

Sentencing Council meeting: 5 April 2019
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Lead Council member: Julian Goose & Rob Butler
Lead officials: Lisa Frost & Caroline Nauth-Misir
0207 071 5784

1 ISSUE

This paper includes feedback and findings from the recent road testing with Crown Court judges on draft guidelines for ABH and GBH which were agreed for testing at the November 2018 meeting.

2 RECOMMENDATION

That the Council:

- considers the findings from the recent road testing of harm models for ABH and GBH; and
- agrees final draft guidelines for ABH and GBH s18 and s20 offences.

3 CONSIDERATION

3.1 This meeting requires consideration of road testing of draft ABH and GBH guidelines with Crown Court judges. The Council is asked to note the findings which have informed minor proposed changes to factors and sentence levels.

3.2 Road testing of a draft ABH guideline was undertaken with magistrates last autumn and findings reported to the Council in November 2018. It was found that magistrates preferred a specific harm model in versions of the guidelines tested, and the Crown Court road testing sought to identify the model preferred by judges. Due to evaluation findings regarding sentence levels and a perception that they were too low for ABH, the road testing also sought views on the sentence levels agreed for offences more likely to be sentenced in the Crown Court.

3.3 The early GBH guideline drafts were also tested. These sought to test factors agreed, and specifically the treatment of weapons in the revised draft s20 and s18 guidelines, additional culpability factors, the proposed harm model and sentences. Road testing findings from testing with Crown Court judges are included at **Annex A**.

ABH culpability factors

3.4 Culpability factors agreed for ABH (shown in **Annex B**) were the same as for s20 offences, given the relationship between the offences and for an offence charged as s20 to be sentenced as an ABH were a GBH level of harm not to be found. Issues highlighted in road testing are discussed below.

3.5 In relation to the way weapons are treated in the guideline, one judge said that it was unlikely there would be an ABH with a highly dangerous weapon, as those types of weapons lead to more severe injuries and therefore are charged as GBH/wounding. Some judges suggested that for ABH all weapons should be captured in the top category, and an aggravating factor included to provide for instances where the weapon was deemed highly dangerous, for example, acid. However, a number of judges approved of the way weapons were treated in this guideline. It is not proposed the factor be revised given the need previously identified to provide for the same factors to be included across the ABH and s20 guidelines, and to ensure a proportionate categorisation of seriousness depending on the weapon involved.

3.6 Some issues were identified with the factor 'prolonged assault', which was included in place of 'sustained and repeated', which it was agreed should be removed from the existing guideline due to issues of interpretation. Although some judges questioned what amounted to 'prolonged', the factor was applied fairly consistently in one of the ABH scenarios tested. It is not suggested the factor be revised as it was previously agreed that a prolonged assault demonstrates greater culpability of the offender.

Question 1: Does the Council agree to retain the culpability factor 'prolonged assault' in the draft ABH guideline?

3.7 In considering the high culpability factor '*victim obviously vulnerable due to age, personal characteristics or circumstances*' a small number of judges questioned whether the vulnerability had to be obvious to the defendant at the time of the

assault, or to the judge when sentencing. For clarity the wording 'at the time of the offence' could be added if the Council thinks appropriate.

Question 2: Does the Council wish to expand the factor relating to vulnerable victim to clarify the vulnerability must be obvious at the time of the offence?

3.8 Overall, factors were applied appropriately and categorisations were broadly as anticipated. No other changes are proposed to factors in the final draft ABH guideline.

ABH harm model

3.9 In the earlier road testing with magistrates of a draft ABH guideline it was identified that magistrates preferred a harm model referencing other offences of GBH and common assault as a 'benchmark' for high and low levels of harm. Views were sought in an online testing exercise with Crown Court judges on a preferred model at the same time, and judges indicated no preference between a model which referenced other offences and one which did not.

3.10 A complication of referencing other offences in the ABH harm models became apparent when considering sentence levels for ABH and S20 GBH offences. It was agreed that the offences should be treated as separate and distinct and not a continuum of each other, given that Parliament has deemed the offences share the same statutory maximum sentence. For this reason, it was agreed that other offences should not be referenced in the ABH harm model. However, it was agreed to test whether removing reference to other offences impacted upon the harm categorisation. The models tested in the recent Crown Court road testing exercise were as follows.

