lapse of time since the offence where this is not the fault of the offender	
	Mental disorder or learning disability, where not linked to the commission of the offence	
	Sole or primary carer for dependent relatives	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

STEP SIX**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.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Annex:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

Fine Band	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80–150 hours) • An activity requirement in the middle range (20 to 30 days) • Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months) • Exclusion requirement, lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours unpaid work • Activity requirement up to the maximum of 60 days • Curfew requirement up to 12 hours per day for 4–6 months • Exclusion order lasting in the region of 12 months

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

NOTES

Number sentenced, proportion sentenced in the Crown Court, custody rate and average custodial sentence length for offences covered by the Assault offences definitive guideline

Offence	Number sentenced			Percentage increase or decrease in number sentenced		Proportion sentenced in Crown Court in 2014	Custody rate			Average custodial sentence length in years		
	2003	2011	2014	2011 vs 2003	2014 vs 2011		2003	2011	2014	2003	2011	2014
GBH with intent s18	1,332	1,625	1,355	22%	-17%	99.9%	93%	95%	90%	4.3	5.1	6.4
GBH s20	3,811	4,035	3,429	6%	-15%	98%	55%	57%	53%	1.5	1.6	1.8
Religiously or racially aggravated GBH s29	27	17	11	-37%	-35%	91%	70%	41%	73%	1.6	2.8	0.0
ABH s47	11,839	11,762	7,240	-1%	-38%	81%	29%	34%	41%	0.8	1.0	1.1
Religiously or racially aggravated ABH s29	93	85	62	-9%	-27%	89%	69%	55%	68%	1.0	1.3	1.2
Assault with intent to resist arrest s38	431	163	136	-62%	-17%	14%	40%	28%	29%	0.4	0.4	0.3
Assault on a police constable s89	6,837	8,452	6,985	24%	-17%	1%	20%	15%	14%	0.2	0.2	0.2
Common assault s39	25,884	46,102	47,420	78%	3%	4%	12%	15%	14%	0.2	0.2	0.2
Religiously or racially aggravated common assault s29	258	892	866	246%	-3%	11%	36%	23%	23%	0.5	0.4	0.4

Source: Court Proceedings Database, Ministry of Justice

Note:

2003 is the earliest year for which data is available, 2011 is the year the assault offences definitive guideline came into force, and 2014 is the latest year for which data is available.

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Causing grievous bodily harm with intent to do grievous bodily harm/ Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3-16 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified 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 to determine the offender's culpability.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- Offence racially or religiously aggravated
- Offence motivated by or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)
- A significant degree of premeditation
- Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
- Intention to commit more serious harm than actually resulted from the offence
- Deliberately causes more harm than is necessary for commission of the offence
- Deliberate targeting of vulnerable victim (should this be here? Or in harm?)
- Leading role in group or gang
- Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

B - Medium culpability:

- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Subordinate role in group or gang
- A greater degree of provocation than normally expected
- Lack of premeditation
- Mental disorder or learning disability, where linked to the commission of the offence
- Excessive self defence

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.

HARM

The court should determine the level of harm caused, or intended, by reference **only** to the factors below.

Category 1	Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present) Victim is particularly vulnerable because of personal circumstances Sustained or repeated assault on the same victim
Category 2	Harm that falls between categories 1 and 3
Category 3	Injury which is less serious in the context of the offence

STEP TWO Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 12 years' custody Category range 9-16 years' custody	Starting point Category range	Starting point Category range
Category 2	Starting point Category range	Starting point Category range	Starting point Category range
Category 3	Starting point Category range	Starting point Category range	Starting point 4 years' custody Category range 3-5 years' custody

The court should then consider further adjustment for any aggravating or mitigating factors. The following 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. 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

Other aggravating factors:

- Location of the offence
- Timing of the offence
- Ongoing effect upon the victim
- Offence committed against those working in the public sector or providing a service to the public
- Presence of others including relatives, especially children or partner of the victim
- Gratuitous degradation of victim
- In domestic violence cases, victim forced to leave their home
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Commission of offence whilst under the influence of alcohol or drugs
- Abuse of power and/or position of trust
- Exploiting contact arrangements with a child to commit an offence
- Previous violence or threats to the same victim
- Any steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Single blow
- Remorse
- Isolated incident
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability where **not** linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Lapse of time since the offence where this is not the fault of the offender

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

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 overall offending behaviour.

STEP SEVEN

Compensation and ancillary orders

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

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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