

Sentencing Council meeting: 14 December 2018
Paper number: SC(18)DEC04 – Assault
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1 ISSUE

1.1 This paper includes discussion and consideration of the evaluation findings for the existing s18 GBH/Wounding guideline, and proposes revised culpability factors and sentence levels for these offences.

2 RECOMMENDATION

That the Council:

- considers the evaluation findings for the existing s18 GBH/wounding guideline;
- considers and agrees culpability factors for s18 GBH/wounding; and
- considers and agrees sentence levels.

3 CONSIDERATION

3.1 At the November meeting the Council agreed a draft revised guideline for s20 GBH and wounding and for ABH offences, subject to any issues which may be identified in pre-consultation road testing. This meeting requires consideration of a revised draft guideline for the s18 offence of GBH with intent. A draft guideline is included at Annex C.

GBH/Wounding s18 – Evaluation findings

3.2 Evaluation findings were discussed at the last meeting, and it was highlighted that in relation to s18 sentences there was an unanticipated impact of the guideline with sentences significantly increasing. Sentences for s20 also increased, but within the range of forecasted severity.

3.3 The evaluation highlighted the following findings in relation to sentence increases for s18;

A regression analysis of CCSS data was undertaken to examine why (the increases) 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)¹, 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. 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)

¹ These figures differ from those in the offence categorisation chart on page 4 as they cover different time periods.

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.

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.

3.4 The existing guideline sentences for s18 offences are as follows;

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
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

Prior to the introduction of the guideline SGC sentences for s18 offences were as follows:

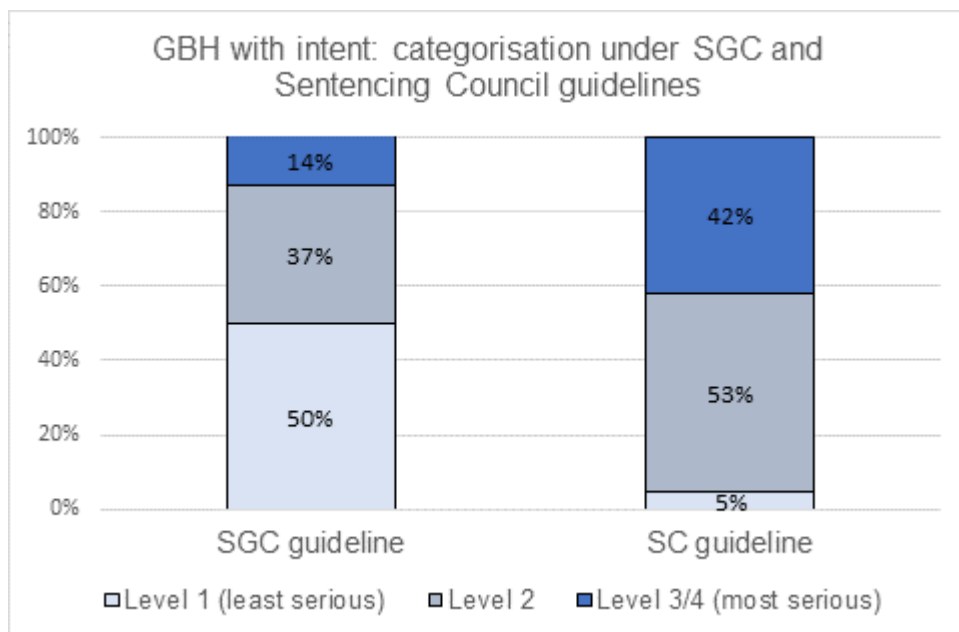
Type/nature of activity	Starting point	Sentencing range
Victim suffered life-threatening injury or particularly grave injury from a pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim	13 years custody	10 – 16 years custody
Victim suffered life-threatening injury or particularly grave injury (where the offence was not pre-meditated) OR Pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim (but not resulting in a life threatening injury or particularly grave injury)	8 years custody	7 – 10 years custody
Victim suffered a very serious injury or permanent disfigurement OR Pre-meditated wounding or GBH OR Other wounding or GBH involving the use of a weapon that came to hand at the scene	5 years custody	4 – 6 years custody
Other wounding or GBH	4 years custody	3 – 5 years custody

3.5 While factors defined seriousness categorisation differently between the guidelines, it was anticipated that there would be a small increase in average sentence lengths following the introduction of the definitive guideline. However, the evaluation highlighted that the actual impact was greater than that anticipated:

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). 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.

3.6 Discussion of the influence of factors on this trend took place at the last meeting, with a specific focus on the potential for a high volume of offences to fall within the greater harm and culpability categories in the existing GBH guidelines. The

shift in seriousness categorisations between the previous SGC guideline and the existing guideline for s18 offences in particular was highlighted, as illustrated by the diagram below. This demonstrates that with the introduction of the existing guideline lower seriousness categorisations shifted from 50% to 5%, while cases falling within the top end of seriousness expanded from 14% to 42%;



3.7 As sentences were not markedly different from the SGC guideline, it is highly likely that the factors and offence categorisations have contributed to sentence increases, and a perception that sentences have increased. Revisions to factors already agreed should address this and provide for proportionate seriousness categorisation.

3.8 Annex A includes a summary of analysis of sentences for s18 offences. This highlights the trend of a high volume of category 1 offence categorisations.

3.9 A point raised during the early consideration of revising the assault guideline was that consideration of sentences for GBH and wounding for s18 offences would be required, as it was thought GBH sentences may be higher. The statistical analysis has confirmed that this is the case, as highlighted at Annex A. It is thought that this could be due to the existing guideline making it more likely a GBH offence would attract a category 1 assessment, as numerous greater culpability factors may apply as well as greater harm due to the existing greater harm factor 'sustained and repeated assault'. As an offence not involving a weapon is more likely to be sustained or repeated to cause GBH type harm, and statistics illustrate that this factor is the most frequently occurring greater harm factor with the frequency increasing over time, this is likely to have contributed to higher GBH sentences.