ABH Harm Model One

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

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

3.11 In summary, it was found application of both models to the same scenario did not impact the harm categorisation achieved, and judges indicated no particular

preference for a harm model. The only point to note was that a number of judges suggested a greater description or examples of injuries in each category would be helpful:

"Well I can understand why you have essentially three categories you know, upper, lower and middle but it might be a little helpful to have in mind what the Sentencing Council would rank as medium level". Judge

"I think we could probably do with a definitions section of what is psychological harm and what is high level, medium level psychological harm and low level." Judge

3.12 The Council has agreed that it is not possible or desirable to include descriptive injury categories given the range of scale and types of injuries which may occur in an ABH, and the need to avoid defining injury levels such as 'injury just short of very serious harm' given the potential for 'guideline shopping' and comparisons with GBH s20 sentences. The difficulty with defining the wide ranging injuries possible in an ABH will be explained in the consultation document.

3.13 It is proposed that harm model 1 be included in the revised draft guideline.

Question 3: Does the Council agree that harm model 1 should be included in the revised draft guideline?

ABH – sentences

3.14 Sentences were agreed at the November meeting. These sought to address the evaluation finding that sentences in the existing guideline are perceived as too low. While it was noted that some of this could be due to charging practice, and GBH type offences being charged as ABH, it was also noted that 40% of sentences imposed in the lowest category of seriousness were custodial sentences which the lowest category range does not provide for.

3.15 It was agreed that sentences should reflect statistical evidence of current sentencing practice. The road testing found that sentences included in the revised draft guideline were perceived as 'about right', although depending on the scenario tested in some cases were still considered too low.

3.16 It is not proposed that these sentences be revised for consultation. While road testing did find in some cases sentencers thought sentences were too low, others were satisfied with the sentences they arrived at. It is difficult to ascertain an overall impact from the two specific scenarios used to test the application of factors. The resource assessment, which will be prepared for consideration prior to sign off of the

guideline, will identify if any unintended impacts are apparent. Ultimately revision is seeking to address the evaluation findings that sentences in the existing guideline are too low, and while some factor revisions (such as distinguishing between weapons) will result in some cases attracting lower harm categorisations and a lower starting point than at present, it was agreed that sentences should be proportionate.

Question 4: Does the Council agree to retain the previously agreed ABH sentence levels for consultation?

GBH

3.17 The draft guidelines agreed for s20 and s18 GBH are included at **Annexes C and D**. The road testing specifically sought to test the factors that were revised based on evaluation findings, the harm models for these offences, and views on sentence levels.

GBH culpability factors

3.18 Although there are two separate GBH offences, s18 and s20, the existing guideline includes exactly the same factors for both. The distinction between offences is that the s18 offence requires proof of intent to cause GBH, while for a s20 offence there is no need to demonstrate the offender intended to inflict the harm caused; just that the offender was reckless or intended some harm. As s20 requires only intention of some harm or recklessness that GBH would be caused, an offender can be found guilty of ABH if bodily harm not amounting to GBH is found.

3.19 Revisions agreed to culpability factors for GBH offences were as for ABH offences. These included distinguishing between weapons and including highly dangerous weapons at high culpability and other weapons at medium culpability; amending the factor 'targeting of vulnerable victim' to 'victim obviously vulnerable due to age, personal characteristics or circumstances'; and substituting 'prolonged assault' for the factor 'sustained and repeated' given issues with inconsistent assessment of sustained and repeated noted in the evaluation.

3.20 Two additional factors were agreed for s18 offences only. These were a high culpability factor of 'revenge' and a lesser culpability factor of 'offender acted in response to prolonged or extreme violence or abuse by victim'. The latter factor was included to recognise cases akin to loss of control manslaughter where GBH instead of a death is caused to a victim. Extensive discussion and consideration of including

this factor took place, but it was agreed that an offender whose culpability were to be affected in such a way should be provided for at step one. The high culpability factor of 'revenge' was included to be clear of the distinction between a revenge attack and an offender who 'snaps' following prolonged or extreme violence or abuse.

3.21 The road testing highlighted some issues with the new factors, a summary of which is as follows;

- Only one judge sentencing GBH scenarios disapproved of distinguishing between weapons in the draft guideline, with all others approving of the approach.
- ABH findings noted that sentencers believed that 'prolonged' was harder to assess and potentially presented a higher threshold than sustained and repeated. This was not found to be an issue in road testing of a relevant GBH scenario, where sentencers easily assessed the incident as prolonged due to the nature of the attack, even though duration was not specified.

