

Sentencing Council meeting:

Paper number:

Lead Council member:

Lead official:

26 July 2019

SC(19)JUL04 – Attempted Murder

Julian Goose

Lisa Frost

0207 071 5784

1 ISSUE

1.1 This meeting requires consideration of a revised draft guideline for the offence of Attempted Murder.

2 RECOMMENDATION

2.1 That the Council:

- considers culpability and harm factors and;
- agrees sentences and guidance on life and extended sentences to be included in the revised guideline.

3 CONSIDERATION

3.1 At the May meeting the Council agreed a number of points relating to a revised Attempted Murder guideline. These were that culpability factors should be descriptive and not follow the approach in the existing guideline of culpability categorisations specifically referencing schedule 21 paragraphs, that the harm model should reflect the broad potential harm in the offence and that the sentencing table should not include life sentences but should include guidance on when life sentences may be appropriate.

3.2 Approval of a draft which can be tested at the Serious Crime Seminar in September is sought, and feedback from the event will then be available for consideration by the Council at the October meeting.

Culpability factors

3.3 The existing SGC Attempted Murder guideline is included at Annex A. The guideline provides for an offence which, had the charge have been murder falling within para 4 or 5 of Schedule 21, to be assessed at category 1 seriousness. Category 2 then provides for other planned attempts to kill and category 3 other spontaneous attempts to kill. Starting points vary according to the level of harm found. Annex B includes a copy of schedule 21 to illustrate offences falling within category 1. As was noted at the last meeting the existing guideline does not provide for the 25 minimum term for a murder involving a weapon taken to the scene, which was introduced after the guideline was developed.

3.4 At the May meeting the Council agreed the approach to assessing culpability should include descriptive factors rather than following the approach in the existing guideline of categories reflecting schedule 21 offences. Culpability factors have been developed and tested against a range of cases and are included at Annex C for consideration by the Council. Annex D includes a proposed draft guideline.

3.5 Very high culpability factors include factors which reflect schedule 21 offences, such as offences involving firearms or explosives and attempted murder of police or prison officers. As discussed at the last meeting, the factors in this category are broader than the schedule, to provide for an appropriate seriousness assessment. This may also address concerns that existing sentences are too low, given the existing guideline is more restrictive in respect of offence categorisation.

Question 1: Does the Council agree with the very high culpability factors included?

3.6 A high culpability category is included to reflect the addition of minimum terms for knives and other weapons taken to a scene in a murder offence, and this category also provides for offences involving some planning.

Question 2: Does the Council agree with the very high culpability factors included?

3.7 Medium culpability includes offences involving weapons not included in category A or B, and offences where there is a lack of premeditation. In revising the assault guidelines lack of premeditation was not included as a lesser culpability factor, as it was thought a spontaneous offence could be as serious as a planned assault. However, in attempted murder it is thought planning, or a lack of, is highly relevant to the culpability of the offender given the intent to kill present in the offence. The existing guideline distinguishes between planned and spontaneous offences and the distinction has been relevant in analysis of cases.

Question 3: Does the Council agree with the medium culpability factors included?

3.8 At the previous meeting discussion took place as to whether the guideline should reflect the partial defences applicable to murder, given that in an attempt death of the victim was the intended outcome. The Council suggested consideration should be given to whether any academic research has been undertaken in this area. Officials have been unable to identify any published research or papers, but discussion with an academic has confirmed that partial defences and the potential for a lesser sentence to be imposed where a death occurs is an area that has been noted as worthy of consideration in attempted murder offences.

3.9 The Council considered this matter in developing the s18 GBH guideline, and agreed the lesser culpability category should provide for culpability to be balanced against other factors in appropriate cases. Lesser culpability therefore includes the same factors agreed for the s18 GBH guideline, with the exception of 'no weapon used'. This has not been included in the attempted murder guideline to avoid offences involving strangulation or suffocation being captured when this may not be appropriate. A further slight difference is in the wording of the mental disability factor, which has been taken from the manslaughter guideline. However, this does not include maturity as a factor reducing responsibility at step one as this is provided for at step two; the factor is intended to capture diminished responsibility type cases.

Question 4: Does the Council agree with the lesser culpability factors included?

3.10 No specific balancing factor has been included in any category, but the wording at the top of the culpability assessment mirrors the wording included in the manslaughter guideline to avoid overly restricting the discretion of sentencers in applying appropriate weight to factors which may be present in an offence.

Question 5: Does the Council agree with the approach to assessing culpability and that the wording included in Manslaughter on how to undertake the culpability assessment should be included?

3.11 There is a further type of offence to consider which relates to 'mercy killings' and how these should be dealt with in the revised guideline. These cases are likely to involve planning, which if substantial would be assessed as category A. The existing guideline states on page 4 at point 10 that the guideline '*is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.*'

3.12 Mercy killings were also considered in developing the manslaughter guideline, and are provided for by the diminished responsibility guideline by a mitigating factor 'belief by the offender that the killing was an act of mercy'. The diminished responsibility guideline does not include a standard culpability assessment, with step one instead requiring the court to assess the level of responsibility retained by the offender. The difficulty with an attempted murder offence being provided for with a mitigating factor is that the reduction in sentence is not likely to have a significant impact on the sentence, given the planning which may be present in an offence. The effect on the sentence of a factor at step one or as mitigation was considered in GBH in relation to the abused offender factor, and it was agreed the guideline should provide for such an offence at step one to ensure an overall proportionate sentence. The Council are therefore asked to consider if the revised guideline should follow the approach in the existing guideline and specifically exclude attempted mercy killings from its scope, or whether the mitigating factor in the diminished responsibility guideline should be included at step one. This is a controversial issue but is likely to be raised in consultation.

Question 6: How, if at all, does the Council wish to address attempted mercy killings in the revised guideline?

