

Sentencing Council

Sentencing Council meeting: 22 July 2018
Paper number: SC(18)JUL03 – Assault
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1 ISSUE

1.1 Following on from the last meeting where factors were agreed for a revised common assault guideline, this paper includes finalised factors and sentences for common assault.

1.2 The paper also sets out the findings from the evaluation of the existing guideline for assault occasioning actual bodily harm (ABH), and proposes revised guideline factors. The Council will also be asked to consider current sentencing practice for ABH and principles which should underpin sentence development in the revised guideline.

2 RECOMMENDATION

That the Council:

- considers and agrees one additional culpability factor and sentences for common assault;
- considers and agrees factors for a revised guideline for ABH and principles which should underpin sentence development.

3 CONSIDERATION

3.1 At the last meeting the Council considered factors for a revised guideline for the offence of common assault. Evidence analysed in relation to the existing guideline indicated that factors included had led to an unintended impact of the guideline; namely that a high proportion of cases were attracting a lesser harm categorisation, resulting in a deflationary impact at the lower end of seriousness. Contrary to the anticipated impact of the guideline, there was no decrease in

custodial sentences on its introduction, and instead a decrease in volumes of community orders and an increase in volumes of fines imposed occurred. It was agreed that the impact is likely to be attributable to the combination of a high proportion of cases sentenced as common assault actually being ABH offences requiring a custodial sentence, and the existing guideline factors leaving offences without a high level of harm attracting a starting point of a fine.

3.2 To address these issues, factors highlighted as problematic in the evaluation were removed, and it was agreed that the revision of factors was likely to address the unintended impact of the guideline. Work has now been undertaken to develop sentence levels for this offence. As well as agreeing sentence levels for common assault today, the Council will be asked to consider factors for a revised guideline for ABH offences.

Common Assault – finalising factors

3.3 The revised guideline agreed at the last meeting for common assault is available at **Annex A**. At the last meeting a high culpability factor of ‘use of substantial force’ was proposed. It was intended that this would replace the problematic high culpability factors included in the existing guideline of ‘intention to commit more serious harm’ and ‘deliberately causes more harm than necessary’. The presence of these factors would indicate activity with the potential to inflict serious harm, but actual harm caused amounts to a charge of common assault. As the offence involves causing another to apprehend the immediate infliction of unlawful force or application of unlawful force, it was submitted that use of substantial force would cause an offence to be more serious and indicate an intention to cause more serious harm than eventuated. The Council agreed that such a factor was necessary but proposed that alternative wording be considered, as it was considered that the original proposed wording may apply in too many cases and inflate culpability categorisation.

3.4 As an alternative to ‘use of substantial force’ a higher threshold factor has been considered of ‘offence involves a significant degree of violence’. The Council are asked to consider if they prefer this factor to ‘use of substantial force’.

Question 1: Does the Council agree with the proposed additional high culpability factor?

Common Assault – sentences

3.5 As already noted, the evaluation of the guideline identified the impact was not as intended upon the guideline's introduction; specifically a reduction in custodial sentences did not occur, and instead a shift of disposals from community orders to fines occurred at the lower end of offence seriousness. The Council were asked at the last meeting which, if any, principles should inform sentence level revision, and if the revised guideline should seek to effect the original anticipated impact upon sentences.

3.6 As discussed at the last meeting it is likely that a high proportion of current custodial sentences are actually ABH offences which account for a high volume of custodial sentences in the current sentence distribution. It is anticipated that revised CPS guidance will prevent cases which are actually ABH being charged as common assault, which should automatically address the high proportion of custodial sentences. The high proportion of fines and sentencer concerns that the existing guideline does not adequately provide for 'middling' harm will be addressed by the revised factors in the guideline, and that three categories of harm are included with harm gradated more clearly.