While use of a weapon in a wounding offence would attract a high culpability categorisation, a wound may currently attract a lesser harm categorisation if the injury is not considered to be serious in the context of other woundings. It is thought that previously agreed harm factors will categorise all types of injuries, including wounds, appropriately.

3.10 Factors were revised at the last meeting to address disproportionate categorisations for s20 offences. Consideration of whether different factors would be appropriate for s18 cases is now required.

Culpability factors

3.11 The culpability factors agreed at the last meeting for both s20 and ABH offences are included at Annex B. In the existing guideline the same factors are included across the ABH and both GBH/wounding guidelines.

3.12 Consideration has been given to whether for s18 offences culpability factors in the revised guideline should differ to reflect the level of intent present in this offence. However, when testing factors against actual cases it appears that the appropriate categorisation was achieved and there were no cases that the factors agreed for s20 offences would not have captured. There was also no apparent necessity for a higher threshold to be applied to factors already agreed for a s18 offence.

3.13 A distinction in seriousness was, however, apparent in cases involving multiple or extreme examples of high culpability factors. Some examples of these are included in the case list at Annex D. One example was an offender who had planned an attack on his estranged wife, and involved him dousing her in petrol then chasing her while throwing lit matches at her (this was originally charged as attempted murder). Others include acid attacks, such as the highly publicised case of Arthur Collins, and the case of Darryl Rowe which involved intentional HIV transmission. Sentences in these cases were found by the Court of Appeal to be justifiably higher than the highest starting point in the existing GBH guideline.

3.14 To provide for such offences and reflect the distinction between those at the most serious end of the scale and those that are still serious, and also to provide for proportionate sentences for cases not involving multiple features, it is thought a similar culpability model to the one used in manslaughter would be appropriate. This includes a very high culpability categorisation, which provides for cases with extreme high culpability factors or multiple culpability B factors to be captured. The highest

sentences would be reserved for such cases. Annex C illustrates the proposed culpability model.

Question 1: Does the Council agree that an additional very high culpability factor should be included for s18 offences?

3.15 Testing of cases against agreed factors also identified that currently there is limited potential for an offence to be captured by the balancing factor at medium culpability. At present, to achieve a medium culpability categorisation where a high culpability factor is also present, the offence will need to involve no weapon, excessive self-defence, or a mental disorder. The agreed lesser culpability factors applied in very few cases considered, and there is potential for a high volume of cases to achieve a high culpability categorisation when this may not fully reflect the circumstances of the offence.

3.16 A number of cases analysed where the balancing factor may be appropriate included such situations as those involving a high degree of provocation, and cases where the offender may not have been the instigator of an offence but excessive self-defence could not be argued. Cases which would fall within this category could also include the domestic abuse victim who 'snaps' and attacks her abuser with a knife or high culpability weapon (as the Council discussed at the last meeting) and victims of abuse who attack a childhood abuser. In such cases an offender cannot escape a high culpability categorisation if a knife is involved in the commission of the offence, and mitigating factors do not provide for a sentence which is too remote from the starting point. Given the higher starting points and sentences for s18 offences, this could result in a sentence which would not be a proportionate reflection of an offender's responsibility in committing the offence. Sentencers in some cases have referred to 'a moment of madness' and have either gone outside of the guidelines to achieve a sentence which they believe to be a more proportionate response to the offence, or expressed regret that even strong offender mitigation cannot provide for a lesser sentence to be imposed.

3.17 The Council are asked to consider if an additional lesser culpability factor should be included to address such cases. Essentially, the issue relates to provocation which causes an offender to lose control, but the Council has previously decided provocation should not reduce culpability and should be restricted to mitigation for an offence. The existing guideline does include a low culpability factor of 'a greater degree of provocation than normally expected' which the Council has removed to be consistent with the approach to provocation in other guidelines. For

example, the domestic abuse guideline states that ‘provocation is no mitigation to an offence within a domestic context, except for in rare circumstances.’ While some discussion of the issue took place at the last meeting, it is thought highly likely this will arise as a point during the consultation and the impact of not providing for provocation amounting to a loss of control on seriousness categorisations should be fully considered. The practical effect of the guideline not providing for provocation at step one is likely to mean higher sentences where the most serious level of non-fatal injury result than in cases where death results for an offence committed in similar circumstances.

3.18 In the manslaughter by reason of loss of control guideline ‘a very high degree of provocation’ is included, but only where it represents a ‘qualifying trigger’ resulting in a loss of control which offers a partial defence to murder. Although the partial defence of loss of control applies only to murder, an analogous situation could occur in a case where a death does not result and which results in a charge of GBH or wounding with intent. The Council is asked to consider if the guideline should provide for extreme provocation or circumstances which could have amounted to a loss of control defence to a murder charge to reduce culpability in a s18 offence. This is also likely to be relevant to the attempted murder guideline. It is not suggested this be included across the other assault guidelines, but does have particular relevance to s18 given the shared level of intent in a murder offence.