Harm Factors

3.13 The existing guideline provides for three levels of harm within each offence category. These are serious and or long term physical or psychological harm; some physical or psychological harm and; little or no physical or psychological harm.

3.14 It was agreed at the last meeting that the harm model should include the factor agreed for the highest level of harm in GBH offences, as this is descriptive of offences where death almost occurs or a life changing injury is inflicted. It was agreed that the factors in the other categories would need to reflect the broad potential range of harm in an attempted murder. Category 2 harm therefore captures cases involving serious injuries not included in category 1, and category 3 provides for cases involving lower levels of harm.

3.15 Annex C includes the harm factors developed. Consideration was given to including four categories of harm, but as discussed at the May meeting while little or no physical harm may be present in an offence, any victim who has been subject of an attempt on their life suffers some psychological harm, so a little or no harm category would likely be redundant.

Question 7: Does the Council agree with the harm factors included?

Sentences

3.16 Statistics illustrating current sentence volumes and the estimated pre-guilty plea distribution of sentences were considered at the May meeting and are included again below. It was noted that considerably fewer indeterminate sentences were imposed post 2012 (with the exception of a 'spike' in 2016), which is likely to be attributable to LASPO¹ and the removal of IPP² provisions, so the indeterminate sentences from 2013 onwards represent life sentences:

Sentence length band	2011	2012	2013	2014	2015	2016	2017
6 years or less	3%	5%	6%	2%	0%	0%	0%
Between 6 and 12 years	10%	3%	13%	11%	5%	6%	13%
Between 12 and 18 years	27%	20%	29%	40%	39%	29%	23%
More than 18 years	16%	32%	37%	18%	34%	26%	37%
Indeterminate	44%	41%	15%	29%	22%	38%	27%
Number of offenders sentenced to immediate custody	79	66	52	55	77	68	70

3.17 The Council were asked to confirm if any principles should be applied to sentence development. Consideration was given to views of attempted murder sentences which were noted when developing the Manslaughter guideline, which gave some indication that attempted murder sentences are currently considered to be too low in comparison to sentences for murder. It was noted in particular that there is considerable disparity between a para 4 or 5 type offence where death results which would attract life and a minimum custodial term of 30 years, whereas a similar facts attempted murder would result in a starting point of a 30 year determinate sentence, with only 15 or 20 years custody served depending on whether the offender is assessed as dangerous.

3.18 It was agreed that attempted murder starting points should be higher to reflect the many cases where death is intended but avoided by sheer luck or skilled medical intervention. It was also agreed that sentences for offences involving lesser culpability should reflect similar circumstances murder offences where a partial defence is available to reduce the charge to manslaughter.

3.19 Sentences have been developed taking all of these factors into account. The very high and high culpability categories include sentences which seek to more properly reflect offence seriousness based on relevant factors. Sentences involving lesser culpability are the

¹ Legal Aid and Punishment of Offenders Act 2012

² Indeterminate sentences for public protection

same as sentences in the lowest category of the Manslaughter loss of control guideline which are as follows;

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

This is to ensure the sentence for a similar facts loss of control manslaughter case is not lower than a case where death does not occur and the charge is attempted murder.

3.20 A case list has been provided at Annex D to provide context to proposed sentences. A comparison of the imposed sentence and the starting point which would be achieved with the draft guideline is included, although the revised sentence does not take into account aggravating and mitigating factors.

Question 8: Does the Council agree with proposed sentences?

Life and extended sentences guidance

3.21 At the May meeting the Council considered whether life sentences should be included in the sentencing table for attempted murder, as they are in the Terrorism guideline. It was agreed that life sentences should not be included as starting points, but that appropriate guidance should be given on life and extended sentences at step one and step two of the guideline. The Council noted that any guidance should reflect guidance included in the Manslaughter and Terrorism guidelines and Court of Appeal guidance in *Burinskas*³, the guideline judgment which set out the structure of considering life and extended sentences in relevant cases.

3.22 The wording included at step one of the manslaughter guideline has been used to highlight cases where a life or extended sentence may be appropriate. As in Other Council guidelines, consideration of extended and life sentences is presented at Step 5.

3.23 As in manslaughter, any determinate sentence starting point would be used to identify the minimum term if a life or extended sentence is imposed.

Question 9: Is the Council content with the presentation of information relating to extended and life sentences at step one of the guideline?

³ *Attorney General's Reference (No.27 of 2013) (R v Burinskas)* [2014] EWCA Crim 334

3.24 In Terrorism, where life sentences are included in the sentence table, guidance on extended and life sentences is included at step two and reads as follows;

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE below).

It is not thought this wording is necessary at step two of the attempted murder guideline as life sentences are not included in the sentence table and reference to step 5 has been included at step one as in the manslaughter guideline.

3.25 There is additional wording and an additional step six in Terrorism which is also relevant to attempted murder offences committed in the context of terrorism. This is provided for by s236A CJA 2003, which provides for special custodial sentences to be imposed for offenders of particular concern. While this will apply to a very small proportion of (if any) cases, it is thought the guideline should reference it for the courts attention given the potential for it to be otherwise overlooked. The wording could read as follows;

Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003, the court must consider the provisions set out in section 236A Criminal Justice Act 2003 (special custodial sentence for certain offenders of particular concern). (See STEP SIX below).

Step six would read as follows;

Step 6 – Special custodial sentence for certain offenders of particular concern (section 236A)

Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

Question 10: Does the Council wish to include the additional wording relating to offenders of particular concern at step two and to include step six in the revised guideline?

Aggravating and mitigating factors

3.26 The aggravating and mitigating factors include relevant factors included in the s18 GBH guideline and one aggravating factor from manslaughter; 'actions after the event (including but not limited to attempts to cover up/conceal evidence)'.

Question 11: Does the Council agree with the aggravating and mitigating factors included?