3.7 It was suggested at the last meeting that it may be desirable to ensure a category A1 offence attracts a custodial starting point. However, it was noted that the existing guideline does not include a custodial starting point in any category, and such a change in a revised guideline is highly likely to be inflationary. A specific example considered at the last meeting based on agreed factors was a domestic incident where serious injury such as a black eye was caused to the victim, which it was broadly agreed should attract a custodial starting point. Although there were few transcripts available for the offence of common assault given that it is summary only, the few that are available have been considered to identify types of offences attracting custodial sentences in the existing guideline. This analysis has identified that where there is a history of domestic assaults custodial sentences are often imposed, but other domestic type incidents included non-marital familial incidents, which often do not. Examples of such cases included incidents involving a brother and sister and a stepmother and stepson, where threats and low level physical violence such as shoving were involved. In a non-marital context the cases reviewed, although causing distress to the victims, did not attract custodial sentences but fines

and conditional discharges. Even in the absence of a high level of physical harm, it may be more likely that more than minor psychological harm would be present in a familial domestic incident, and it may not be appropriate to have a custodial starting point in all cases. As the guideline includes an instruction to sentencers to refer to the domestic assault guideline when sentencing common assault offences, it is likely that application of this guideline would provide for a custodial sentence to be imposed in appropriate cases.

3.8 Given the wide range of high culpability factors and the fact that appropriate charging should address issues with higher sentences, it is thought that it may be preferable to retain a starting point of a high level community order for the most serious offences, with the presence of aggravating factors then providing for a custodial sentence to be imposed in appropriate cases. Revised factors will provide for appropriate categorisation of harm and ensure that in appropriate cases a community order can be imposed. This should address criticism and concerns in the evaluation findings that sentences in the guideline are too low, while still providing for fines to be imposed in cases of lower seriousness.

3.9 The proposed sentences also take into account the relativity between common assault and more serious assault offences. If sentence starting points are increased, this may then require increases in starting points for other more serious offences.

3.10 Sentence levels are included at **Annex A** for the Council's consideration. Subject to approval sentence levels will be tested over the Summer and findings shared with the Council prior to the sign off of the revised guideline and full consultation, to identify if revisions have addressed the predominant areas of concern for sentencers.

Question 2: Does the Council agree with the proposed sentence levels for common assault?

Actual Bodily Harm

3.11 This offence is provided for by Section 47 of the Offences Against the Persons Act 1861. The offence is committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm (ABH). It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment.

3.12 In law, the only factors that distinguish Common Assault from Assault occasioning Actual Bodily Harm are the degree of injury that results and that ABH may be tried in the Crown Court and attract a significantly higher sentence. There is no statutory definition of ABH. Case law principles which have developed are that the assault must cause any hurt or injury interfering with the health or comfort of the victim. Harm does not need to be permanent but must be more than trifling or transient. The injury can be psychiatric but not merely fear or anxiety.

3.13 The number of adult offenders sentenced for ABH has generally decreased over the last decade, although some of this decline could be attributable to some ABH cases being charged as common assault. In 2017 there were around 6,200 offenders sentenced for ABH, and just over two thirds of offenders were sentenced in the Crown Court.

The existing guideline – evaluation findings

3.14 The assessment of the impact and implementation of the actual bodily harm guideline noted the following;

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. 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, indicates that there is no strong evidence that the guideline had an impact, despite the expectations that it would. 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 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 cited 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.

3.15 As a result of these findings and observations of the Council at the last meeting, a revised guideline is proposed. As with the recently agreed common assault guideline this is in the format of more recent Council guidelines, removing or revising problematic factors and providing for three gradations of harm. The proposed revised draft guideline is included at **Annex B**. The existing guideline is included at pages 12-14 of **Annex C**.

Culpability factors

3.16 The culpability factors in the existing ABH guideline are exactly the same as those for common assault, with the exception of use of a weapon which is broader in common assault and includes threat or use of weapon. Given that the difference between the offences is the harm caused, it is proposed that the existing culpability factors for ABH be revised as for common assault, although the high culpability weapon factor restricted to use of weapon as in the existing guideline. The rationale for each factor revised was considered and agreed at the last meeting, with problematic factors removed or revised.

