

### Assault Guideline: Crown Court Roadtesting

This paper summarises the qualitative research on the Assault Guideline. Twenty interviews were conducted with Crown Court judges either over the phone or face-to-face, with the aim of testing the new draft guidelines for ABH, s20 and s18. Judges were asked to sentence either two or three hypothetical scenarios (see annex – page 7 onwards), sentencing the scenario firstly with the new draft guideline and then again, with the current assault guideline.

As part of the roadtesting two ABH harm models were tested: one version which included ‘*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*’ as additional information and one version without this additional information. Two versions of the s18 guideline were also tested: one version which included the lesser culpability ‘*Offender acted in response to prolonged or extreme violence or abuse by victim*’ and one version which excluded this factor.

The research has provided valuable information on how the guideline might work in practice to support development of the *Assault* guideline. However, there are limitations to the work<sup>1</sup>, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

#### **Key Findings**

##### ABH

- Overall, some variation in sentences was found, both between judges using the same guidelines, and when comparing the draft and current guidelines. As a result, the research did not result in a conclusive picture of the impact that the draft ABH guideline will have on sentencing or of the consistency with which the guideline will be applied. However, the guidelines were generally well received by judges with only a limited number of issues being raised. As Council may recall the guideline was also well received by magistrates when the draft guideline was tested last year (2018). About a third of adult offenders sentenced for an ABH offence were sentenced in magistrates’ court in 2017.
- Consistency of sentencing amongst judges varied between the two ABH scenarios:
  - In scenario one (“restaurant worker”) judges were generally consistent, categorising the offender unanimously as culpability B and then as either harm category 1 or 2, as anticipated by policy.
  - For scenario two (“neighbours”), however, judges were divided between whether to place the offender in culpability A or culpability B. Despite it not being anticipated that any culpability A factors would be identified in this case, all judges bar one felt that this was a “*prolonged assault*”<sup>2</sup>. Only when factors in culpability B or C were also felt to be relevant (e.g. use of a non-dangerous weapon or excessive self-defence) was the case categorised as category B.<sup>3</sup>

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<sup>1</sup> Limitations include: this is a small sample which is not necessarily representative and the scenarios only include limited detail of the actual case, which makes comparison with the sentence given by the judge in the actual case difficult.

<sup>2</sup> Although it had not been anticipated that “prolonged assault” would be identified as a factor, given the nature and level of the attack this is acceptable.

<sup>3</sup> For one judge categorising the scenario as culpability B, only one factor was felt to be present, so no “balancing” of factors between the categories was necessary.

- For harm in scenario two, most judges placed the offender in category 2 - medium level of physical or psychological harm. However, it had been anticipated that this would be categorised as a high level of harm (category 1).
- As a result of these differing categorisations, the impact of the draft guideline on final sentences varied between the two scenarios and in many cases resulted in a different sentence from that using the current guideline:
  - In scenario one, sentences using the draft guideline varied from 4 months to 15 months, with most being 12 months or over. All but one judge either came to a higher or the same sentence when using the draft guideline compared to the current guideline. For those that were higher, this may be attributable to the fact that judges generally categorised the scenario as offence category 2 using the current guideline (because it was deemed to be “greater harm”) which has a starting point of 26 weeks. Therefore, some of the cases that were categorised as B1 on the draft guideline – which has a starting point of 1 year – had a higher final sentence.
  - Again, for scenario two, final sentences using the draft guideline varied – from 4 months to 13 months, with most over 9 months. However, in contrast to the first scenario, most sentences were higher using the current guideline compared to the draft guideline, by at least 3 months. This also relates to the categorisation of the scenario and the consequent different starting points between the guidelines: for the current guideline, all but one judge placed the offender in category 1 (with a starting point of 18 months), generally because of the sustained and repeated assault and use of a weapon. However, using the draft guideline, categorisations, although varied, were in either A2, B1 or B2, which have starting points of 1 year, 1 year, and 26 weeks, respectively.
  - For both scenarios, judges either considered their sentences to be about right or slightly low using the draft guideline. However, there was no consistency or clear pattern regarding which sentences were perceived as too low or about right.
- When asked for their views on the draft guideline, judges were generally content; however, four issues were raised:
  - Some judges were not content with the phrase ‘*Prolonged assault*’ in culpability A as they felt it would lead to interpretation issues. Judges applied this factor fairly consistently in scenario two.
  - In culpability A, the factor ‘*Victim obviously vulnerable*’ led to some confusion as to whether the victim being vulnerable had to be obvious to the defendant at the time of the assault or to the sentencer only.
  - There were mixed views on whether the treatment of weapons in culpability was helpful or not. A few judges suggested that splitting the weapons out by ‘*highly dangerous*’ and ‘*which does not fall within category A*’ is unnecessary and unhelpful. They said that having to decide whether the weapon is highly dangerous or not is too complicated and open to interpretation, despite the definition provided in the guideline. However, just as many judges also noted that they liked the way weapons were treated in this guideline. It should be noted that not all judges commented on this part of the guideline.
  - On harm, irrespective of the model used, a quarter of the judges suggested that examples of what was meant by the different levels of harm (both physical and psychological) would be helpful. The judges did not indicate a preference for either model.