4 IMPACT /RISKS

4.1 It will be important to ensure revisions to the existing guideline ensure sentences achieve relativity with similar fact murder sentences, to reflect the principles in Appleby that offences involving death should attract the highest sentences. However, reflecting the very high level of intent in the offence of attempted murder is also important, and ensuring sentences reflect the gravity and any impact upon victims.

4.2 It is intended that views and feedback from Judges on an early version of the revised guideline will be obtained at the Serious Crime Seminar in September. The Council will then be able to consider any findings prior to sign off of the guideline in the Autumn.



Sentencing Guidelines Council

Attempted Murder

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to relevant guidelines. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after **27 July 2009**.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice (published June 2007) on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council.

The advice and this guideline are available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.



Chairman of the Council
July 2009

CONTENTS

Foreword	i
Introduction	3
A. Assessing seriousness	3–4
(i) Culpability and harm	3
(ii) Aggravating and mitigating factors	4
B. Ancillary orders	4
Compensation orders	4
C. Sentencing ranges and starting points	5
D. Factors to take into consideration and guideline	6–7
Annex A Extract from the Criminal Justice Act 2003	8
Annex B General aggravating and mitigating factors	9–10

Introduction

1. This guideline covers the single offence of attempted murder. The Council has published a separate definitive guideline for offences of assault which do not result in the death of the victim.¹
2. There are critical differences between murder and attempted murder; not only is the intended result not achieved but also, for attempted murder, there must have been an intention to kill whereas a charge of murder may arise where the intention was to inflict grievous bodily harm. These differences are reflected in the approach set out below which supersedes previous guidance from the Court of Appeal in *Ford*² and other judgments.

A. Assessing seriousness

(i) Culpability and harm

3. The culpability of the offender is the initial factor in determining the seriousness of an offence. It is an essential element of the offence of attempted murder that the offender had an intention to kill; accordingly an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. In common with all offences against the person, this offence has the potential to contain an imbalance between culpability and harm.³
5. Where the degree of harm actually caused to the victim of an attempted murder is negligible, it is inevitable that this will impact on the overall assessment of offence seriousness.
6. However, although the degree of (or lack of) physical or psychological harm suffered by a victim may generally influence sentence, the statutory definition of harm encompasses not only the harm actually caused by an offence but also any harm that the offence was intended to cause or might foreseeably have caused; since the offence can only be committed where there is an intention to kill, an offence of attempted murder will always involve, in principle, the most serious level of harm.

¹ *Assault and other offences against the person*, published 20 February 2008, www.sentencing-guidelines.gov.uk

² [2005] EWCA Crim 1358

³ see *Overarching Principles: Seriousness*, para. 1.17, published 16 December 2004, www.sentencing-guidelines.gov.uk

(ii) Aggravating and mitigating factors

7. The most serious offences of attempted murder will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”. For ease of reference, these provisions are reproduced at [Annex A](#).
8. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. These factors are included in the guideline at page 7.
9. The *Seriousness* guideline⁴ sets out aggravating and mitigating factors that are applicable to a wide range of cases; an extract is provided at [Annex B](#). Some are already reflected in the factors referred to above. Care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor. An additional statutory aggravating factor has been introduced by the Counter-Terrorism Act 2008 for prescribed offences which include attempted murder.⁵
10. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy. Whilst the approach to assessing the seriousness of the offence may be similar, there are likely to be other factors present (relating to the offence and the offender) that would have to be taken into account and reflected in the sentence.

B. Ancillary orders**Compensation orders**

11. A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned. There is no limit to the amount of compensation that may be awarded in the Crown Court.

⁴ *Overarching Principles: Seriousness*, paras. 1.20–1.27 published on 16 December 2004; www.sentencing-guidelines.gov.uk

⁵ s.30 and schedule 2. If a court determines that the offence has a terrorist connection, it must treat that as an aggravating factor, and state in open court that the offence was so aggravated.

C. Sentencing ranges and starting points

12. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. The starting points and ranges are based upon an adult “*first time offender*” who has been **convicted after a trial**. Within the guidelines, a “*first time offender*” is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
13. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.
14. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the offence) to reach a **provisional sentence**.
15. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
16. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
17. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence below the range given.
18. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.
19. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

D. Factors to take into consideration

1. Attempted murder is a serious offence for the purposes of the provisions in the Criminal Justice Act 2003⁶ for dealing with dangerous offenders. When sentencing an offender convicted of this offence, in many circumstances a court may need to consider imposing a discretionary life sentence or one of the sentences for public protection prescribed in the Act.
2. The starting points and ranges are based upon a first time adult offender convicted after a trial (see paragraphs 12–19 above). They will be relevant when imposing a determinate sentence and when fixing any minimum term that may be necessary. When setting the minimum term to be served within an indeterminate sentence, in accordance with normal practice that term will usually be half the equivalent determinate sentence.⁷
3. Attempted murder requires an intention to kill. Accordingly, an offender convicted of this offence will have demonstrated a high level of culpability. Even so, the precise level of culpability will vary in line with the circumstances of the offence and whether the offence was planned or spontaneous. The use of a weapon may influence this assessment.
4. The level of injury or harm sustained by the victim as well as any harm that the offence was intended to cause or might foreseeably have caused, must be taken into account and reflected in the sentence imposed.
5. The degree of harm will vary greatly. Where there is low harm and high culpability, culpability is more significant.⁸ Even in cases where a low level of injury (or no injury) has been caused, an offence of attempted murder will be extremely serious.
6. The most serious offences will include those which encompass the factors set out in schedule 21 to the Criminal Justice Act 2003, paragraphs 4 and 5 that, had the offence been murder, would make the seriousness of the offence “exceptionally high” or “particularly high”: see [Annex A](#).
7. The particular facts of the offence will identify the appropriate level. In all cases, the aggravating and mitigating factors that will influence the identification of the provisional sentence within the range follow those set out in schedule 21 with suitable adjustments. This guideline is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.
8. When assessing the seriousness of an offence, the court should also refer to the list of general aggravating and mitigating factors in the Council guideline on *Seriousness* (see [Annex B](#)). Care should be taken to ensure there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor.