3.17 There is one other culpability factor that may differ depending on the Council's decision in respect of the additional common assault factor discussed at paragraph's 3.3 – 3.4 of this paper. If the factor 'offence involves a significant degree of violence' is agreed as an appropriate high culpability factor for common assault, a similar factor would be required in the ABH guideline. However, due to the fact that a higher degree of injury will have occurred in an ABH offence, it may be appropriate to

increase the threshold of this factor, as many offences are likely to involve significant violence and could cause the proposed common assault factor to have an inflationary effect if included in the ABH guideline. The wording 'offence involves a serious level of violence' is proposed.

Question 3: Does the Council agree with the proposed high culpability factors for ABH offences?

Harm

3.18 As for common assault, the harm factors in the existing guideline are the biggest concern as they do not provide for cases of medium harm, and interpretation of the term 'within the context of the offence' has proved problematic. The existing guideline harm factors for ABH are as for common assault, save for the greater harm factor relating to the context of the offence specifying that such harm includes disease transmission and/or psychological harm.

3.19 The revised guideline proposes three harm categories, which gradate harm with reference to the level of injury. Some harm must be present to constitute this offence, so the lowest category includes minor harm. Case transcripts have been analysed to identify the types of harm resulting in the highest sentences for offences of ABH. Due to the wide range of injuries that can be involved, the categories have been limited to describing the level of injury (serious/minor) rather than describing the type of injury. Factors such as injury requiring extensive medical treatment, multiple serious injuries, minor bruising were considered, but it was considered that these could have the potential to leave some cases outside of the correct category so an overall assessment of the level of harm is proposed.

Question 4: Does the Council agree with the proposed harm factors?

Aggravating and mitigating factors

3.20 The aggravating and mitigating factors included are as agreed for the common assault guideline at the last meeting. In analysis of cases these factors were all found to be relevant.

Question 5: Does the Council agree with the proposed aggravating and mitigating factors?

Sentences

3.21 Existing sentence starting points and ranges for this offence are available for review at page 12 of **Annex C**. **Annex D** includes statistical information on sentencing trends between the period 2007-2017 for both common assault and ABH, in addition to Crown Court Sentencing Survey (CCSS) data for ABH offences.

3.22 As already noted, a key finding in the evaluation of the guideline was that contrary to expectations ABH sentences increased, although some sentencers reported that sentence ranges were too low. It is thought that sentencer perceptions in this respect could be due to the existing guideline sentences representing a decrease in sentence ranges and starting points compared to the SGC guideline, which were as follows;

Type/nature of activity	Starting point	Sentencing range
Pre-meditated assault EITHER resulting in injuries just falling short of GBH OR involving the use of a weapon	30 months custody	2 – 4 years custody
Pre-meditated assault resulting in relatively serious injury	12 months custody	36 weeks – 2 years custody
Pre-meditated assault resulting in minor, non-permanent injury	24 weeks custody	12 – 36 weeks custody
Other assault resulting in minor, non-permanent injury	Community Order (HIGH)	Community Order (MEDIUM) – 26 weeks custody

3.23 Increases in sentences could also be attributable to the level of injuries present in cases being charged as ABH. The evaluation highlighted 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.*” An inference could therefore be drawn that if ABH cases were being charged as common assault, a similar pattern may have occurred with GBH offences being sentenced as ABH, and a GBH type injury in the context of an ABH provided for this factor to be applied. This was evident in a small number of cases analysed, where lacerations were caused with glasses in ABH offences, and some cases involved broken bones which would usually be charged as GBH. As can be seen on page 8 of **Annex D**, the estimated pre guilty plea ACSL in category 1 is 2 years, which is higher

than the starting point of 1 year 6 months. This could indicate a higher level of offence seriousness than sentencers feel the existing starting point is appropriate for.