GBH s20

- Overall, the s20 draft guideline was received well: judges were content with the structure and factors present. However, whilst the research found the categorisation of many of the cases to be consistent between judges, there was variation in final sentences and between the current and draft guideline. The draft guideline resulted in lower sentences on each occasion.
- Judges were mostly categorising harm and culpability consistently using the draft guideline, and as expected by policy, for both s20 scenarios (B1 for the “pub” scenario and A3 or B3 for the “engagement party” scenario). This meant that the initial starting points in the draft guideline selected by judges were relatively consistent.<sup>4</sup>
- However, there did appear to be some variation in final sentences between judges using the draft guideline, despite this consistent categorisation: sentences ranged between 1 year and 18 months for scenario one, and between 15 months and 2 years and 6 months for scenario two. This indicates that the variation was introduced at step 2 at the stage of aggravating or mitigating the sentence.
- When comparing the draft and current guidelines, it was also found that:
  - In both scenarios judges came to higher sentences when using the current guideline by at least 3 months but ranging up to 1 year and 2 months. However, most sentences were higher by 6 months to 1 year.
  - Most judges preferred the higher sentence; this preference was unanimous in the second scenario, but also found to a lesser extent in the first scenario.
  - The higher sentences resulting from the current guideline again appear to relate to the different starting points selected by the judges (in addition to aggravating the sentence in the “pub scenario”; this may be because some of the aggravating factors in the current guideline do not appear in the draft guideline):
    - In scenario one (“pub”) judges categorised the offender as category 1 using the current guideline, which has a starting point of 3 years’ custody, on the basis of ‘*Use of a weapon*’. Because ‘*Use of a weapon or weapon equivalent which does not fall into category A*’ is in medium culpability on the draft guideline, judges were categorising the offender as B1 which has a starting point of 2 years’ custody - a full year lower than the current guideline starting point.
    - Scenario two (“engagement party”) shows a similar pattern. Judges who chose category 1 on the current guideline (starting point of 3 years’ custody<sup>5</sup>) categorised the offender as either A2/A3 on the draft guideline which led to a starting point of 2 years and 18 months respectively. Most judges who chose category 2 on the current guideline

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<sup>4</sup> Some starting points using the current guideline were, however, different from those in the guideline and based on where in the category the judge thought the offender would be (for example, high category 2, low category 1); this meant they sometimes opted for a starting point somewhere between two categories.

<sup>5</sup> One judge selecting category 1 chose a starting point of 2 years and 6 months on account of it being at bottom of category 1; however, this is still higher than their starting point under the draft guideline of 1 year and 6 months.

(starting point of 18 months<sup>6</sup>) categorised the offender as B3 which led them to a 36 week starting point.