3.19 Phrasing such a factor is problematic. The concept of provocation affecting an offender’s culpability is controversial due to the removal of it as a specific defence when murder legislation was revised, and there is a potential for it to appear to present a concession to acts of revenge and have broad application. It is included in manslaughter as it is provided for by loss of control with the legislation including qualifications as to when it is applicable. It would not be appropriate to attempt to replicate the legislative definition of loss of control as a partial defence to murder, but a number of cases and academic articles have discussed features which may be relevant to the capacity and intent of an individual who loses control which are also relevant to a s18 offence. These have included reference to ‘extremely grave circumstances reducing tolerance and self restraint’², ‘extreme emotional disturbance’³ and ‘a loss of the ability to act in accordance with considered judgement or normal powers of reasoning.’⁴

² Lord Chief Justice in *Dawes* [2013] EWCA Crim 322

³ Suggested by the Law Commission as a potential qualifying feature of loss of control

⁴ Observed by Rafferty LJ (in *R v Jewell* [2014] EWCA Crim 414) as a definition included in Smith and Hogan’s *Criminal Law* (13th edn, 2011)

3.20 If the Council thinks a factor should be included at lesser culpability to address such cases two options are proposed. One could be to allow for severe provocation to reduce culpability and include 'very high degree of provocation' as in the manslaughter guideline. Alternatively a factor which alludes to loss of control while not specifically referencing it could be included, such as '*offender's responsibility substantially reduced due to circumstances of extreme gravity related to the commission of the offence.*' However, the legislation and legal tests around application of loss of control as a partial defence to murder are complex, and it may not be thought suitable to attempt to encapsulate the concept within a culpability factor.

3.21 If it is agreed that a factor reflecting loss of control and reduced culpability is appropriate, it is important to consider an analogous loss of control manslaughter sentence to ensure that where a death is caused in a loss of control offence a higher sentence is imposed, which is necessary to reflect the principle established in *Appleby*⁵ that crimes resulting in death should be treated more seriously.

3.22 The manslaughter loss of control factors and sentences are as follows;

A – High culpability

- Planning of criminal activity (including the carrying of a weapon) **before** the loss of control
- Offence committed in the context of other serious criminal activity
- Use of a firearm (whether or not taken to the scene)
- Loss of self-control in circumstances which only just met the criteria for a qualifying trigger
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

B – Medium culpability

Cases falling between high and lower because:

- factors are present in high and lower which balance each other out **and/or**
- the offender's culpability falls between the factors as described in high and lower

C – Lower culpability

- Qualifying trigger represented a very high degree of provocation

⁵ AG Reference 60, 62 and 63 (*Appleby*) [2009] EWCA Crim 2693

Harm

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

Culpability		
A	B	C
Starting point 14 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
Category range 10 – 20 years' custody	Category range 5 – 12 years' custody	Category range 3 – 6 years' custody

Sentences

3.23 If a loss of control type factor is considered appropriate, to reflect Appleby and achieve proportionate sentences, the s18 sentences would need to be lower than a Category B and a Category C loss of control manslaughter case. The comparative categories in the s18 guideline would be C1 and D1, which would need to have starting points lower than 8 years and 5 years respectively.

3.24 This could represent a decrease from current sentencing practice. While a starting point of 4 years was available in both the SGC and existing guidelines, these were not for the cases involving the most serious harm which a category D1 case would be.

3.25 To summarise, the Council is asked to consider if a lesser culpability factor relating to provocation should be included, and if so should sentences take into account Manslaughter loss of control sentences and Appleby, and a category D1 sentence include a 4 year starting point. If culpability and harm are to be equally weighted, this would then need to be replicated across C2 and B3, and lower level sentences revised downwards. Subject to the Council agreeing to the inclusion of a very high culpability factor, sentences would be as follows;

HARM	CULPABILITY			
	A	B	C	D
Harm 1	Starting point 12 years	Starting point 9 years	Starting point 7	Starting point 4
	Category Range 10-16	Category Range 7-12	Category Range 5-10	Category Range 3-7
Harm 2	Starting point 9 years	Starting point 7	Starting point 4	Starting point 3
	Category Range 7-12	Category Range 5-10	Category Range 3-7	Category Range 2-6
Harm 3	Starting point 7	Starting point 4	Starting point 3	Starting point 2
	Category Range 5-10	Category Range 3-7	Category Range 2-6	Category Range 1-4

3.26 A further point to consider is that any case involving lesser culpability and high harm would also attract these sentences. These would be cases involving no weapon, excessive self defence or a mental disorder.

Question 2: Does the Council agree that an additional factor should be included at lesser culpability to address cases where an offender's responsibility is substantially reduced by provocation or loss of control, and if so, that sentences should be lower than sentences for an analogous manslaughter offence?

3.27 Should the Council not wish to include a factor relating to provocation/loss of control and for sentences at the lower end of the scale to be lower than currently, an alternative sentencing table is proposed. These have been developed with reference to the proposed revised framework of factors, and without adjustment to the highest starting points in the existing guideline. The seriousness assessment should ensure the very worst cases attract the highest seriousness categorisation, while reflecting gradations in seriousness throughout the other starting points and ranges. Proposed sentences are as follows;

HARM	CULPABILITY			
	A	B	C	D
Harm 1	Starting point 12 years Category Range 10-16	Starting point 10 years Category Range 7-12	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7
Harm 2	Starting point 10 years Category Range 7-12	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7	Starting point 4 Category Range 2-6
Harm 3	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7	Starting point 4 Category Range 2-6	Starting point 3 Category Range 1-4

3.28 Statistics regarding current sentencing practice are included at Annex E. These have not directly informed sentences, particularly at the higher end (in terms of sentence distribution being considered), given the inflationary issues with sentences. However, they do illustrate a number of post guilty plea sentences are three years or less which has informed the proposed sentences at the bottom end of the scale. The case list included at Annex D illustrates a range of offending behaviour and provides context to sentences. Sentences have also been informed with reference to Court of Appeal and first instance sentencing remarks, as well as by considering proportionality of sentence across a range of illustrated culpability and harm.

Question 3: If the Council did not agree to question 2, does the Council agree with the alternative proposed sentences?