3.22 In relation to the abused offender factor, there was strong support that this be included, for all of the reasons the Council agreed to include it:

"I would prefer having the lesser culpability including prolonged or extreme violence rather than having to go to mitigating features because it's difficult to mitigate down from you know 12 years. Whereas if it's lesser culpability you are straight away into a much lower area". Judge

"It certainly is something that should be recognised at stage one when you're looking at stage 1, yes" Judge

"I think that new box lesser culpability box would do that. It would allow a lot of judges to give a lot of very vulnerable women the right sentence, so I'd urge that to go in" – Judge

The impact of the factor upon S18 sentences will be discussed later in this paper.

Question 5: Subject to decisions made in respect of factors in the ABH guideline, does the Council agree to retain the high culpability factors in the draft GBH guidelines for consultation?

GBH - Harm model

3.23 The harm model agreed for GBH offences includes greater definition of the level of injuries and their impact, as this is easier to define in cases which must involve really serious harm. The road testing sought to identify if there were any issues with application of these factors.

3.24 Four GBH scenarios were road tested, two s20 and two s18, with a view to identifying if there were any issues with application of the factors. The harm model met with broad approval, with some judges explicitly stating 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 existing assault guideline.

3.25 Factors were generally applied as expected and the anticipated categorisation was made, suggesting the factors are appropriate. However, there was some difficulty and discussion in the s18 offence scenario where sugared boiling water was used as a weapon and resulted in severe disfigurement of the victim, and judges did not seem to feel that the factors allowed them to categorise the injuries at a high level of harm. The description of injury was as follows; *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.* It was expected that sentencers would find harm to be at category 2, as the injuries were grave but not life threatening. This proved to be the case with four out of five judges finding category 2 harm and one finding harm to be at category 1. The scenario sought to test sentencer views on the thresholds of harm in the model, and issues were identified with the high threshold of category 1 harm;

"Well it's not life-threatening, or particularly grave. There's no evidence of lifelong dependencies or third party care, but it's the permanent scar to his face. I mean that's a matter of degree which is difficult to express in writing... I've no doubt the photographs would be horrible, but if they were horrible enough...that scarring on your face does affect your ability to carry out your day to day activities. Especially if, a supervisor at work, needed to speak to customers for example and things like that."

"Having a permanent facial disfigurement is hell of a burden to carry".

"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."

3.26 One of the other s18 scenarios tested included life threatening injuries and was appropriately assessed as category 1 harm. However, the scenario in question appeared to cause particular concerns for sentencers as they felt the threshold of the

wording left them unable to categorise the injuries at the highest level, even though one sentencer did so by assessing the injuries as particularly grave and impacting upon the victim's day to day activities.

3.27 Using the existing guideline the injury was assessed unanimously as greater harm, but only two categories of harm, greater and lesser (in the context of the offence), are included in the existing guideline. The previous SGC guideline included a very serious injury causing permanent disfigurement with a 5 year starting point with a range of 4-6 years custody.

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

3.28 As the existing guideline would provide for a category 1 assessment and a 12 year starting point, it is unsurprising sentencers felt restricted by the harm 2 categorisation in respect of their sentence. Most judges came to a higher sentence using the current guideline compared with the draft guideline by at least 18 months, but up to 6 years. This is unsurprising given the 6 year difference between the category 1 and 2 starting points in the existing GBH S18 guideline. The judge who categorised the offence as A1 using the draft guideline came to the same sentence with the current guideline.

3.29 It was anticipated in developing the factors that permanent disfigurement could be captured at the highest category of harm: the factors as drafted were intended to capture the injuries in such cases in *both* categories depending on their impact upon the victim. It must be recognised that the highest category of harm in a GBH offence will be for injuries which are life threatening or severely life changing. Some disfigurements and scarring would fall into the latter category, but the impact would differ depending on the nature and location of the injury.

3.30 It is recognised that some facial disfigurement, such as that caused by an acid attack or by burns, would be horrendous for a victim. It should be noted that such injuries could be captured by the 'particularly grave' factor, but if this has not proved an obvious factor to apply in practice, perhaps it would be preferable to reference it expressly. To ensure such cases are appropriately captured an additional high harm factor of 'severe and permanent facial or extensive bodily disfigurement' could be included in the highest harm category if the Council thinks appropriate. It may also be that combining 'particularly grave' with 'life threatening' injuries in the factor may have caused sentencers to feel the threshold were too high, so separating these factors may be an alternative way to address the issue.

Question 6: Does the council wish to include an additional category 1 harm factor of 'severe and permanent facial or extensive bodily disfigurement' or, as an alternative, to separate out the factors?