- Generally, judges were content with the culpability, harm and aggravating and mitigating sections of the guideline, with some judges explicitly saying they prefer the treatment of harm in the new guideline, particularly as *'serious in the context of the offence'* was expressed by some judges as a challenge to understand in the current assault guideline.

### GBH s18

- Overall, as with s20, judges were generally content with the s18 draft guideline in terms of its structure and the factors present, and they were largely consistent when categorising the scenario. The impact that the guideline had on sentencing and judges' views on final sentences varied depending on which scenario they were sentencing – the "domestic abuse" scenario (scenario one), the "boiling water" (scenario two) or "drunk ex" scenario (scenario three).
- Judges mostly categorised the culpability and harm for the s18 offenders in all three scenarios consistently using the draft guideline and as expected by policy. There was slightly more discrepancy with scenario three, where judges were divided between culpability, A, B or A/B (all but one judge felt it was harm 3). However, despite the general consistency the final sentences varied in all three scenarios.
- Scenario one ("domestic abuse") was sentenced with three separate guidelines, a draft version which included the lesser culpability factor (*'offender acted in response to prolonged or extreme violence or abuse by victim'*), a draft version without this factor and the current s18 guideline. It was found that:
  - When sentencing with **version one** of the draft guideline, (including the lesser culpability factor, where the offence was categorised mostly as B1, but also as C1 by one judge), judges gave sentences between 4-8 years.<sup>7</sup> Judges tended to be sympathetic towards the offender, whilst recognising that the defendant has nearly killed someone – they therefore generally felt that the final sentences were appropriate<sup>8</sup>. When compared to sentences using the current guideline, most sentences were higher on the current guideline by at least 6 months but ranging up to 4 years.
  - When sentencing the same scenario with **version two** of the draft guideline, (without the lesser culpability factor, where the offence was categorised unanimously as A1), it was notable that when they reached the final sentence stage, three of the judges stopped following the guideline. One judge said they would depart from the guideline in this situation and the other two judges said they would go back and change the culpability/harm categorisations to achieve a lower sentence; in doing this, they reached a final sentence of 6 to 8 years. The two judges who followed the draft guideline reached a final sentence of 10 years, having applied several mitigating factors.

<sup>6</sup> One judge chose a 2 year starting point as the offence was "borderline" with category 2, but this was still higher than the starting point of 1 year and 6 months.

<sup>7</sup> However, the majority of sentences were between 4 and 6 years.

<sup>8</sup> The judge who thought the offender was culpability C said that the sentence was too low.

- As a result of the higher culpability categorisation, all judges gave a higher sentence using version two of the draft guideline compared with version one; in addition, three of the five judges gave higher sentences using version two when compared with the current guideline (despite the use of a weapon, these three judges assessed the culpability in the current guideline as borderline between higher and lower culpability).
    - There were mixed views from judges on their preferred final sentences; two judges preferred version one (4 and 4.5 years), two judges preferred the current guideline (5 and 7 years) and one judge seemed to prefer version two (10 years).
    - Given the variation here and the observation that judges appeared to be sympathetic to the offender, it may be that they are using their discretion to reach what they deem to be an appropriate sentence for a case such as this; however, it is also apparent that their views on what is the most appropriate sentence differed.
  - For scenario two (“boiling water” – categorised mostly as A2, but as A1 by one judge) final sentences using the draft guideline ranged between 7 years and 6 months to 15 years (the latter being given by the judge who opted for A1). There was variation in judges’ views on the sentence, with some feeling that the sentence was too low and some that the sentence was about right.
  - For scenario three (“drunk ex” – categorised as B3, A3 or B2) final sentences ranged from 2 years and 6 months to 5 years, and for this scenario all judges felt the sentence was too low.
  - For both scenario two and three, all judges bar one gave a higher sentence using the current guideline compared with the draft guideline, by at least 18 months but ranging up to 6 years and 6 months. As with ABH and s20, this may relate to the starting points for the different categories in the guidelines:
    - In scenario two, all judges categorised the offender as category 1 on the current guideline which has a starting point of 12 years. Using the draft guideline, judges were mostly categorising the offender as A2 which has a starting point of 7 years. The one judge who categorised the offender as A1 on the draft guideline gave the same sentence when sentencing the scenario with the current guideline.
    - The biggest difference was in scenario three. Judges categorised the offender as category 1 or category 2 on the current guideline with starting points of 12 years and 6 years, respectively. However, using the draft guideline the offender was categorised as A3, B3 and B2 with starting points of 4 years, 3 years and 4 years respectively.
  - When commenting more generally on the guideline, several judges generally felt that the sentencing range was too low for a s18, especially for less serious cases with sentences that were under three years’ custody before guilty plea.
- Finally, judges were generally content with the structure and factors present in the guideline; however, two key findings on culpability and harm were apparent:
  - In scenario two (“boiling water”) judges placed the offender in harm category 2 as they saw the injury as ‘*Grave but non-life threatening*’. However, there was a strong feeling that severe facial burns and permanent scarring should be captured at harm category 1. It was felt that the pain caused and the permanent effect is substantial enough to be in the highest category. “*Looking at the wording on the new draft guideline you can't get it into the higher category and I think that's wrong, if I was the victim with those injuries I would want the higher category.*”