Aggravating and mitigating factors

3.29 The aggravating and mitigating factors included for s20 GBH offences have been included. Subject to decisions made at the meeting as to how provocation should be treated, these may require revision.

Question 4: Does the Council agree with the proposed aggravating and mitigating factors?

4 IMPACT /RISKS

4.1 It will be important reputationally to ensure decisions made in revising the guideline are based on evidence of issues identified in the evaluation, to ensure the Council is seen to be responsive to issues with the guideline. Revision proposals seek to address inflationary issues by revising factors rather than sentences where appropriate, and clearer factors should provide for appropriate seriousness categorisations and address inflationary issues for s18 offences.

4.2 There is a risk that the Council could be seen to be taking steps to reduce sentences for serious offences, particularly if a factor is included to address loss of control type situations. Clear rationales for revision of factors and any impact upon sentences will be provided at consultation to mitigate this risk.

4.3 Early testing of the guidelines with sentencers will continue to be undertaken to identify potential issues and impact prior to sign off and consultation on the revised guidelines. Subject to the Council agreeing factors and sentences at the meeting, immediate testing of the revised s18 guideline is planned to commence. This will help with early identification of any potential risk of the guideline appearing unjustifiably deflationary.

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GBH with intent (section 18) – data trends

Evaluation findings

The evaluation found that following the introduction of the guideline, there was an increase in sentence severity and ACSLs for GBH with intent (s18) offences, in excess of that anticipated in the resource assessment. There was **strong statistical evidence that the guideline caused a change in sentencing practice** for this offence.

Overall trends

From 2007 to 2017 there was a steady increase in average sentencing severity, which has been driven by an increase in average custodial sentence lengths (ACSLs).

The majority of offenders are sentenced to immediate custody (90% in 2017). A small proportion of offenders also received a suspended sentence in 2017 (1%).

There has been a steady increase in ACSLs over the last 10 years, and since the guideline came into force. These increases are due to a shift from estimated pre-guilty plea sentences of up to 6 years towards pre-guilty plea sentences of over 6 years.

The majority of offenders sentenced for GBH with intent are sentenced for 'wounding' (63% in 2017) as opposed to 'GBH'. For GBH offences, 92% of offenders were sentenced to immediate custody in 2017, and 7% were otherwise dealt with.¹ For wounding offences, 89% were sentenced to immediate custody, 1% received SSOs, and 10% were otherwise dealt with. Sentence severity has been gradually increasing for both offences, but since 2014 it has been marginally higher for GBH. This is driven by a slightly higher ACSL for GBH offences; in 2017 the estimated pre-guilty plea ACSL for GBH was 8 years 8 months, compared to 8 years 5 months for wounding.

In the first quarter of 2015 (the most recent data available from the Crown Court Sentencing Survey), 38% of offenders fell in the highest category of seriousness, 60% were in the middle category and 3% in the lowest category. Before the guideline came into force, the majority of offenders sentenced (85%) were placed in the two middle levels of seriousness. Over time there has been a decrease in the proportion of offenders placed in the lowest category of seriousness (from 14% in the second half of 2011 to 3% in Q1 2015). The proportion placed in the highest category has fluctuated over the last few years at around 40%.

Category 1

Of those offenders placed in category 1, the vast majority receive an immediate custodial sentence (94% in Q1 2015). The estimated pre-guilty plea ACSL in category 1 has generally been increasing since the guideline came into force, from 9 years 8 months in the second half of 2011 to 11 years in Q1 2015. The starting point for this category is 12 years' custody. Overall this shows that generally around 40% of offenders are falling into category 1, and they are receiving increasingly longer sentences.

Category 2

For those placed in category 2, most offenders receive a custodial sentence (95% in Q1 2015). This proportion has marginally decreased over time, and there has been a slight increase in SSOs in the past few years. In the second half of 2011, all offenders in category

¹ This includes hospital orders and other miscellaneous disposals.

2 received an immediate custodial sentence, but by Q1 2015 this had decreased to 95%, with 4% receiving an SSO. The estimated pre-guilty plea ACSL has been fairly stable since the guideline came into force, at around 6 years (the starting point for this category).

Category 3

Immediate custody was the most common sentencing outcome for offenders placed in category 3 (82% in 2014), followed by SSOs (13%). The estimated pre-guilty plea ACSL in category 3 has fluctuated over the past few years at an average of around 3 years 9 months. The starting point for this category is 4 years.

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:**A - High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm' or wounding, which can be physical or psychological. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

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.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 3 years</p> <p>Category Range 2 years– 4 years</p>	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>
Harm 2	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>
Harm 3	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks custody</p>

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 considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:**A – Very High culpability**

Very high culpability **may** be indicated by:

- The extreme character of one or more culpability B factors
- Multiple culpability B factors

B - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

C – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
 - Factors in both high and lesser categories are present which balance each other out; **and/or**
 - The offender's culpability falls between the factors as described in high and lesser culpability

D – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

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.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence.