GBH s20 - Sentences

3.31 Sentences for GBH s20 were not intended to deviate too far from the existing guideline, as the evaluation of the existing guideline, while showing a slight increase in ACSL and a shift in disposal types, did not find the existing guideline caused a significant change in sentencing practice. The sentence levels were therefore developed and approved in line with statistics on current sentencing practice for s20 GBH offences, and relative to ABH sentences.

3.32 Road testing identified that due to the revision to factors, particularly the treatment of weapons, in the revised draft guideline, sentences for the two s20 scenarios tested came out lower using the new guideline than the existing. While sentencers were initially satisfied with the sentence they arrived at using the revised draft guideline, upon sentencing with the existing guideline they preferred the higher sentence. This was not an issue where judges assessed the weapon in the domestic

scenario as highly dangerous (a broken bottle), but where the weapons in the scenarios were found to fall into category B this led to lower starting points.

3.33 As the factors are intended to provide for more proportionate seriousness assessments, and to address the inflationary impact of the weapons factor in the existing guideline, it is not proposed that this be revised or that sentences are reconsidered at this point. The revision to the weapons factor was intended to ensure more proportionate sentences, and that use of lower level weapons such as a shod foot will attract a lower sentence than use of a knife. The resource assessment which will be available prior to sign off of the guideline will consider if the revision of factors and the effect upon categorisation and starting points will have a deflationary effect beyond any that the Council are satisfied with. Weapons were a factor present in an average of 45% of s20 cases in CCSS data between 2011-2015, so an assessment will be made of the impact of distributing the weapons factor across two categories of culpability rather than one.

Question 7: Does the Council agree not to consider whether S20 sentences should be revised until it has considered the draft resource assessment of the guideline?

3.34 Rewording of the highly dangerous weapons guidance could also be included to refer to 'bladed articles' instead of knives, as it was somewhat surprising that sentencers did not assess a broken bottle as highly dangerous, which could be due to the threshold the additional guidance on highly dangerous weapons appears to present.

Question 8: Does the Council wish to amend the highly dangerous weapon guidance to include reference to bladed articles rather than knives, to ensure appropriate weapon categorisation?

GBH s18 - Sentences

3.35 The Council will recall that a key consideration in developing sentences for the s18 offence was to ensure an offender who 'snaps' in a loss of control type situation does not attract a higher sentence than they would have received had they killed their victim and been sentenced with the loss of control manslaughter guideline. This meant other sentence starting points and ranges were required to be relative to the relevant categories of s18 offences, and the objective of testing was to test if this resulted in sentences being perceived as too low.

3.36 Two versions of the draft guideline were tested, one including the abused offender lesser culpability factor, and one which did not. Both guidelines included the same sentences. In sentencing the domestic abuse scenario which did not include the abused offender lesser culpability factor, most judges stopped following the guideline on seeing the sentence starting point this would result in, which was 12 years (A1), and said they would depart from the guidelines. In using the version which included the abused victim factor, four of the five judges assessed the offence as category B1 with one judge assessing as C1. In using the existing guideline, two of the judges applied the higher culpability weapon factor and lesser culpability provocation factor to either find a category 2 seriousness assessment and a 6 year starting point, and those finding the offence to be category 1 moved down the category range. Most final sentences using the guideline with the abused victim factor were in the region of category 2 assessment sentences in the existing guideline, of between 6 – 8 years. This suggests the 7 year starting point in this category is appropriate. However, one judge who assessed the offence as category C1 attracting a 4 year starting point said that the sentence was too low. Had all relevant factors been applied however (use of highly dangerous weapon), the categorisation would have been as for other judges and a more appropriate sentence achieved.

3.37 While the top end sentences, (A1, B1 and A2) generally appear to be perceived as fairly proportionate, and in line with the existing guideline, other s18 sentences were broadly considered as too low in road testing. Most sentences were considerably lower using the draft guideline than using the existing guideline. In the s18 scenario tested relating to the drunken assault by an offender on his ex-girlfriend's new partner, sentences were higher in every case using the existing guideline by at least two years, and up to as much as 6 and a half years. Interestingly, however, this scenario was based on a Court of Appeal case which found 4 years to be an appropriate sentence, and the sentences using the draft revised guideline were more in line with this ranging from 2 years 6 months to 5 years.

3.38 In particular, the sentences in the lower categories of seriousness were questioned, with one judge noting;

"I found it curious, that the sentences in harm 3, that's culpability A, culpability B and culpability C, go down to 2 and a half years, for a section 18! I mean that is very, very low, for a section 18. And I just wonder whether they're starting it too low there."