- Judges who sentenced the domestic abuse scenario were keen to retain the lesser culpability factor '*Offender acted in response to prolonged or extreme violence or abuse by victim*' in the guideline. The judges who did not sentence this scenario made little reference to this factor.

## ANNEX A

### Annex: Sentencing Tables

#### ABH Scenarios

##### *ABH scenario one: restaurant worker*

V was on his way home from a night out celebrating his birthday in the early hours of the morning and was very drunk. He was staggering through the town centre when he accidentally bumped into D who was walking home after work in his job at a fast food restaurant. Due to being unsteady on his feet V's weight fell against D and caused him to fall. D was unhurt but very angry, and immediately got up and grabbed V by the throat and punched him hard in the face four times before throwing him to the floor and walking off. The incident was captured on CCTV. The force of the punches knocked out V's front teeth, broke his nose and his lip was split. V had to undergo dental treatment and was without front teeth for a number of weeks before replacement teeth were fitted. V says he was unable to leave the house during this time and felt very depressed at his appearance, and he now feels scared and anxious if out at night alone. D has no previous convictions and pleaded guilty at the first hearing.

Higher sentence using the draft guideline

Draft guideline								Current guideline		
Judge	Harm model	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
3S	1	B – Vulnerable (A), no weapon (C)	1	14 months	None	No previous convictions	12 months	12 months	Greater harm & lower culpability Category 2	A – Ongoing effect M – No previous convictions
6D	1	B – Case falling between A&C	1	15-18 months	Revenge	Good character, remorse	15 months	9 months	Greater harm & middle culpability <sup>9</sup> Category 2	A – Location, timing, ongoing effect M – No previous convictions, remorse
9W	1	B – Prolonged (A), no weapon (C)	2	9 months	Walked away, vulnerable victim	Remorse, good character	9 months	9 months	Greater harm & lower culpability Category 2	A – Location, ongoing effect M – No previous convictions, isolated incident

<sup>9</sup> When referencing the current guideline, the term 'middle culpability' is used for when judges felt that the culpability of the offender fell between higher culpability and lower culpability.