***** SENTENCES TO BE AGREED*****

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

GBH S18	
<p>R V Laverick (att GBH) Court of Appeal case- D attempted to set estranged wife on fire. Two days before the offence, the appellant had sent a message on Facebook to a relative of his wife saying, among other things, "I'm just waiting for the right time, don't give a fuck anymore ... I've got a can of petrol and a two foot long machete ... it's going to be hell or a cell for me and mate I really don't care anymore." On the day of the offence he followed her home after she dropped their child off at school, produced a bottle filled with petrol and threw the contents over her. It went into her face and burned her eyes. She tried to run away but had difficulty because she could not see where she was going. The appellant chased her, continuing to throw petrol over her. Victim ran towards a nearby house, screaming for help. As she did so, the appellant struck matches and threw them in her direction. After the event eight spent matches were found at the scene. Fortunately it was a windy day so the matches did not ignite. Throughout she was begging the appellant to stop. She ran into a nearby garden and tried to get into the house, but no one was in and the door was locked. The appellant pushed her against a fence. He took out a cigarette lighter and flicked the lighter a number of times close to her clothing, by now doused with petrol. She was absolutely terrified and thought she was going to die. She was able to push the appellant away and ran to another property where the occupant was able to allow her into the home and the appellant ran off. The police were called. The appellant was arrested outside his home with a lighter in his possession. He said he was intending to pour petrol over her to scare her with no intention of harming her, and lighting of matches and sparking of the lighter had been purely to scare her. Judge said it was "nothing short of miraculous that petrol did not ignite and had the petrol ignited, she would have become a human torch, she would have suffered injuries which would have been painful in the extreme and disfiguring, almost certainly for the rest of her life. One can think of few crueller crimes short of murder than setting someone alight".</p>	<p>Guilty plea. The judge's conclusion was, taking into account the seriousness of the offence, that the appropriate starting point for a determinate sentence after trial would have been 15 years. There was full credit to be given for the plea and therefore the custodial term was 10 years. Having determined that offender was dangerous, Judge concluded that a life sentence was not necessary; rather an extended licence period would be sufficient to protect the public. He set that licence period at five years – so 15 year sentence. Court of Appeal dismissed appeal</p> <p>With revised factors A1 Culpability A- significant planning, use of a highly dangerous weapon equivalent (petrol). Harm 1 intended</p>
<p>Transcript case 16 – 2016 D and victim had 'bad blood' between them, although history not clear. Victim threw a bottle at outside window of a café where D was with friends and family and gesticulated to him. They had words and victim left and so did D, going in opposite directions. Victim returned with a knife and went into</p>	<p>Found Guilty after trial. Cat 1 offence. Starting point 12 years immediate custody. Extended sentence for dangerousness imposed of 16 years and extended licence period of 4 years, so 20 years in total.</p>

<p>cafe looking for D. D had gone to a flat nearby and retrieved a hidden gun and put disposable gloves and bag on himself, and pulled his hoody up and went to victim to confront him. J said D made a 'conscious decision to teach victim a lesson'. Victim refused to give account of what happened, but J said he had no doubt victim had lunged with his knife at D and that D advanced on him and fired gun, at least two shots, before walking away returning gun to its hiding place and setting off out for a day out paintballing. Victim found at his flat by police, gunshot wound to upper left abdomen and another to his shoulder. Had to have part of his liver removed, repair of a gastric perforation and the removal of bottom half of his pancreas. An operation on his shoulder a week later showed splintering and fragmentation of bone which needed a shortening of the arm and fusing of the damage by the attachment of a metal plate and the removal of dead tissue. In intensive care and HDU for three weeks.</p>	<p>With revised guideline A1 Culpability B – use of a highly dangerous weapon (firearm) Harm 1 – particularly grave injury, requiring removal of parts of internal organs.</p>
<p>Transcript case 17 – 2016 Offence involved kidnap, false imprisonment and blackmail. Gang kidnapped victim and subjected him to 36 hours of torture and violence; stabbing, punching, kicking and burning him with a heated fork, torture with a fork, stabbing and restabbing right arm leading to permanent weakness (and victim is a barber), cutting his beard and forcing him to drink alcohol - deeply degrading as victim a muslim. Made threats/implied he would be killed to terrify him. Ongoing and life changing effect on victim.</p>	<p>Guilty plea – 33% reduction. Starting point 18 years, 12 years for GBH after plea.</p> <p>Revised guideline categorisation A1 Multiple culpability B factors - Planning/premeditation, use of heated instrument to burn/brand victim, prolonged assault. Harm 1 – permanent injury to arm, ongoing and life changing effect.</p>
<p>Transcript case 20 – 2016 Offender got into an argument with victim and victim very aggressively racially abused her. Offender headbutted victim and followed her outside and using a stiletto she was holding hit the victim over the head aiming nine blows, two of which landed. Deep laceration to right eye requiring 20 stitches and a deep laceration to the top of her head along with marks and bruises. High culpability as used two weapons; head and shoe. Greater harm categorisation as attack assessed as sustained and repeated.</p>	<p>Guilty plea – full credit. Starting point 6 years, reduced to 3 years 4 months for plea.</p> <p>Revised guideline categorisation B3 Culpability B – Weapon not in category A Harm 3 – injuries not grave, permanent, irreversible or life changing</p>

