

ABH and GBH (s18 and s20) Harm Model Testing with Crown Court Judges

Introduction

An online research exercise was conducted with Crown Court judges to test two draft ABH harm models and two draft GBH (s18 and s20) harm models. We particularly wanted to know which, if any, harm model would be interpreted most consistently by judges and whether either model would result in categorisations of various injuries that were in line with our expectations. In total 32 judges took part in this research; 15 judges participated in the ABH exercise and 17 judges participated in the GBH exercise. In both exercises they were asked to categorise a series of injuries¹ using one of the harm models. Once this had been completed they were shown both harm models and asked if they had a preference. Given the small sample sizes the research findings presented below should be regarded as indicative only and not conclusive.

Findings

GBH

- A clear majority of judges preferred the more detailed GBH harm model, ('GBH harm model one') at the end of this paper. Phrases such as, "likely to produce far greater consistency", "helpful and focussed" and "easier to apply" were used by multiple judges to describe this harm model.
- The two judges who preferred the less detailed harm model ('GBH harm model two' at the end of this paper) did so because they felt it "gives far greater judicial discretion" and "it provides the sentencing court with greater flexibility".
- As well as being preferred by most judges, harm model one also led to greater consistency when categorising the GBH injuries. Six out of fifteen injuries (see Table 1) were categorised more consistently by judges using harm model one compared to judges categorising the injuries using harm model two. There were only two injuries which were categorised more consistently using harm model two. The remaining seven injuries were either categorised consistently (one injury) or inconsistently (six injuries) under both harm models, highlighting that even though harm model one led to greater consistency compared with harm model two there was still some variation between judges when using the preferred harm model.
- Finally, in 10 out of the 15 injuries tested, those judges using harm model two tended to categorise the injuries at a higher level than using harm model one (see Table 1). This suggests that harm model two could lead to higher sentencing than harm model one.

¹ Ten injuries if judges were completing the ABH exercise and fifteen injuries if they were completing the GBH exercise.

ABH

- Most judges preferred the harm model with less text ('ABH harm model one' at the end of this paper). Judges felt that this harm model was "clearer", "more straightforward" and "easier to understand".
- Some judges preferred the second harm model ('ABH harm model two' at the end of this paper). Reasons such as "more flexibility" and "simplicity" were given for preferring this model.
- In terms of sentencing practice, the ABH injuries were generally categorised the same when comparing judges using harm model one with judges using harm model two, although harm model two appeared to lead to slightly higher categorisation (see Table 2). For most injuries there was some variation over their categorisation, but in general, there was a majority view in each case.

Table 1. GBH injuries - categorisation

GBH Harm Model One	GBH Harm Model Two		
Injury	Most consistent categorisation of harm	Most judges placing the injury in a higher harm category	
Q1.1. Gunshot wound to the upper left abdomen and another to the shoulder. Had to have part of liver removed, repair of a gastric perforation and the removal of bottom half of 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.	Model Two (9/9 judges placed in the injury in category one)	Model two	
Q1.2. A significant and serious deep wound to arm requiring several stitches and several other less serious wounds to body.	Model one (8/8 in category three)	Model two	
Q1.3. Wound was small but surgeons had to slice open the whole front of the victim's stomach to repair the internal organs, including the kidney. Victim is now physically recovered, but suffers severe depression and has severe scarring to abdomen.	No difference	Model two	
Q1.4. Over 50 bruises on his body, including 37 to his front, 16 to his back. Bite mark on abdomen, cigarette burns to his skin. Victim continues to suffer physical difficulties including, problems with his leg, difficulties with walking, cannot use his left arm to hold things and his peripheral vision has been affected. Psychological damage: scared of going upstairs, does not like dark places and finds loud voices distressing.	Model one (8/8 in category one)	Model one	
Q1.5. Small puncture wound in left shoulder and penetrating wound to abdomen causing some internal organs to start falling out. Operated on to close the wound. Full recovery.	No difference	Model two	
Q1.6. Fractured eye socket and fractured left arm.	Model one (8/8 in category three)	Model two	
Q1.7. Victim had to have an operation, had metal plates put into his jaw and "is still suffering".	Model one (3/8 in category two and 5/8 in category three)	Model two	
Q1.8. Bruising to face, lips, eyes and all over legs. 10in wound to back of shin which required 8 stitches.	Model one (8/8 in category three)	Model two	
Q1.9. Serious injuries to face, fractures to nose and facial bones and fractures to ribs and wounds to scalp.	No difference	Model two	
Q1.10. Victim left with permanent and highly visible scarring to face and neck. Rarely goes out as is depressed at appearance.	No difference	No difference	
Q1.11. Multiple fractures to nose, bruising and swelling across face. Victim still has problems with taste, smell and vision, and suffers severe anxiety.	No difference	No difference	
Q1.12. Subarachnoid haemorrhages. Injury not likely to be permanent but after almost a year victim suffers headaches and is not able to drive.	Model two (3/9 in category one and 6/9 in category two)	Model two	
Q1.13. Two fractures to victim's jaw, had to have his jaws wired and to eat and drink using a straw for a considerable period. Victim also had a sizeable section of his ear bitten off and may have to undergo plastic surgery for reconstruction.	Model one (7/8 in category two)	Model two	
Q1.14. Fractured skull and brain damage and surgery required to reduce the inter-cranial pressure. Victim left partially sighted, has substantial learning difficulties, and behavioural problems.	No difference	No difference	