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12J	1	B – Case falling between A&C	2	9 months	Vulnerable victim	Good character	12 months	3 months	Middle harm & lower culpability Category 2/3	A – Location, timing M – Good character, single blow
15C	1	B – Case falling between A&C	½	12 months	Vulnerable victim, repeated and sustained attack	None	15 months	9-10 months	Greater harm & lower culpability Category 2	A – Ongoing effect M - None
4K	2	B – Vulnerable victim (A), no weapon used (C)	1	1 year	None	No previous convictions	15 months	8 months	Greater harm & lower culpability Category 2	A – None M – None
7J	2	B – Case falling between A&C	1	1 year	None	No previous convictions, provocation, remorse, good character	12 months	9 months	Greater harm & lower culpability Category 2	A – None M – No previous convictions, remorse good character, isolated incident, provocation
16H	2	B – Case falling between A&C	2 (but towards higher end)	26 weeks	Vulnerable victim	Not enough info to decide	7.5 months	13.5 months	Bottom of greater harm & borderline of higher culpability Category 1/2	A – Location, timing, ongoing effect M – Isolated incident, no previous convictions
18B	2	B – Case falling between A&C	2	26 weeks	None	No previous convictions & good character	4 months	4 months	Greater harm & lower culpability Category 2	A – None M – Good character
20K	2	B – Case falling between A&C	1 (bottom end)	1 years	Vulnerable victim	No previous convictions	15 months	15 months	Greater harm (culpability = missing) Category 1/2	A – None M – Good character



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*ABH scenario two: neighbours*

D had bought a car from a neighbour, V, and the car had developed a very expensive fault. D was telling another neighbour of the problem with the car when the neighbour told him that V had told him the car had a serious problem a few weeks before and he was going to ‘get shot of it.’ D was furious and went to V’s house and confronted him and asked for his money back. A nasty argument ensued and V became very aggressive and told D he ‘wasn’t giving him a fucking penny’ and ‘to get out of my fucking face before I do you’. D refused to leave so V then pushed D and punched him in the face. D was enraged and grabbed a heavy piece of wood which was leaned up against the wall of V’s house and swung it at V, hitting him around the head. V fell to the floor and D continued to hit him with the piece of wood and kick him to the face and body until other neighbours intervened and pulled him off. V sustained extensive cuts and bruises, including swelling to his head and eyes, and a nasty cut to his face requiring 5 stitches. D is of previous good character and pleaded guilty on the day of trial.

 Higher sentence using the current guideline

Draft guideline								Current guideline			
Judge	Harm model	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
10T	1	B – Prolonged assault (A), weapon used (B)	1	1 year	None	Good character	10 months	14.5 months	Greater harm & higher culpability Category 1	A – None M – Good character	
11F	1	A – Prolonged assault	2	1 year	Use of weapon	Excessive self-defence, good character	12 months	15 months	Greater harm & higher culpability Category 1	A – None M – Good character, excessive self defence	
13F	1	A – Prolonged assault	2	26 weeks	Weapon, own home	Remorse, good character	4 months	12 months	Greater harm & higher culpability Category 1	A – None M – Good character, did not take weapon	
14D	1	B – Weapon used	1/2	15 months	None	Good character	12 months	15 months	Greater harm & higher culpability Category 1	A – Location M – Good character	

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22R	1	B – Prolonged assault (A), weapon used (B), self-defence (C)	2	26 weeks	Revenge, victims own home	Good character, absence of premeditation	12 months	12 months	Lesser harm & lesser culpability Category 2	A – Location M – No previous convictions, isolated incident good character
5K	2	B – Prolonged assault (A), self-defence (C)	2	26 weeks	None	No previous convictions, significant degree of provocation	9 months	15 months	Greater harm & higher culpability Category 1	A – None M – Provocation
8J	2	A – Prolonged assault	2	12 months	None	Good character, remorse, significant degree of provocation	12 months	12 months	Greater harm & higher culpability Category 1	A – None M – No previous convictions, remorse, good character
17H	2	A – Prolonged assault (A), weapon used (B)	2	14 months	None	Good character, some degree of provocation	13 months	18 months	Greater harm & higher culpability Category 1	A – Location M – None
19B	2	A – Prolonged assault and highly dangerous weapon	2	12 months	None	Good character (& mentions they have to live next door to each other)	5 months	9 months	Middle harm & middle culpability Category 1	A – None M – No previous convictions, good character, isolated incident
21K	2	B – Prolonged assault (A), use of weapon (B)	1	12 months	None	Good character, no previous convictions, potential provocation	12 months	18 months	Greater harm & higher culpability Category 1	A – None M – Good character