<p>Transcript case 36 – 2016 Victim was on way home and saw homeless man and gave him £10, and offender asked for money too (not clear if he was also homeless.) Victim refused and offender attempted to punch and kick him. Then followed him and armed himself with a large bottle and attacked victim from behind. Struck him on side of head causing him to fall to ground then stamped on his head, kicked him, punched him and used the bottle again to hit him. Injuries included numerous facial fractures including cheekbones on both sides, orbit of eye, base of skull and nose. Victim has permanent scarring, ongoing tenderness and pain, nerve damage, interrupted sleep and will not enter city centre.</p>	<p>Starting point 10 years. NG plea, offender refused to attend sentencing hearing. Offence category 2. Offender had a number of previous convictions for violence, including a previous s1 conviction, although not recent enough to provide for dangerousness assessment. Offender described as an entrenched offender and a man of violence. Judge said significant number of aggravating factors take case beyond category range, these included a very clear suggestion of premeditation, he went looking for victim and he armed himself with a weapon. It was in the city centre in the very early morning. There was at least one other person present and a risk of others being present. Defendant concealed his coat and he must have concealed the bottle. A further very significantly aggravating feature is the fact that he was on licence for his last offences of robbery and attempted robbery. Antecedents seriously aggravate this offence. There is little that was said or could be said in mitigation on his behalf. Final sentence 10 years.</p> <p>Revised guideline categorisation – A3 Culpability – Premeditation and use of weapon Harm 3</p>
<p>Transcript case 37 - 2016 - Victim in relationship with offender's sister. All alcoholics. While drunk celebrating sister's birthday offender launched a sustained and savage attack on victim as he hadn't wished his sister a happy birthday. Repeated punches to head and face, sister tried to stop him but couldn't so she called police and offender shouted out comments suggestive of intention to kill or seriously injure victim. Asked sister how many bones he should break, and told police if they were not there in 15 mins he would execute victim, and threatened to throw him out of window and kill him. Rendered victim unconscious during attack and continued to beat him. Injuries included cut/laceration to nose, longer laceration to left cheek beneath left eye. Both eyes severely bruised and there was extensive deep bruising down left side of his face and neck area, as well as left ear. Extensive bruising and cut to back of his hands (defensive injuries). Most serious injury was subdural haematoma. Spent six weeks in hospital and could not return</p>	<p>Cat 1, starting point 10 years. Guilty plea, 33% reduction. Final sentence 7 years.</p> <p>Revised guideline categorisation – B1 Culpability – prolonged, victim vulnerable (became unconscious during attack and continued to beat him) Harm – 1 Life threatening injury (blood clot to brain)</p>

to flat where attack happened.	
<p>Transcript case 40 - 2016 Described as nasty and mean offence; two person attack on victim – offender lead assailant. Victim was knocked unconscious by blow then struck a number of times by both offenders, kicking, stamping and offender used a lump of wood to hit him with. Injuries included a number of facial fractures, continues to suffer effects particularly with sight and some soreness. Not clear if they will resolve in time. Greater culpability, use of shod foot (weapon), harm not serious in the context of the offence.</p>	<p>Category 2 – 6 year starting point. Guilty plea, 33% reduction. Final sentence 4 years imprisonment.</p> <p>Revised guideline categorisation – B3 Culpability B – Leading role in group, weapon other than highly dangerous (wood) Harm – category 3</p>
<p>Transcript case 42 - 2016 Offender was a serving prisoner, boiled a kettle and added 40 sachets of sugar (to maximise pain and suffering of victim) and poured it over head of fellow inmate. Deliberately sadistic and premeditated assault. Told probation officer if it had not been victim, it would have been somebody else. The following day offender telephoned and bragged about it to his mother, telling her that he hoped that victim died. Judge said motivation was clearly and simply to cause him pain and thereby to experience pleasure from doing so. Judge described offender as ‘chillingly dangerous’. Offender has an extensive history of violence and told probation officer he likes violence and derives pleasure from it. Injuries not described but cannot have been severe as Judge says “whilst I acknowledge that in the event the injury was not such as to make it the completed offence, your motivation was such, in my view, to put it at the top of Category 2”.</p>	<p>Guilty plea but Judge said offender did not have much choice (witnesses). Credit not specified. 11 year extended sentence (6 custody, 5 on licence) imposed and dangerousness found.</p> <p>Revised guideline categorisation – A2 Culpability A – Planning/premeditation, highly dangerous weapon equivalent (boiling water and sugar combination) Harm – 2 intended. Grave injuries, burns, potential permanent scarring.</p>
<p>Transcript case 1 - D inflicted injuries on three women using a bottle and then stabbed them all with knives taken from the kitchen of one of the victims. Children were present for at least one of the attacks, but no further information is given for the motive, the situation or any other details of the offence. Judge considered the three counts as one, so imposed one sentence to be served concurrently, reflecting all three. The three women all sustained multiple cuts to the head, and one had a wound to the neck, which didn't cut a major vein/artery but came close. One of the victims sustained defensive injuries to one of her hands causing short term pain and inconvenience to her occupation. Judge said "It is fortunate...that their injuries</p>	<p>Category 1 16 years immediate custody G plea 25% reduction. 12 years custody with extended licence for 5 years (dangerousness)</p> <p>Revised guideline categorisation – B2 – but multiple victims</p>

<p>were not more serious than they turned out to be". D had drunk a lot of alcohol, which he said hadn't affected his conduct, but judge said that even if he was drunk, it is no mitigation.</p>	
<p>R v Henning - The victim and the offender were known to each other. There was a history of bad blood between their families. On 5th June 2014, victim and her cousin went to a house and went to the back garden where there were a number of people, including the offender. The victim asked one of those present about buying some cannabis. The offender said that he had some, but victim said to him "no thanks" and she and her cousin left. The offender lost his temper and started shouting at her and threatening to knock her out. The victim went to the front of the house but the offender followed her and continued to goad her. He slapped her to the face and when she tried to hit him back, he struck her again, causing her to go to the ground. He then stamped on her head twice. Her cousin helped her home but she felt dizzy and sick. She attended hospital. She was found to have a fractured jaw which required surgery and the insertion of metal plates under general anaesthetic. She also had to have a tooth repositioned. While she had made a full recovery from the injury to her jaw, she had been left with the cosmetic disfigurement of a blackened front tooth. She also had anxiety and sleep disturbance which required medication and was still continuing some four months later. Her anxiety led to her sustaining substantial weight loss for some weeks. Offender had no of pre cons. Admitted offence and showed remorse.</p>	<p>Guilty plea on day of trial and 10 per cent discount. Judge found offence fell within category 1. It was a sustained and repeated assault (greater harm) and factors indicated higher culpability, in particular the use of a shod foot to inflict the injuries. She said that the starting point after a trial was one of 12 years with a range of nine to 16 years. The aggravating features here included the previous convictions, but the plea, the appellant's age and his remorse meant that the starting point could be brought down. The sentence was one of 10 years' imprisonment. Upheld on appeal – C of A said it was a severe sentence, but this was a vicious attack by someone with a long history of offending, including offences of violence. They agreed with the approach taken by the judge and did not consider that the sentence was manifestly excessive.</p> <p>Revised guideline categorisation – C2 Culpability C – Shod foot Harm – 2</p>
<p>R v Smallwood at about 1.45 in the morning, the victim and his female companion were walking through the centre of Brighton. By chance they encountered the offender. The female and the offender had formerly been in a relationship. The offender approached the victim and instigated a fight, punching him to the floor. Whilst he was lying prone on the floor, the offender kicked him to the head three times. Witnesses described the kicks "as if taking a conversion in a rugby match", each involving the offender taking a few steps back before each kick. The offender then ran away and went to a night club leaving victim unconscious. He was taken to hospital and found to have a number of injuries - a laceration under his left eye that required 18 stitches, a laceration above his left eyebrow that required gluing, cuts</p>	<p>Judge departed from guideline of a 6 year SP for a category 2 (<i>lesser harm but higher culpability – use of shod foot as a weapon</i>) and imposed 2 years custody for the purpose of suspending it. Referred to C of A by AG. Increased to 4 years by C of A.</p> <p>Revised guideline categorisation – C3 Culpability C – Shod foot Harm – 3</p>