⁶ Sections 224–230 as amended

⁷ *R v Szczerba* [2002] 2 Cr App R (S) 86

⁸ *Overarching Principles: Seriousness*, para. 1.19, published on 16 December 2004; www.sentencing.guidelines.gov.uk

Attempted Murder

Criminal Attempts Act 1981 (section 1(1))

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

Maximum penalty: Life imprisonment

Nature of offence	Starting point	Sentencing range
<p>Level 1 <i>The most serious offences including those which (if the charge had been murder) would come within para. 4 or para. 5 of schedule 21 to the Criminal Justice Act 2003</i></p> <ul style="list-style-type: none"> • Serious and long term physical or psychological harm • Some physical or psychological harm • Little or no physical or psychological harm 	<p>30 years custody 20 years custody 15 years custody</p>	<p>27–35 years custody 17–25 years custody 12–20 years custody</p>
<p>Level 2 <i>Other planned attempt to kill</i></p> <ul style="list-style-type: none"> • Serious and long term physical or psychological harm • Some physical or psychological harm • Little or no physical or psychological harm 	<p>20 years custody 15 years custody 10 years custody</p>	<p>17–25 years custody 12–20 years custody 7–15 years custody</p>
<p>Level 3 <i>Other spontaneous attempt to kill</i></p> <ul style="list-style-type: none"> • Serious and long term physical or psychological harm • Some physical or psychological harm • Little or no physical or psychological harm 	<p>15 years custody 12 years custody 9 years custody</p>	<p>12–20 years custody 9–17 years custody 6–14 years custody</p>

Specific aggravating factors	Specific mitigating factors
<p>(a) the fact that the victim was particularly vulnerable, for example, because of age or disability</p> <p>(b) mental or physical suffering inflicted on the victim</p> <p>(c) the abuse of a position of trust</p> <p>(d) the use of duress or threats against another person to facilitate the commission of the offence</p> <p>(e) the fact that the victim was providing a public service or performing a public duty</p>	<p>(a) the fact that the offender suffered from any mental disorder or mental disability which lowered his degree of culpability</p> <p>(b) the fact that the offender was provoked (for example, by prolonged stress)</p> <p>(c) the fact that the offender acted to any extent in self-defence</p> <p>(d) the age of the offender</p>

The presence of one or more aggravating features will indicate a more severe sentence within the suggested range and, if the aggravating feature(s) are exceptionally serious, the case will move up to the next level.

Annex A: Extract from the Criminal Justice Act 2003, schedule 21***Determination of minimum term in relation to mandatory life sentence****Starting points**

4 (1) If—

- (a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and
- (b) the offender was aged 21 or over when he committed the offence, the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of two or more persons, where each murder involves any of the following—
 - (i) a substantial degree of premeditation or planning,
 - (ii) the abduction of the victim, or
 - (iii) sexual or sadistic conduct,
- (b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,
- (c) a murder done for the purpose of advancing a political, religious or ideological cause, or
- (d) a murder by an offender previously convicted of murder.

5 (1) If—

- (a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and
- (b) the offender was aged 18 or over when he committed the offence, the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include—

- (a) the murder of a police officer or prison officer in the course of his duty,
- (b) a murder involving the use of a firearm or explosive,
- (c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),
- (d) a murder intended to obstruct or interfere with the course of justice,
- (e) a murder involving sexual or sadistic conduct,
- (f) the murder of two or more persons,
- (g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, or
- (h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

* As at June 2009

Annex B: General aggravating and mitigating factors identified in the Council guideline *Overarching Principles: Seriousness*

The factors below apply to a wide range of offences.

Not all will be relevant to attempted murder.

Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

Personal mitigation

Section 166(1) Criminal Justice Act 2003 makes provision for a sentencer to take account of any matters that 'in the opinion of the court, are relevant in mitigation of sentence'.

When the court has formed an initial assessment of the seriousness of the offence, then it should consider any offender mitigation. The issue of remorse should be taken into account at this point along with other mitigating features such as admissions to the police in interview.

Criminal Justice Act 2003 c. 44

Schedule 21 DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE

Interpretation

This version in force from: **December 18, 2003** to **present**

1

In this Schedule—

“child” means a person under 18 years;

“mandatory life sentence” means a life sentence passed in circumstances where the sentence is fixed by law;

“minimum term”, in relation to a mandatory life sentence, means the part of the sentence to be specified in an order under [section 269\(2\)](#);

“whole life order” means an order under [subsection \(4\) of section 269](#).

Status: Law In Force

2

[Section 28](#) of the [Crime and Disorder Act 1998 \(c. 37\)](#) (meaning of “racially or religiously aggravated”) applies for the purposes of this Schedule as it applies for the purposes of [sections 29 to 32](#) of that Act.

This version in force from: **December 3, 2012** to **present**

[3

For the purposes of this Schedule—

(a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(i\)](#) or [\(b\)\(i\)](#);

(b) an offence is aggravated by disability if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(ii\)](#) or [\(b\)\(ii\)](#);

(c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in [section 146\(2\)\(a\)\(iii\)](#) or [\(b\)\(iii\)](#).

Starting points

This version in force from: **April 13, 2015** to **present**

4

(1) If—

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) the murder of two or more persons, where each murder involves any of the following—

- (i) a substantial degree of premeditation or planning,
- (ii) the abduction of the victim, or
- (iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

[(ba) the murder of a police officer or prison officer in the course of his or her duty,]¹

(c) a murder done for the purpose of advancing a political, religious [, racial]² or ideological cause, or

(d) a murder by an offender previously convicted of murder.