## ANNEX A

### GBH s20 Scenarios

#### *GBH s20 scenario one: pub*

D was out with friends at a pub having a game of pool. V and his friends were nearby waiting for the table to become available. D overheard V complaining about the ‘black bastards hogging the pool table’. At first D ignored it, but after it continued for some time and V made the comments louder, D confronted him telling him to shut his mouth. V squared up to D and said ‘come on then nigger if you want some’. D lost his temper and hit V around the head with the pool cue he was holding, causing V to fall back and hit his head on the corner of the pool table. V was rendered unconscious, and on examination in hospital was found to have suffered multiple subarachnoid haemorrhages. Medical evidence confirms that as a result of the injuries sustained V suffers ongoing severe headaches and has been left with epilepsy and is not able to drive, and has therefore had to give up his job as a delivery driver. D is full of remorse and devastated at the injuries caused to V. D is of previous good character and pleaded guilty at the first opportunity.

Higher sentence using the current guideline


Draft guideline							Current guideline		
Judge	Culpability	Harm	Starting point	Aggravating factor/s	Mitigating factor/s	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
3D	B - Use of a weapon	1	2 years	None	Remorse, good character, significant degree of provocation	12-15 months	2 years	Greater harm & higher culpability Category 1	A – Location M – No previous convictions, good character, remorse, single blow, isolated incident
4S	B - Use of a weapon	1	2 years	None	Significant degree of provocation, remorse, no previous convictions	18 months	2.5 years	Greater harm & middle culpability Bottom of category 1	A – Ongoing effect M – Remorse, no previous convictions
5W	B - Use of a weapon	1	2 years	None	Remorse, good character, significant degree of provocation	15 months (potential to suspend)	18 months	Greater harm & middle culpability Category 1/2	A – Presence of others, location

ANNEX A

						given the racism)			M – Single blow, isolated incident, good character, remorse
7J	B/C - Use of weapon (B) and excessive self-defence (C)	1	1 year 9 months	None	Provocation, good character, remorse, self defence	12 months	2 years	Greater harm & higher culpability Category 1	A – Location, ongoing effect, presence of alcohol M – Good character, remorse, single blow
11C	B - Use of weapon	1	2 years	None	Remorse, good character, provocation	18 months	2.5 years	Greater harm & higher culpability Category 1	A – None M – racial provocation

*GBH s20 scenario two: engagement party*

V was with her partner, D at an engagement party. D had a history of being jealous and had previous convictions for behaving violently towards V. V was at the bar speaking to an old school friend when D approached her and dragged her by the arm and told her he wanted a word with her outside. He dragged her outside and she was asking him to stop as he was causing a scene. He threw her against a wall and shouted in her face that he had seen her flirting and she was ‘making him look like a cunt.’ She tried to push him away and go back inside, and he grabbed her by the throat and hit her across the head with the bottle of beer he was holding. The bottle broke and caused bruising to her ear and a deep 3 cm wound to her head which required stitches. D pleaded guilty on the day of trial.

 Higher sentence using the current guideline

Draft guideline							Current guideline			
Judge	Culpability	Harm	Starting point	Aggravating factor/s	Mitigating factor/s	Final sentence (pre- GP)	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
6C	B - Use of a weapon	3	36 weeks	Previous convictions, history of violence	None	15 months	2 years	Lesser harm & higher culpability Category 2	A – Previous convictions M – None	
8S	B - Use of a weapon	3	36 weeks	History of violence, previous convictions, possibly victim vulnerable	None	18 months	2 years and 8 months	Middle harm & higher culpability Category 2	A – Previous convictions M – None	

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9P	A - vulnerable victim (A), use of weapon (B)	3	1 year and 6 months	Previous convictions/history of violence	None	2 years	2.5 years	Greater harm & higher culpability Bottom of category 1	A – Previous convictions M – None
10K	A/B - vulnerable victim (A), use of a weapon (B)	3	1 year 6 months	Previous convictions	None	2 years	2.5 years	Border of greater harm & higher culpability Category 2	A – Previous convictions M – None
12M	A - vulnerable victim, use of a HD weapon	2	2 years	Previous convictions, history of violence, abuse of position of trust, revenge, steps taken to prevent, alcohol	None	2.5 years	3 years	Greater harm & higher culpability Category 1	A – Previous convictions, timing, presence of others, alcohol, abuse of position of trust, steps taken to prevent reporting M - None