Q1.15. Serious bruising and cuts to face and head and broken ribs. Character changed post injury, becomes irritable and cannot taste or smell. Short term memory affected. Has lost confidence in driving and has given up. Blurred vision in one eye and used to keep fit at gym and run but no longer can due to effect on balance. Still able to work.	No difference	No difference
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Table 2. ABH injuries - categorisation

Majority view			
Group	No. of categorisations		Most judges placing the injury in a higher harm category
	Harm model 1	Harm model 2	
Q1.1. Knocked out victim's front teeth. Victim had to undergo dental treatment and now feels reluctance to go out/nervous on the street.	Category one - 3	Category one - 5	Model two
	Category two - 5	Category two - 2	
	Category three - 0	Category three - 0	
Q1.2. Spat in victim's face and beat up victim; a sustained assault resulting in a head injury (subarachnoid haemorrhage).	Category one - 4	Category one - 6	Model two
	Category two - 4	Category two - 1	
	Category three - 0	Category three - 0	
Q1.3. Bit victim's arm leaving teeth marks and reddening of skin.	Category one - 0	Category one - 0	No difference
	Category two - 4	Category two - 3	
	Category three - 4	Category three - 4	
Q1.4. Injuries amounted to severe bruising and swelling.	Category one - 0	Category one - 1	No difference
	Category two - 5	Category two - 4	
	Category three - 3	Category three - 2	
Q1.5. Injuries from being hit with a car including weakness to knee, head injury causing blurred vision, and symptoms to the soft tissue of the neck caused discomfort for "quite a period".	Category one - 3	Category one - 2	No difference
	Category two - 4	Category two - 4	
	Category three - 1	Category three - 1	
Q1.6. Deep two inch cut to the back of victim's neck caused by vase and some other small cuts and scratches.	Category one - 3	Category one - 2	No difference
	Category two - 5	Category two - 5	
	Category three - 0	Category three - 0	
Q1.7. Kicked, slapped and punched the victim causing multiple injuries including bruising, black eye, a bleed below the skin of the eye and a haemorrhage in inner ear.	Category one - 7	Category one - 5	Model two
	Category two - 1	Category two - 2	
	Category three - 0	Category three - 0	
Q1.8. Put his hands around victim's throat, dragged her around the room, threw heavy objects at her, grabbed her hair, pushed her face into the ground. Cuts and bruises and victim very distressed and scared to be in house.	Category one - 3	Category one - 5	Model two
	Category two - 5	Category two - 2	
	Category three - 0	Category three - 0	
Q1.9. Dislocated elbow and anaesthetic was required to treat at hospital.	Category one - 5	Category one - 4	No difference
	Category two - 3	Category two - 3	
	Category three - 0	Category three - 0	
Q1.10. Victim was punched three times in the face, causing broken nose, black eyes and a split lip.	Category one - 5	Category one - 3	Model one
	Category two - 3	Category two - 3	
	Category three - 0	Category three - 1	

GBH Harm Model One

Harm	
All cases of GBH will involve 'really serious harm', 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>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> <p>Particularly grave and/or life-threatening injury caused</p>
Category 2	<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> <p>Grave but non life-threatening injury caused</p>
Category 3	All other cases of really serious harm

GBH Harm Model Two

Harm	
<p>All cases of GBH will involve 'really serious harm', which can be physical or psychological. To assess the level of harm caused by the offence, the court must consider;</p> <ul style="list-style-type: none"> • The range of injuries (including physical and psychological injury) that can occur in cases of grievous bodily harm • Where in that range of injuries the injury caused falls 	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Cases not in category 1 or 2

ABH Harm Model One

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	High level of physical or psychological harm falling just short of really serious bodily harm
Category 2	Cases falling between categories 1 and 3
Category 3	Low level of physical or psychological harm similar to harm caused in a high level common assault

ABH Harm Model Two

Harm Assault occasioning actual bodily harm causes injury which is more serious than in most cases of common assault, but which falls below the really serious injury in cases of grievous bodily harm. To assess the level of harm caused by the offence, the court must consider; <ul style="list-style-type: none"> • The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm • Where in that range of injuries the injury caused falls 	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

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