5

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when he committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within [paragraph 4\(1\)](#)) would normally fall within sub-paragraph (1)(a) include—

[...] ¹

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is racially or religiously aggravated or aggravated by sexual orientation [, disability or transgender identity]², or

(h) a murder falling within [paragraph 4\(2\)](#) committed by an offender who was aged under 21 when he committed the offence.

This version in force from: **March 2, 2010 to present**

[5A.—

(1) If—

(a) the case does not fall within [paragraph 4\(1\)](#) or [5\(1\)](#),

(b) the offence falls within sub-paragraph (2), and

(c) the offender was aged 18 or over when the offender committed the offence,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—

(a) commit any offence, or

(b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.] ¹

This version in force from: **March 2, 2010 to present**

6

If the offender was aged 18 or over when he committed the offence and the case does not fall [within [paragraph 4\(1\)](#), [5\(1\)](#) or [5A\(1\)](#)] ¹, the appropriate starting point, in determining the minimum term, is 15 years.

This version in force from: **December 18, 2003 to present**

7

If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravating and mitigating factors

This version in force from: **December 18, 2003 to present**

8

Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

9

Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

This version in force from: **March 2, 2010 to present**

10

Aggravating factors (additional to those mentioned in [[paragraph 4\(2\)](#), [5\(2\)](#) and [5A\(2\)](#)] ¹) that may be relevant to the offence of murder include—

- (a) a significant degree of planning or premeditation,
- (b) the fact that the victim was particularly vulnerable because of age or disability,
- (c) mental or physical suffering inflicted on the victim before death,
- (d) the abuse of a position of trust,
- (e) the use of duress or threats against another person to facilitate the commission of the offence,
- (f) the fact that the victim was providing a public service or performing a public duty, and
- (g) concealment, destruction or dismemberment of the body.

This version in force from: **October 4, 2010 to present**

11

Mitigating factors that may be relevant to the offence of murder include—

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within [section 2\(1\)](#) of the [Homicide Act 1957 \(c. 11\)](#)), lowered his degree of culpability,
- (d) the fact that the offender was provoked (for example, by prolonged stress) [...] ¹
- (e) the fact that the offender acted to any extent in self-defence [or in fear of violence] ²
- (f) a belief by the offender that the murder was an act of mercy, and
- (g) the age of the offender.

This version in force from: **October 31, 2009 to present**

12

Nothing in this Schedule restricts the application of—

- (a) [section 143\(2\)](#) (previous convictions),
- (b) [section 143\(3\)](#) (bail), or
- (c) [section 144](#) (guilty plea) [,] ¹
[or of [section 238\(1\)\(b\) or \(c\)](#) or [239](#) of the [Armed Forces Act 2006](#).]
] ¹

Case name and reference	Facts	Offence category and sentence	Revised guideline categorisation and starting point
AG Reference Bowen [2018] EWCA Crim 1682	<p>Described as horrific and shocking case. Victim (V) was neighbour of offender and his partner, spent the evening with them and became concerned offender's partner, L, was having a fit. Offender became angry and accused her of interfering. V returned home but wanted to go to the offender's flat to check on L and also to get her phone back, so she went back with her partner for a second time. V went into the offender's flat. In the interim the offender had gone outside to a garden shed and had obtained petrol in a container, he then came back brandishing the petrol container and there was then a conversation between the three adults as to whether the offender would "do it"; that is to say, attack V with the petrol (she at that stage not anticipating that he would). He then walked up to V, poured the petrol over her body and ignited the fuel with a cigarette lighter. The offender then watched her burn without helping at all whilst he smoked a cigarette. V's partner was outside and with neighbours gained entry to flat upon hearing V screaming; her clothes and flesh were still burning and she was screaming in agony. Offender fled scene and went to sister's house and washed his clothes. Injuries wholly life changing. A series of major surgical procedures had to be performed on V's upper body to deal with the immediate effect of the burns. Those involved removing burnt skin and flesh from affected areas. She remained in the Burns Intensive Care Unit for a month. Major treatment required to her eyelid regions, her face and nasal regions, her ear regions, her neck regions, her breast regions and her hands. She lost the most part of her ears, some of her fingers have had to be amputated and the likelihood of any movement of her hands is minimal. Psychological evidence set out the effects of the trauma that V has suffered and will continue to suffer. Pressure garments need to be worn and a face mask for almost the entire period of the day and night for approximately 2 years for burns scarring. There will be further skin graft operations needed. She remains in constant high levels of pain with the pain being very difficult to manage.</p>	<p>1st instance judge found to be a cat 2 att murder case, with SP of 24 years. 20% discount given for early G plea, so SP reduced to 19 years plus 5 years extended sentence. C of A found unduly lenient, and should have been a category 1 case. Case involved sadistic conduct and C of A mentioned weapon (petrol) taken to scene, although noted latter not provided for by existing guideline. Said as cat 1 case life sentence should have been considered, and notional determinate should have been 24 years. Substituted sentence for life with minimum term of 12 years.</p>	<p>A1 if sadistic conduct most prominent culpability factor, B2 if weapon taken to scene. SP 35/30 years – if life 17.5/15 year minimum term.</p>