3.24 A more marked trend of higher sentences above the category range in the lowest category of seriousness can be seen in the last table on page 7 of **Annex D**. The data illustrates a high proportion (around 40%) of custodial sentences were imposed in this category, which does not even provide for a custodial sentence to be imposed. This could suggest that sentencers do not believe the existing guideline sentences are adequate, and that the types of case found to be at the lower end of seriousness in the guideline are considered too serious for the sentencing options available. When comparing sentences for ABH and common assault, it is noted that a case of lower seriousness in ABH, which would presumably still be more serious than a high category common assault, currently attracts a lower starting point than the most serious common assault offence. It is possible that sentencers have sought to correct this by imposing what they consider to be more proportionate sentences at the lower end of ABH seriousness. However, the revised common assault guideline provides for the highest harm categorisation where an injury is more than minor, and the proposed lowest ABH harm factor provides for minor injury. This may justify for sentencers a lower starting point for a minor injury ABH if this is retained although this would need to be considered with a view to the type of injury which may be present in each offence. Alternatively the Council may consider that there should be parity between the highest common assault starting point and lowest ABH starting point.

Question 6: Should the starting point at the lower end of seriousness for ABH be equivalent to or higher, rather than lower than, the highest starting point in a common assault offence to ensure relativity of sentences?

3.25 Before sentence levels are developed, further work is required to consider sentences for s.20 GBH, which has the same statutory maximum sentence as ABH. Although the maximum sentence is the same, GBH involves more serious harm and relativity between the sentences will be important. Prior to this work being undertaken the Council are asked to consider whether the revised ABH guideline should seek to address the unintended consequences of the existing guideline and reduce sentences for ABH. However, if the increases are due to the type of offence being charged, the capacity of the guideline to address sentence increases could be

limited, as these may involve more serious injuries and sentencers may continue to impose higher sentences.

3.26 The Council are therefore asked to consider a number of specific questions in relation to ABH sentences.

Question 7: Should the other ABH sentence starting points be maintained or increased?

Question 8: Are there any other principles or considerations that should underpin ABH sentences?

4 IMPACT /RISKS

4.1 It will be important reputationally to ensure a thorough assessment of the evidence available and for principled decisions to be made regarding sentences for this offence.

4.2 Early testing of the guidelines with sentencers will be undertaken to identify potential issues and impact prior to sign off of the guideline.

STEP ONE
Determining the offence category

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

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

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse'

Culpability demonstrated by one or more of the following:

A - High culpability:

- Offence committed in domestic context
- Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances
- Prolonged assault
- Offence involves a significant degree of violence
- Threatened or actual use of weapon or weapon equivalent*
- Leading role in group activity

B – Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

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

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	More than minor physical or psychological harm
Category 2	Minor physical or psychological harm
Category 3	No physical injury No/very low level of distress

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.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point High level Community Order</p> <p>Category Range Low level Community Order - 26 weeks' custody</p>	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>
Harm 2	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - low level Community Order</p>
Harm 3	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - Low level Community Order</p>	<p>Starting point Band A Fine</p> <p>Category Range Discharge – Band C Fine</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

Other aggravating factors:

Spitting

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

Offence committed in prison

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with 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

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

STEP ONE**Determining the offence category**

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- Offence committed in domestic context
- Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances
- Prolonged assault
- Offence involves a serious level of violence
- Use of weapon or weapon equivalent*
- Leading role in group activity

B – Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

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

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	Serious physical or psychological harm
Category 2	Cases falling between categories 1 and 3
Category 3	Minor physical or psychological harm

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.

HARM	CULPABILITY	
	A	B
Harm 1	Starting point Category Range	Starting point Category Range
Harm 2	Starting point Category Range	Starting point Category Range
Harm 3	Starting point Category Range	Starting point Category Range

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.