3.39 This was a concern of the Council prior to testing, given the seriousness of a s18 offence. While the sentences at the top end of the table did not appear to cause concern, the sentences in the mid to lower end of the table were not felt to be appropriate. The starting points of category B1 and C1 were intended to be relative to the loss of control manslaughter guideline for a comparable offence where death is not caused.

3.40 Given road testing findings a revised sentence table is included below for the Council's consideration. The 7 year starting point for a category B1 case has been retained, but the starting point of category C1 has been adjusted and shares the same starting point as a loss of control manslaughter case. A lower sentence remains available within the range, as this would perhaps be a more proportionate way to address this issue and avoid all other sentences being too low.

The existing s18 guideline sentences are also included below for reference and comparison:

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

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

It should be remembered that the evaluation highlighted the existing guideline had an inflationary effect, but that it has been identified through an analysis of cases and CCSS data that this is likely to be due to the placement of factors (for example all weapons are captured in greater culpability and 78% of s18 cases involved weapons) and not attributable to the existing starting points and ranges being too high, given that they are slightly lower than the previous SGC guideline starting points.

3.41 Should the Council approve of the revised sentence levels, the resource assessment will consider the impact of the sentences agreed and whether they are likely to remedy the evaluation finding that the s18 guideline was inflationary or if they will result in a more pronounced deflationary effect. This will be prepared for the Council to consider prior to sign off of the guideline.

Question 9: Does the Council agree to consult on the proposed revised sentences included above?

4 IMPACT /RISKS

4.1 It will be important reputationally to ensure decisions made in revising the guideline are based on evidence of issues identified in the evaluation, to ensure the Council is seen to be responsive to issues with the guideline. Revision proposals seek to address inflationary issues by revising factors rather than sentences where appropriate. It is also important to note that sentences have been developed in line with evidence of current sentencing practice.

4.2 The draft resource assessment will consider if there will be any unintended impact of revisions, and the Council will be able to consider these prior to sign off of the consultation on the revised guidelines.

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 work¹, 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*”². 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.³

¹ 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.

² 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.

³ 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.⁴
- 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’ custody⁵) 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

⁴ 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.

⁵ 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 months⁶) 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.

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- 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.⁷ 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 appropriate⁸. 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.

⁶ 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.

⁷ However, the majority of sentences were between 4 and 6 years.

⁸ 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.

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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 ⁹ 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

⁹ 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

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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

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						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	12years	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	

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				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 if 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

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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

STEP ONE**Determining the offence category**

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

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

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

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

B – Medium culpability

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

C – Lesser culpability

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

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

Harm	
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

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 2 years</p> <p>Category Range 1 year– 3 years 6 months</p>	<p>Starting point 1 year</p> <p>Category Range 26 weeks – 2 years</p>	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>
Harm 2	<p>Starting point 1 year</p> <p>Category Range 26 weeks – 2 years</p>	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks</p>
Harm 3	<p>Starting point 26 weeks</p> <p>Category Range High Level Community Order - 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks</p>	<p>Starting point Medium Level Community Order</p> <p>Category Range Band B Fine – 16 weeks custody</p>

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

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

1) Has the custody threshold been passed?

2) If so, is it unavoidable that a custodial sentence be imposed?

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

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

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

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

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

Revenge attack

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

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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STEP ONE**Determining the offence category**

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

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

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

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

B – Medium culpability

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

C – Lesser culpability

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

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

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

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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

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

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

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

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

Other aggravating factors:

Spitting

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

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

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

Revenge attack

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

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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STEP ONE**Determining the offence category**

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

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

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

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

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

B – Medium culpability

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

C – Lesser culpability

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

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

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 12 years</p> <p>Category Range 10-16</p>	<p>Starting point 7 years</p> <p>Category Range 6-10</p>	<p>Starting point 4</p> <p>Category Range 3-7</p>
Harm 2	<p>Starting point 7 years</p> <p>Category Range 6-10</p>	<p>Starting point 4</p> <p>Category Range 3-7</p>	<p>Starting point 3</p> <p>Category Range 2 years 6 months-5</p>
Harm 3	<p>Starting point 4</p> <p>Category Range 3-7</p>	<p>Starting point 3</p> <p>Category Range 2 years 6 months-5</p>	<p>Starting point 2 years 6 months</p> <p>Category Range 2-4</p>

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline*.

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

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

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

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

Other aggravating factors:

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

Offence committed in prison

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon (where not taken into account at step one)

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

Revenge attack

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

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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