ANNEX C

<p>Ryan [2014] EWCA Crim 1351</p>	<p>Drugs dispute between the applicant and the victim and there had been a build-up of threat and counter threat between them. A fight was arranged when the applicant attended with a firearm capable of firing shotgun pellets and the victim had a large dog and a baseball bat. A co-accused was involved on the applicant's side and he was armed with a baton and a knife. However he tried to diffuse the situation and the applicant had the leading role. The confrontation developed rapidly and the victim set his dog onto the applicant. At that point the applicant fired the gun at the victim but missed. He then pursued him and caught him at close quarters when he discharged the weapon into his body. The victim had 70 puncture wounds and about 100 pellets in his stomach, his liver and gall bladder. He would have died without skilled medical intervention and had to undergo a number of operations over a period of months. The applicant had a number of previous convictions involving drugs, weapons and public order offences. It was argued the offence should have been in a lower category and there was too great a disparity with the sentence of six years imposed on the co-accused for possessing a firearm with intent to endanger life.</p> <p>CACD: There were a number of aggravating features putting the offence well within level 1 of the guidelines. The only mitigation was a degree of provocation. If the offence had resulted in death the starting point for the minimum term would have been 30 years. The sentence was fully justified and there was nothing in the disparity argument.</p>	<p>1st instance – Cat 1 - 30 year SP. CACD: upheld</p>	<p>A1 – (firearm, victim nearly died) 35 years determinate</p>
<p>Deer [2013] EWCA Crim 1010</p>	<p>The applicant and the victim had a relationship but by the time she gave birth to his son they had separated. The relationship had been dominated by his controlling and violent behaviour. Whilst she was pregnant the police attended five incidents involving violence by him towards her. The applicant was on bail for committing an assault upon her when he committed the present offence. This occurred when she visited his house to discuss the child and he punched her heavily to the face and used a Taser to her back. When she was on the floor he placed a cord around her neck and tightened it until she lost consciousness. He repeated the strangulation on two further</p>	<p>1st instance – 15 year SP, imposed IPP 8 year minimum</p>	<p>C1/2 (use of weapon other than cat A or B, planning not mentioned. High or Medium level of harm: 25/20 year SP</p>

	<p>occasions and when she tried to escape, he attacked her with a baseball bat. When a friend arrived at the house it appeared the victim was dead. She suffered multiple lacerations to the back of the head, multiple bruises to the face and body, and signs of strangulation. Her hands were grossly swollen and three fingers were fractured. The applicant had no previous convictions for violence but in a pre-sentence report and a psychiatric report was assessed as being dangerous to women. It was not argued an indeterminate sentence was not appropriate but that the specified term was excessive. The judge put the case at the very top of level 3 and gave 20% credit for the plea as it was entered at a late stage.</p> <p>CACD: The question for the judge was not whether she could envisage worse level 3 offences, but whether, having taken account of the aggravating and mitigating factors, the offence fell at or near the top of the category. Application refused.</p>		
Hardacre [2011] EWCA Crim 2791	<p>The applicant and victim lived on the third floor of an apartment block. During an argument, he threw her over the balcony. She was found on the pavement unconscious having suffered a severe brain injury, fractures of the pelvis and lower spine, and had strangulation marks on her neck. She was in hospital for over 3 months. The applicant had a previous conviction for assaulting an ex-girlfriend who had ended their relationship because of his violent behaviour. The applicant entered a guilty plea on the day of the trial.</p> <p>The Judge sentenced on the basis of it being a spontaneous attempt to kill with long term serious harm. He took a 15 year starting point and gave a 10% deduction for the late guilty plea.</p> <p>CACD: The judge's approach was correct.</p>	SP 15 yrs, 10% credit for plea – 13.5 yrs	C1 – medium (no premeditation), high level of harm SP 20 years
WADE [2012] EWCA Crim 2605	<p>The victim was the appellant's ex-wife and although they were divorced they remained close. She became seriously ill with a blood clot and the appellant looked after her but her condition deteriorated. Both had alcohol issues. The victim had episodes when she defecated and urinated in the bed and the appellant had to clear up the mess. The appellant was at the end of his tether and tried to smother her.</p>	Exceptional case 2 years 6 months reduced to 16 mths on appeal	C3 10 year SP

	<p>Paramedics found her lying in urine and faeces and the appellant told them he had tried to kill her. A couple of days later there was an argument when the police were called and he admitted to them he had tried to kill her a few days before. The appellant pleaded guilty on the basis he was under a great deal of pressure as the main carer for his wife and due to her alcohol consumption her behaviour had become more difficult. She was drunk and had defecated so he snapped and put a quilt over her head but then came to his senses. The appellant was only prosecuted because of what he said to the police.</p> <p>The Judge recognised this was an exceptional case though the situation was not akin to a mercy killing. However he said it is difficult to imagine any case of attempted murder which would fall below the custody threshold.</p> <p>CACD: The judge was correct to say a custodial sentence was inevitable and what the appellant did to his wife cannot ever be the way out of a situation such as he faced. However the sentence of two and half years imprisonment was excessive and a proper sentence following trial would have been 2 years imprisonment. The appellant was entitled to the fullest credit for the plea of guilty and given the time spent in custody could be released immediately.</p>		
Transcript 70 – John Way (1 st instance)	<p>Arrived, uninvited, at his estranged wife’s address who was now married to V. They were packing to move and 2 removal men were there. His ex-partner was in the house, but V was in the garage. D entered the house; by this time had armed himself with a 6-inch bladed knife from his car (was up a sleeve). His ex-partner asked what he was doing there and asked that he leave; D refused and asked where V was. V came in and D attacked him immediately; stabbed him with a downwards motion four times around the chest. D is larger and heavier than V so carried on despite a removal man and his ex-partner trying to intervene. His ex-partner was also injured, sustaining 2 cuts to her hand. V fell to the floor, bleeding heavily. D drove off. Ongoing trauma (ex-wife feels guilty about her husband; her children are having nightmares, the punches to her head have aggravated an old injury causing her headaches, earache and blurred</p>	<p>GP on the day of trial</p> <p>Level 2 – SP=15 years</p> <p>Final sentence =14 years (16 years pre GP).</p>	<p>B2 – (knife taken to scene, medium harm)</p> <p>25 years determinate</p>