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

Other aggravating factors:

Spitting

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

Offence committed in prison

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

History of failure to comply with 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

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

Assault Definitive Guideline

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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

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

Sentencing trends for common assault and ABH, 2007-2017^{1,2}

Proportion of adult offenders sentenced for common assault, by sentence outcome, all courts, 2007-2017³

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	20%	16%	13%	15%	15%	15%	15%	16%	15%	15%	14%
Fine	11%	11%	12%	11%	13%	14%	14%	15%	16%	16%	16%
Community sentence	42%	44%	46%	45%	43%	42%	39%	37%	39%	38%	39%
Suspended sentence	10%	10%	12%	12%	12%	11%	12%	12%	13%	14%	14%
Immediate custody	14%	15%	15%	14%	15%	15%	14%	14%	14%	14%	14%
Otherwise dealt with	4%	4%	2%	3%	3%	3%	5%	5%	3%	3%	3%

Proportion of adult offenders sentenced for ABH, by sentence outcome, all courts, 2007-2017

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	4%	3%	2%	2%	2%	2%	1%	1%	1%	1%	1%
Fine	3%	2%	2%	1%	2%	2%	1%	1%	1%	1%	1%
Community sentence	32%	32%	31%	32%	30%	23%	20%	17%	16%	15%	15%
Suspended sentence	28%	30%	31%	31%	31%	34%	36%	38%	41%	39%	38%
Immediate custody	29%	31%	32%	31%	34%	38%	40%	41%	39%	40%	42%
Otherwise dealt with	4%	3%	2%	2%	2%	1%	2%	2%	2%	2%	2%

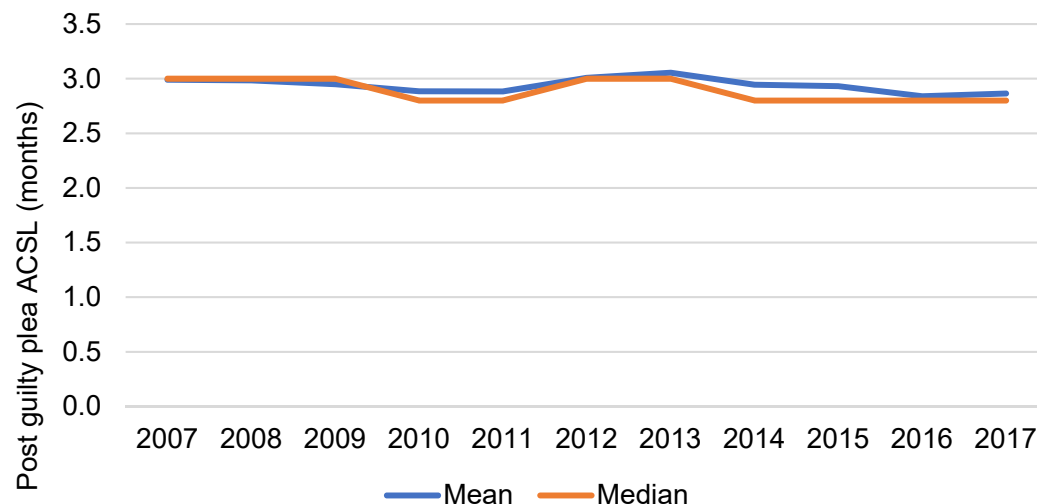
¹ Source: Court Proceedings Database, Ministry of Justice

² Excludes youths, section 29 offences (racially/religiously aggravated), and custodial sentences of over 6 months for common assault, and over 5 years for ABH (the statutory maximum sentences for these offences)