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GBH s18 scenarios

*GBH s18 scenario one: domestic abuse*

V had a history of domestic abuse against D while drunk, and had put her in hospital on a number of occasions with serious injuries including broken bones, facial fractures, lost teeth and severe bruising. D always refused to give evidence against V and proceedings were dropped as a result. One night V returned home from the pub and went into the bedroom and woke D and demanded sex. D said she needed to use the bathroom and locked herself in there hoping V would fall asleep. She waited 10 minutes before coming out and heard him snoring. D then went to the kitchen and got a large knife which she took to bed with her in case D woke. She went into the bedroom and V stirred, causing her to fear he would wake. Terrified at the prospect he would beat her upon waking or want sex, D took the knife and stabbed D 10 times to the upper body. He had multiple stab wounds to his neck, penetration of a lung, and a perforated kidney and liver. His life was in danger but surgeons managed to save him. D was originally charged with attempted murder but a plea to a s18 was accepted. She has two teenage children with V and is extremely remorseful, and says she wishes she had sought help and escaped the marriage long ago, and doesn't know what possessed her to act as she did. Character references say that D is mild mannered and quiet, and express shock at her actions.

 Version one

 Version two

Draft guidelines										Current guideline		
Judge	Culpability v1	Culpability v2	Harm	Starting point v1	Starting point v2	Aggravating	Mitigating	Final sentence v1	Final sentence v2	Final sentence (pre- GP)	Guideline categorisation	Aggravating/ mitigating
3C (V2 first)	C – response factor	A – prolonged assault	1	4 years	12 years	V1 = None V2 = None	V1 = None V2 = no previous convictions, remorse, history of violence, carer	4 years	8 years (judge would move out of A to B)	8 years	Greater harm & higher culpability Category 1	A – None M – Remorse, good character, isolated incident.
4S (V2 first)	B – response factor &	A – HD weapon	1	7 years	12 years	V1 = None V2 = None	V1 = No previous convictions, remorse,	6 years	10 years	7 years	Greater harm & middle culpability Category 1/2	A – None M – No previous convictions, remorse, good character,

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	HD weapon						good character V2 = No previous convictions, remorse, good character, history of violence, carer					isolated incident, sole/primary carer
5P (V1 first)	B – response factor & HD weapon	A – HD weapon	1	6 years	12 years	V1 = None	V1 = No previous convictions, remorse, provocation V2 = No previous convictions, remorse, provocation, history of violence	6 years	8 years	5 years	Greater harm & middle culpability Category 2	A – None M – No previous convictions, good character
6K (V1 first)	B – response factor & HD weapon	A – HD weapon	1	7 years	12 years	V1 = None	V1 = No previous convictions, remorse, carer V2 = No previous convictions, remorse, history or	4.5 years	6 years (judge would move outside cat range)	5 years	Greater harm & middle culpability Category 2	A – None M – No previous convictions, remorse

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							significant violence.					
7M (V2 first)	B – response factor & HD weapon	A – premeditation, prolonged & HD weapon	1	7 years	12 years	V1 = Victim vulnerable V2 = victim vulnerable	V1 = Good character V2 = History of violence, good character	8 years	10 years	10 years	Greater harm and higher culpability Category 1	A – Location, timing M – Remorse, good character, past history of violence by victim towards offender

*GBH s18 scenario two: boiling water*

V was D’s supervisor at work and disciplined D for his poor attitude and attendance. D was given a final warning and told he would be let go if he did not improve. D was extremely angry, and was overheard telling colleagues V was “going to fucking proper get it”. V was in the office porter cabin doing paperwork one day when D entered to make tea for his colleagues. D boiled the kettle and was seen to add a large amount of sugar to the kettle containing the boiling water, before approaching V and tipping it over his head. D locked the door to prevent V escaping, and stood by as V ran screaming around the porter cabin in agony and would not let him access the sink to put cold water on his face. Colleagues had to break the door down to assist V, and V was left with severe burns and permanent scarring to his face. One of his eyelids permanently drooped and he was left devastated and depressed at his appearance. D admits the offence but is not remorseful, saying V was a cunt and deserved it. D has previous convictions for violent disorder and ABH, but these were 3 years ago.