	<p>vision, anxiety). V is still physically scarred, he has difficulty lifting – has had a major negative impact on his work and income as a self-employed person. Has pins and needles in hand, a tight chest, shortness of breath, flashbacks, lack of confidence and anxiety. Judge considered: D armed himself in a pre-mediated fashion. D had been violent towards V some months before – assaulted him (punched him in the face). Received a caution and later a harassment warning. Had written letters to family members showing he intended to harm V in a manner likely to lead to his incarceration. Was unprovoked and premeditated involving a weapon. Sustained attack. Culpability is very high. Agg-was under a caution and harassment warning. Mit-was depressed and stressed (night sedation did not work, was drinking and anti-depressants did not work – although there did appear to be a time when D was a bit better). Until this was a man of good character, has made progress in prison, appreciates the severity of his actions</p>		
<p>Transcript 68 – Glyn Sullivan (1st instance)</p>	<p>Entered on his own, or with someone else, V's house to burgle it. V was 66 and in poor health; a well-respected member of the community. Had few valuables at home. Even if with another person, D took the lead and was responsible for the injuries on V – placed a cord around his neck, repeatedly hit him with many objects (including an iron, his walking stick, fists and feet), and used a knife – used as torture to try and find out where his valuables were. Was after valuables to buy drugs. Inflicted terrible injuries – graphic photos in court. Numerous injuries to head, including lacerations, incised wounds, extensive facial bruising to face and scalp, fractures of cheekbones and left lateral orbit and orbital floor and sub-arachnoid haemorrhage in brain and right subdural haemorrhage on surface of the brain. Depth of wounds with the knife cannot be assessed, but consistent with prodding with the tip. Also, extensive injuries to the torso and arms and hands. Also injuries representing restraint and defence.</p> <p>Ransacked the house and left V for dead and lay there for 24 hours before being discovered. When D left the flat was indifferent as to</p>	<p>Had it been murder, the SP would have been 30 years. SP therefore 20 years.</p> <p>Dangerousness found. Final sentence=life imprisonment with minimum term of 11 years</p>	<p>A2 – offence involved sadistic conduct (torture), medium harm SP (determinate) 30 years (if life min term 15 years)</p>

	<p>whether V was alive or dead. In interview D said he “didn’t give a shit about him”.</p> <p>Has precons, but is an absence of violence.</p> <p>No long-term physical or psychological injury – V had made a good recovery</p> <p>Agg – carried out in pursuance of a burglary and robbery; was planned; V was particularly vulnerable because of age and health; prolonged attack; use of weapons</p>		
Transcript 13 – Aweis, Aweis and Hersi	<p>3 d’s acting together and with others unknown made a determined attempt to kill V during a planned attack from which he had no possibility of escape. They did so not only using force of numbers, but also a variety of weapons the most lethal of which was a loaded gun from which one bullet was fired, pointed at V’s head but narrowly missing. Further attempt then made to shoot V dead. Gun misfired and live round ejected and found outside of shop later on. If successfully shot would have killed V. Attackers then set about V with feet and fists, some using hammers to deliver repeated blows to V’s head, ferocious assault. Injuries not described but Judge said “it is only through good fortune and despite the determined efforts of his attackers that victim survived with his life”.</p>	<p>Aweis & Aweis – planning but no evidence either used weapon, 20 years each.</p> <p>Hersi – CCTV showed him raining down blows savagely, went armed and ready with a weapon and used without hesitation being one of first to get ‘stuck in’. No dangerousness finding. 23 years custody.</p>	<p>Aweis & Aweis B2/3 if sentenced on basis of planning only, Medium or low level of harm 25/20 SP</p> <p>Hersi A2/3 – Use of firearm; planning, assume medium/low level harm 30/25 year SP</p>
Transcript 34 – Julia Knight (1 st instance).	<p>D had close relationship with V, her mother – visited 2/3 x a week and regularly telephoned. 15 years ago mother was found to have leukaemia and 3 years’ ago, health deteriorated. Had a fall at home and fractured spine; had a heart attack and suffered fibrosis of the lungs; developed pseudogout which affected mobility; had subarachnoid haemorrhage. Found it hard to cope and was probably discharged from hospital too early. Suffered another fall and readmitted to hospital. D visited to discover the hospital were thinking of discharging her again. D went to work, accessed internet records about insulin and records of patients with diabetes. Printed</p>	<p>Level 2, with some elements of level 3. Convicted after trial – 14 years</p>	<p>A3 – Substantial planning (obtained prescription, forged signature of doctor.) Assumed harm 3. SP 25 years.</p>

	<p>prescription for insulin and forged a doctor's signature. Took a syringe from work. Went to hospital and injected mother in the stomach (had taken steps to avoid arousing suspicion in mother). Effect was fast but staff managed to stabilise mother.</p> <p>Is context for choice of insulin – after becoming depressed after her marriage breakdown, D injected herself with insulin to kill herself – so had knowledge of the effects of injecting insulin into someone without diabetes (had been told was the best way to commit suicide in a painless way).</p> <p>Failed to admit offence – suspicion initially fell on nursing staff and mother's partner. Finally admitted it, but said intention was never to do serious harm and certainly not to kill. Judge recognises effect of a prison sentence on V will be devastating – is of good character, with no precons or cautions etc. Was nurse for most of adult life, well regarded. Defence says was an act of immense stupidity; D under stress and concerned for mother's treatment. Agg – mother's age (80s), unwell and vulnerable. Abused position of trust – daughter and nurse.</p>		
<p>Transcript 45 – Jacqueline Patrick (1st instance).</p>	<p>Concerted, planned, persistent attempt to poison husband with antifreeze. Intention that its effects would be disguised as an adverse reaction to medication/a suicide attempt. D married to V for nearly 30 years – first attempt in the October. Daughter encouraged her. Deleted text messages showed D mixed illicit painkillers/ prescription medication with V's drink to overdose him. May have also used antifreeze. V was admitted to hospital for 8 days – no blood samples taken but there was kidney damage and high levels of ibuprofen. Further text messages show planning and more poison being given. On Xmas Day was a family argument and V spent most of his time alone; D put anti-freeze into a bottle of liqueur; V probably drank 2.5 glasses. D called ambulance on Boxing Day saying his kidney condition had flared up (setting up false pre-existing condition). Paramedics found a fabricated typed DNR note. D went into a coma;</p>	<p>Sentenced for 2 att murders. GP at PCMH – 25% discount.</p> <p>Higher end of Level 2 for either of counts – but totality of offending is equivalent to Level 1/top end of 2</p> <p>For each count 15 years' concurrent</p>	<p>A1 – substantial degree of planning/premeditation. High harm as life threatening injuries. SP 35 years (in region of 26 years custody after 25% discount for plea)</p>