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

Common assault sentence lengths

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

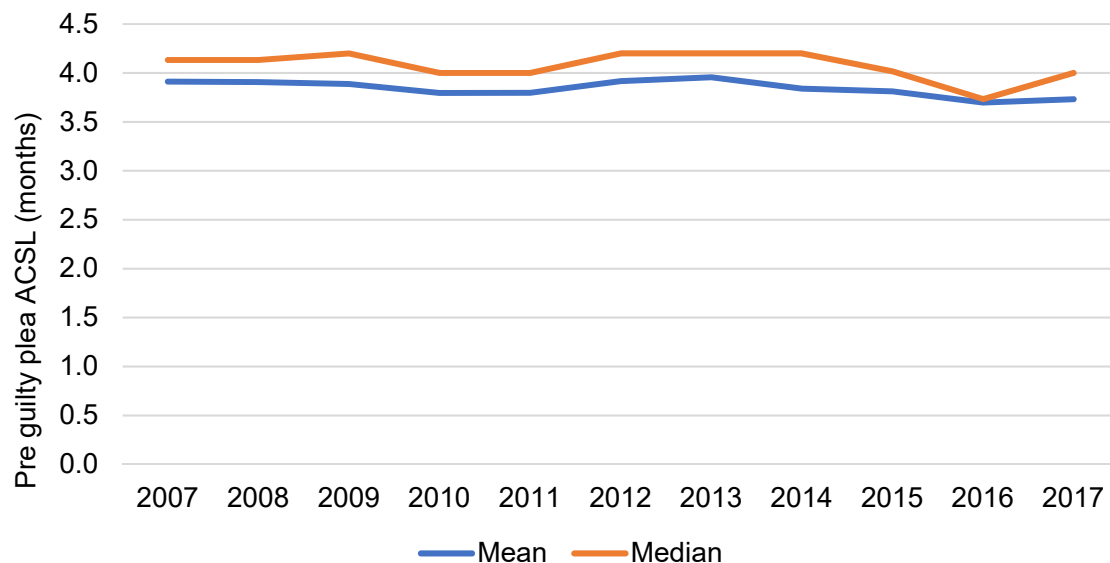


Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017⁴

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 month or less	13%	13%	12%	13%	14%	13%	13%	14%	14%	16%	16%
Between 1 and 2 months	22%	21%	21%	22%	21%	19%	18%	20%	20%	21%	21%
Between 2 and 3 months	24%	23%	25%	25%	24%	23%	22%	22%	22%	23%	21%
Between 3 and 4 months	27%	27%	26%	24%	24%	25%	25%	23%	22%	21%	21%
Between 4 and 5 months	8%	10%	11%	10%	11%	13%	13%	13%	13%	12%	13%
Between 5 and 6 months	6%	6%	6%	5%	6%	8%	9%	8%	8%	8%	8%

⁴ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 month or less' includes sentence lengths less than and equal to 1 month, and 'Between 1 and 2 months' includes sentence lengths over 1 month, and up to and including 2 months.

Estimated pre guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017



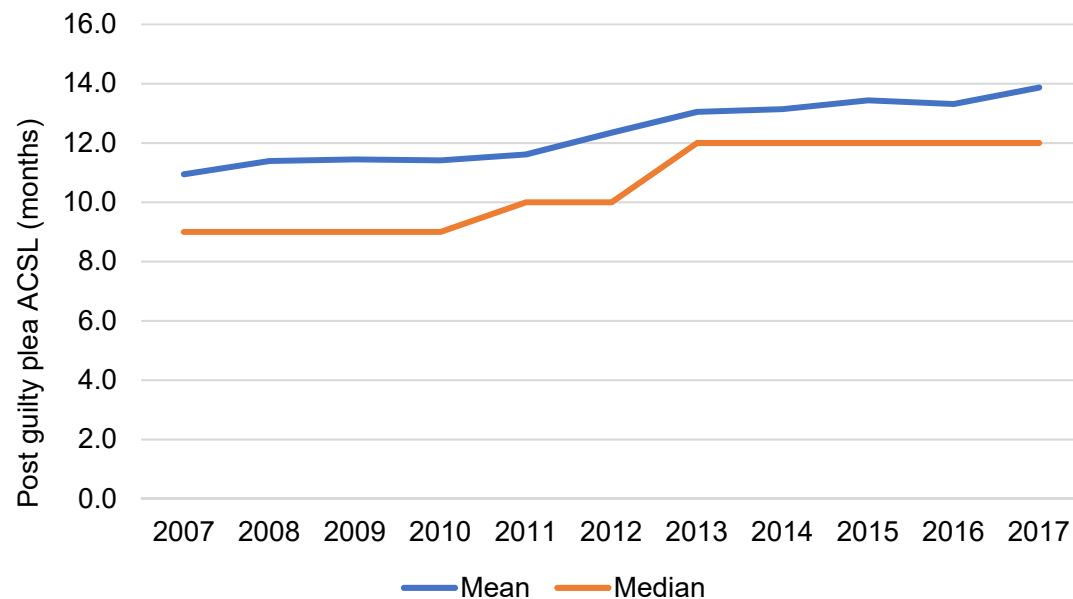
Estimated pre guilty plea sentence length bands received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017⁵