 Higher sentence using the current guideline

Draft guideline							Current guideline			
Judge	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating	
3T	A - Use of HD weapon, planning, prolonged, revenge	2	7 years	Preventing medical assistance,	None	9 years	14 years	Greater harm & higher culpability Category 1	A – Previous convictions M - None	



**ANNEX A**


				previous conviction					
5F	A - Planning/premeditation, revenge	2	7 years	Previous convictions	None	7 years 6 months	9 years but judge has to take this down from 12.	Greater harm & higher culpability Category 1	A – Previous convictions M – None
7F	A - Use of HD weapon, premeditation, revenge	2	10 years	Vulnerable victim	None	10 years	13-15 years	Greater harm & higher culpability Category 1	A – Location M – None
9D	A - Planning, prolonged, revenge	1	14 years	Steps taken to prevent, previous convictions	None	15 years	15 years	Greater harm & higher culpability Category 1	A – Ongoing effect, steps taken to prevent, previous convictions M – None
12R	A - Use of HD weapon, premeditation, revenge	2	7 years	Previous convictions, steps taken to prevent assistance	None	8 years	13-14 years	Greater harm & higher culpability Category 1	A – Previous convictions, location, ongoing effect M – None

*GBH s18 scenario three: drunk ex*

V and his female companion were walking through the town centre after a night out when they encountered D, who was drunk. The female and D had formerly been in a relationship. D instigated a fight with V, and headbutted him causing V to fall to the floor. Whilst V was lying on the floor, D, who was wearing trainers, kicked him to the head three times. Witnesses described the kicks "as taking a conversion in a rugby match", each involving the offender taking a few steps back before each kick. D then ran away and went to a night club leaving V unconscious. V was taken to hospital and found to have a number of injuries - a laceration under his left eye that required 18 stitches, a laceration above his left eyebrow that required gluing, cuts and grazes to his

**ANNEX A**

left elbow, a bruised ear and a bruised head. When reviewed in hospital six weeks later he was still experiencing numbness to the left side of his face due to nerve damage caused by the assault and the numbness lasted for some three months. D pleads guilty. He has no previous convictions, is in employment and has a number of good character references.

 Higher sentence using the current guideline

Draft guideline							Current guideline		
Judge	Culpability	Harm	Starting point	Aggravating	Mitigating	Final sentence	Final sentence (pre- GP)	Guideline categorisation	Aggravating/mitigating
4T	B - Potentially prolonged (A), use of weapon (B)	3	3 years	None	Good character, no previous convictions	2 years and 6 months	9 years	Greater harm & higher culpability Category 1	A – None M – None
6F	A - Prolonged assault	3	4 years	Intention to cause more harm, influence of alcohol	Good character, no previous convictions	4 years and 6 months	9 years	Greater harm & higher culpability Category 1	A – Domestic violence, alcohol, revenge M – No previous convictions
8F	B - Use of weapon	2	4 years	Three kicks, influence of alcohol, night time	No previous convictions, good character, in work	4 years	10 years	Greater harm & higher culpability Category 1	A – None M – Good character
10D	A/B -Prolonged (A), use of weapon (B)	3	6 years	Alcohol	Good character	5 years	7 years	Lesser harm & higher culpability Category 2	A – Presence of others, alcohol, M – Good character
12R	A/B -Prolonged (A), use of weapon (B)	3	4 years	Presence of others	Good character	3 years	6 years	Lesser harm & higher culpability Category 2	A – Location, presence of others, alcohol M – No previous convictions