<p>and grazes to his left elbow, a bruised ear and a bruised head. When reviewed in hospital six weeks later he was still experiencing numbness to the left side of his face due to nerve damage caused by the assault and the numbness lasted for some three months. As a result of the attack, victim remains permanently scarred to a very visible part of his face. Offender had no pre cons, in employment and number of good character references. Was drunk at time of offence.</p>	
<p>Transcript case 4 - Both defendants were parents of V (a premature and sickly baby, who's due date was the day of the offence). There was a heightened state of emotion between the parents (including the mother shouting), and V was distressed. D, presumably frustrated by V crying, took hold of V under her arms, shook her briefly and, realising his actions, put her on the floor and alerted the mother to the fact that V "did not look right". D was prone to violent outbursts and was addicted to cannabis. Injuries were fractures to the ribs, the clavicles and damage/bleeding to the brain. A consultant community paediatrician stated that although V is now aged more than 2 years and 4 months, her developmental age is between 12 and 18 months.</p>	<p>Top end of category 2. 8 years 4 months custody starting point 20% discount for plea. Final sentence 6 years and 8 months custody.</p> <p>Revised guideline categorisation – B2 Culpability B – Vulnerable victim Harm – 2</p>
<p>Transcript case 7 - Sustained and repeated attack on victim using shod foot, outside a 30th birthday party where a child and others saw the incident. Caused fractured eye socket and fractured left arm. Defendant was on licence for another offence of violence at time (history of assaults).</p>	<p>Category 1. Starting point not specified but 1/3 reduction for plea and final sentence 10 years custody plus 8 years concurrent for additional attempted s18 offence.</p> <p>Revised guideline categorisation – C3 Culpability C – Weapon (shod foot) Harm – 3</p>
S18 WOUNDING WITH INTENT	
<p>R v Bourke – charged as attempted murder, pleaded to s18 as alternative. DA case. History of frequent and often violent arguments to which Police were called. Victim often attacked offender. Drunken argument resulted in victim being stabbed. She had multiple stab wounds to neck, belly and back including penetration of lung and into stomach area, kidney and liver and defence wounds to forearms. Placed in medically induced coma. At least 20 stab wounds but her life never in danger. Attack was sustained and violent. Victim left with scars to body and a drooping left</p>	<p>Category 1 case. Guilty plea at first opportunity. 15 year starting point reduced to 10 and 5 years extended licence. Quashed on appeal and replaced with 13 and a half year starting point with credit for plea; 9 years and a 3 year extended sentence. Revised guideline categorisation – A1 Culpability A – use of highly dangerous weapon (knife), prolonged assault (20 stab wounds)</p>

<p>eye. No longer capable of work and no longer felt safe in her own home. Provocation and DA on both sides found.</p>	<p>Harm 1 – particularly grave, multiple stab wounds</p>
<p>R v Matthews – Offender had been on a three-day cocaine binge and then visited his adoptive parents' house. He was angry with them because he had not been able to attend his grandfather's funeral a year earlier. He assaulted his mother by pulling her head down and punching her to the shoulder. Concerned by his general violent behaviour, his mother had earlier removed the knives from the house. However, he found a knife and went towards his mother with it and said "I'll kill someone one of these days. I'll kill you". He tried to stab her in the neck but she took the brunt of the cut to her left arm as she tried to defend herself. After seemingly calming down, he stabbed her in the leg and refused to let his father call an ambulance. He then sat down to drink a beer. His mother required surgery to remove the knife from her leg which was embedded in her shin bone and stitches to the lacerations to her neck and arm. She suffered deep vein thrombosis as a result of the knife wounded her leg. Offender was 35 years old and had numerous previous convictions including violent offences, some of which had been committed against his parents. The judge noted the effect of the offending on the mother, the progress he had made in custody, and that his psychological issues had led to substance abuse.</p>	<p>Offender pleaded guilty to two sequential attacks on his mother. Extended sentence, comprising a 10-year custodial term and a four-year extended licence period.</p> <p>C of A held sentence was appropriate.</p> <p>Revised guideline categorisation – B2 Culpability – highly dangerous weapon (knife) Harm – 2 grave but non life threatening injury (surgery required, DVT caused)</p>
<p>Transcript case 10 - D and V had a long-standing family dispute. They bumped into each other, by chance, at a supermarket. D went and armed himself with a Sabatier knife, encouraged V to "Come outside" for a fight, and stabbed V in the chest and elbow, wounding both.</p>	<p>Category 2. Plea not specified. 6 years immediate custody. Extended sentence of 7 years 6 months and extended licence of 18 months – 9 years in total.</p> <p>Revised guideline categorisation – B3 Culpability – highly dangerous weapon (knife) Harm - 2</p>
<p>Transcript case 29 - 2016 Breach of RO and a S18 towards ex girlfriend. RO imposed and two months later he visited her home at 6.45 in morning armed with a vegetable knife 8 inches long with a serrated pointed edge. As she left front door he was waiting and repeatedly punched her in face. Then used knife to stab her, principally in head and neck. Whispered in her ear 'you ruined my life'. She begged him to stop. Police were called and he went into her home. Injuries included cuts and stab wounds to her neck. Broken nose, cuts to eyebrow, hand, cheek and ear. Persistent blows, fractured right eye socket, cuts had to be stitched. She thought</p>	<p>Starting point 12 years. 33% discount for Guilty plea. Final sentence 8 years custody.</p> <p>Revised guideline categorisation – A1/2 Culpability – Planning/premeditation, use of highly dangerous weapon (knife) Harm – 1/2. Very high degree of psychological harm</p>