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 month or less	4%	4%	5%	5%	5%	5%	4%	5%	5%	6%	7%
Between 1 and 2 months	14%	13%	13%	13%	14%	13%	12%	14%	14%	15%	14%
Between 2 and 3 months	20%	20%	19%	20%	21%	17%	18%	19%	19%	20%	19%
Between 3 and 4 months	12%	12%	12%	12%	12%	12%	12%	11%	12%	11%	11%
Between 4 and 5 months	19%	19%	20%	20%	20%	20%	19%	20%	18%	19%	18%
Between 5 and 6 months	31%	32%	31%	29%	29%	33%	34%	32%	32%	29%	31%

⁵ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 month or less' includes sentence lengths less than and equal to 1 month, and 'Between 1 and 2 months' includes sentence lengths over 1 month, and up to and including 2 months.

ABH sentence lengths

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

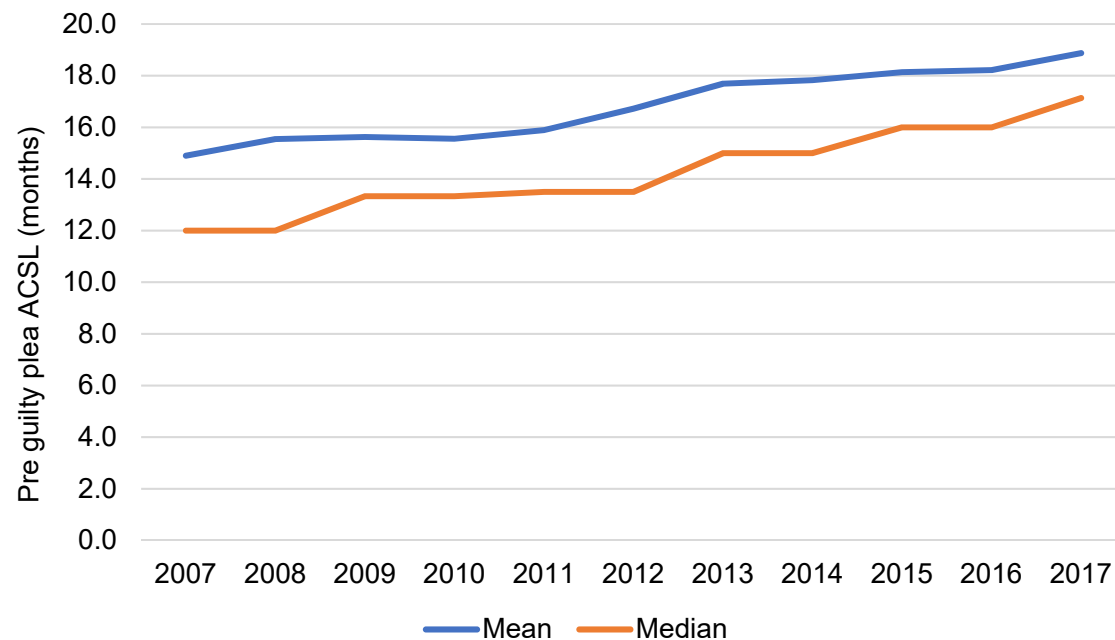


Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017⁶

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 year or less	71%	70%	69%	70%	69%	65%	60%	59%	58%	57%	55%
Between 1 and 2 years	24%	25%	25%	26%	26%	29%	33%	34%	35%	35%	36%
Between 2 and 3 years	4%	5%	5%	4%	4%	5%	6%	6%	6%	7%	8%
Between 3 and 4 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Between 4 and 5 years	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%

⁶ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 year or less' includes sentence lengths less than and equal to 1 year, and 'Between 1 and 2 years' includes sentence lengths over 1 year, and up to and including 2 years.

Estimated pre guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017



Estimated pre guilty plea sentence length bands received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017⁷

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 year or less	51%	50%	49%	48%	46%	43%	38%	38%	37%	37%	37%
Between 1 and 2 years	34%	33%	35%	37%	38%	40%	43%	42%	42%	42%	38%
Between 2 and 3 years	12%	12%	12%	12%	12%	13%	15%	15%	17%	15%	19%
Between 3 and 4 years	2%	3%	3%	2%	2%	3%	4%	4%	4%	5%	5%
Between 4 and 5 years	1%	2%	1%	1%	1%	1%	1%	2%	1%	1%	1%

⁷ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 year or less' includes sentence lengths less than and equal to 1 year, and 'Between 1 and 2 years' includes sentence lengths over 1 year, and up to and including 2 years.

Crown Court Sentencing Survey data for ABH offences, 2013 - 2015 (Q1)^{8,9}

Sentence table in Sentencing Council ABH definitive guideline

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

Proportion of offenders placed in each offence category, Crown Court Sentencing Survey

Offence category	2013	2014	2015 Q1
	(n=3,422)	(n=3,781)	(n=932)
Level 1 (most serious)	37%	39%	42%
Level 2	54%	53%	50%
Level 3 (least serious)	9%	9%	8%
Total	100%	100%	100%



Around half of offenders sentenced in the Crown Court are placed within the middle category of seriousness. Over time there's been a shift towards more offenders being placed in the highest category.

Proportion of offenders receiving each sentence outcome: Offence category 1 (most serious), Crown Court Sentencing Survey

Sentence outcome	2013	2014	2015 Q1
	(n=1,263)	(n=1,457)	(n=392)
Immediate custody	73%	68%	61%
SSO	25%	30%	36%
CO	2%	2%	3%
Conditional discharge	0%	0%	0%
Other	0%	0%	0%
Total	100%	100%	100%

⁸ Source: Crown Court Sentencing Survey, 2011-2015 (Q1)

⁹ Excludes youths, section 29 offences (racially/religiously aggravated), and custodial sentences of over 5 years (the statutory maximum sentence for this offence)

Proportion of offenders receiving each sentence outcome: Offence category 2 (middle category), Crown Court Sentencing Survey

Sentence outcome	2013	2014	2015 Q1
	(n=1,847)	(n=1,997)	(n=464)
Immediate custody	34%	36%	30%
SSO	49%	49%	53%
CO	16%	14%	16%
Fine	0%	0%	0%
Conditional discharge	0%	0%	0%
Absolute discharge	0%	0%	0%
Other	0%	1%	1%
Total	100%	100%	100%

Proportion of offenders receiving each sentence outcome: Offence category 3 (least serious), Crown Court Sentencing Survey

Sentence outcome	2013	2014	2015 Q1
	(n=312)	(n=327)	(n=76)
Immediate custody	12%	17%	13%
SSO	23%	30%	30%
CO	54%	42%	39%
Fine	4%	5%	5%
Conditional discharge	6%	6%	12%
Absolute discharge	0%	1%	0%
Other	1%	0%	0%
Total	100%	100%	100%



On average, around 40% of offenders in category 3 received a custodial sentence (immediate custody or SSO), which isn't in this category range.

Post guilty plea mean ACSLs for offenders sentenced to immediate custody, Crown Court Sentencing Survey

Offence category	ACSL in years		
	2013	2014	2015 Q1
Level 1 (most serious)	1.5	1.5	1.5
Level 2	0.8	0.8	0.8
Level 3 (least serious)	0.7	0.6	0.6

Estimated pre guilty plea mean ACSLs for offenders sentenced to immediate custody, Crown Court Sentencing Survey

Offence category	ACSL in years		
	2013	2014	2015 Q1
Level 1 (most serious)	2.0	2.0	2.0
Level 2	1.1	1.1	1.0
Level 3 (least serious)	0.9	0.7	0.8