ANNEX D

<p>she would be killed and was terrified. She has had to move home and continues to have problems sleeping. Has eye socket injury requiring specialist attention as do other injuries and scars she received.</p>	
<p>Transcript case 31 - 2016 Bottled victim while drunk - not clear if already broken or he broke it. Caused neck injuries and permanent scarring and Judge says victim psychologically scarred for life.</p>	<p>Category 2. Starting point 6 years custody. 33% discount for plea. Final sentence 4 years. Revised guideline categorisation – A/B3 Culpability – Use of weapon (bottle) likely to be highly dangerous if broken, maybe not highly dangerous if not? Harm – A/B3.</p>
<p>Transcript case 38 - 2016 - Offender and brothers (co-d's) attended a house party where words were exchanged with others, although everything seemed to be resolved. Knives then appeared on scene and offender struck victim who was walking away with knife, causing wound to his face. 7 cm very deep laceration, and only through intervention of expert medical assistance was facial nerve undamaged. Scar left but not permanent and barely noticeable.</p>	<p>Category 2 – 4 year starting point (departed from guideline) Judge said case falls towards the bottom end of Cat 2 range, it was a single blow. Great deal of mitigation found; only one previous conviction - when aged 15, some years ago - for an offence of burglary, so no history of violence, described in PSR as posing a medium risk of reoffending. Having regard to the fact that this was a moment of madness and the injury, whilst still serious, is not as bad as it might have been. 25% credit as plea on day of trial, final sentence 3 years. Revised guideline categorisation – A3 Culpability – A - highly dangerous weapon (knife) Harm – 3</p>
<p>R v Smith - The victim had gone to S's house to complain about repairs that S had carried out on his partner's vehicle. An argument ensued, S asked V to leave and was shouting and threatening him. S took a metal pole from his car, V got into his vehicle and the S struck the car with the pole. V came out of the vehicle and was assaulted with the pole, causing lacerations to his forehead and bruising to his left arm. The jury rejected the appellant's defence of self-defence. When passing sentence, the judge stated that the appellant could have retreated but had instead grabbed the pole causing injury.</p>	<p>The offence was a Category 2 offence with a six-year starting point and a range of between five to nine years' imprisonment. Six years imposed. Court of Appeal found sentence was towards the bottom of the range but did not merit uplift. The sentence was manifestly excessive. The altercation was over car repairs and the assault was not the most serious kind for such cases. The injuries were not so severe. The correct sentence should have been five years' imprisonment. Revised guideline categorisation – C3 Culpability – C – non highly dangerous weapon (pole) Harm – 3</p>

Sentencing trends for GBH with intent, 2007-2017^{1,2}

Proportion of adult offenders sentenced for GBH with intent, by sentence outcome, all courts, 2007-2017³

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	<0.5%	0%	0%	0%	<0.5%	<0.5%	0%	<0.5%	0%	0%	0%
Fine	<0.5%	0%	0%	0%	0%	0%	0%	<0.5%	<0.5%	<0.5%	0%
Community sentence	1%	<0.5%	<0.5%	1%	1%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%
Suspended sentence	2%	2%	2%	2%	1%	1%	2%	3%	3%	3%	1%
Immediate custody	93%	95%	95%	95%	95%	97%	95%	90%	89%	89%	90%
Otherwise dealt with	3%	3%	3%	3%	3%	2%	3%	6%	7%	8%	9%

GBH with intent sentence lengths

Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for GBH with intent, all courts, 2007-2017⁴

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
3 years or less	31%	23%	26%	21%	17%	13%	11%	10%	10%	9%	8%
Between 3 and 6 years	36%	44%	48%	50%	51%	48%	48%	48%	48%	47%	44%
Between 6 and 9 years	5%	8%	11%	11%	15%	20%	26%	26%	25%	27%	28%
Between 9 and 12 years	0%	2%	2%	3%	4%	7%	10%	12%	11%	12%	14%
Between 12 and 15 years	0%	0%	0%	0%	1%	1%	3%	3%	3%	3%	4%
More than 15 years	0%	0%	0%	0%	0%	0%	0%	1%	1%	1%	1%
Indeterminate	28%	23%	14%	15%	11%	10%	1%	1%	1%	1%	1%

¹ Source: Court Proceedings Database, Ministry of Justice.

² Excludes youths.

³ Percentages may not add up to 100 per cent, due to rounding.

⁴ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '3 years or less' includes sentence lengths less than and equal to 3 years, and 'Between 3 and 6 years' includes sentence lengths over 3 years, and up to and including 6 years.

Post guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for GBH with intent, all courts, 2007-2017