	<p>ethylene glycol found in blood (100ml is fatal) – did not regain consciousness for 10 days and slim chances of survival at first. D could not speak for some time after leaving hospital, neck was swollen, severe pains in legs; took over 3 months to walk properly. Another 3 months to walk with a stick. Cried all the time. Had a catheter for a month, was a renal outpatient for a year, in constant pain and discomfort. Problems sleeping, lost 3 stone in weight. Has recovered a lot but less able to move than before; is exhausted, with little motivation.</p> <p>Mitigation: Good character; unhappy marriage; has done some volunteer work after the offences.</p>		
<p>Transcript 48 – Zack Davies (1st instance).</p>	<p>A planned racially motivated attack which followed from D seeking out racist and extremist literature and images. Extreme racist and right-wing views. Evidence of internet searches and postings (incl. for material related to Isis and Taliban beheadings and mutilations). V tried to defend himself and there was intervention of a bystander – otherwise victims would have been killed in front of many shoppers at lunchtime. Used a machete and hammer (also had a small lock knife). Other weapons found in room as well – Stanley knife, lock knife, hammer. When arrested spoke of violent thoughts and thoughts about killing people (had intended to behead V for public sympathy and spoke of plans to behead mother’s partner). Had told a family member to watch the news – “something big was about to happen”. Had been expelled from school for carrying a knife and for the last 10 years regularly carried a knife. Played violent video games. Re: offence, armed himself, intending to go and attack mother’s partner in Post Office – he wasn’t there and came across V, followed him and attacked him inside Tesco’s, chasing him through aisles. Blows to back of head, shouting “white power”, “justice for whites”, “remember Lee Rigby”. V ended up on floor, D standing over him – raised machete above head and struck down in slashing motion. V managed to get away; D followed. A bystander stood in front of D blocking his path, persuading him to put weapons down. Sustained attack using weapons – horrific injuries to V. Major injury to left hand (almost</p>	<p>Doctors/ psychiatrists disagree on type of disorder he has/ whether suitable for a hospital order. Judge doesn’t think is appropriate – thinks knew full well what he was doing</p> <p>Level 1 -If had been a murder would have been 30 years SP Discretionary life sentence – minimum term 14 years</p>	<p>A1/2 Racially motivated, serious injuries but not clear if level 1 harm. SP 35/30 (17.5-15 in custody if life)</p>

	<p>severed); 2 wounds to back of head, further wounds to back and side of foot; recovering well and expected to return to work soon but was hospitalised and unable to work for 9 months.</p> <p>Agg – planned attack; armed himself with 3 weapons; initial plan was to attack someone else but when he couldn't find him attacked V; had been planning to commit such an atrocity for some time; also sustained attacked, struck in front of others (including elderly and young), causing panic to others; racially motivated attack – V says the racist attack has had an effect on his family and the wider Sikh community; injuries have meant V has been unable to pursue his career for 9 months</p> <p>Mit – age (26), no precons (although admitted to carrying a knife); admitted alternative offence of wounding</p>		
Transcript case 8 – Fox (1 st instance).	<p>Attack on former partner, described as frenzied attack of dreadful ferocity. Said intent was of short duration and formed only shortly before attack. Used scissors, said didn't bring to scene and judge dealt with on that basis. Lay in wait in her garden, then entered her home and used terrifying violence, stabbing repeatedly with a pair of scissors about the neck and head aiming for her eyes, threatening to blind her to kill her and her children who were upstairs. She tried to crawl away and he dragged her back, stabbing her again and again. She sustained 12 stab wounds to the head and neck and further injuries to arms, legs and torso. Would certainly have died if not for the skill of surgeons. Injuries caused a stroke and she is now wheelchair bound and paralysed to left side. She said the life she knew has been taken from her. Victim deaf and without speech so uses sign language, and now struggles to communicate as left arm does not work. She is only 26. Agg; Pre cons for violence. Sustained and brutal attack. Victim particularly vulnerable; she was deaf so did not hear him entering her home so was unprepared to take defensive action. Threats to blind her and kill her children. Attack in her own home in</p>	<p>Makes hospital order with limitation direction under s45a as HO not sufficient to punish. Extended sentence for public protection. 25 years. Plea on first day of trial, 20% discount as was waiting for a report before pleading. Reduced to 20 for plea. Further five on licence, so 25 years (20 custodial and 5 on licence)</p>	C1 – SP 25 years

ANNEX C

	<p>presence of others (new boyfriend) and children upstairs. Use of a weapon and planning. Culp extremely high.</p> <p>Has personality disorder but not mental disorder. Considered Vowles and nature of mental disorder, the extent to which it is attributable to the offence. Judge finds mental disorder does not diminish culp. Long term impact on V. V little mitigation</p>		
<p>Transcript case 1 – Harris Bennett (1st instance).</p>	<p>Minor incident in a shop, offender felt 'slighted' and summoned a gunman who arrived within minutes and shot victim outside shop. First shot deflected and bullet bounced off of a van, victim ran and was chased by offender and gunman and shot in the back. He was terribly injured, shot went through his back and exited his chest. He has been left paralysed from waist down, lost a lung and has spinal damage. He has a young family he cannot care for; judge says his grief cannot be understated. Gun used. No imbalance between culp and harm – both extremely high.</p> <p>Not being gunman does not mitigate, able to summon a gunman to side within minutes. Acted as if it was his area and he was in charge. No pre cons.</p>	<p>Final sentence 30 years</p>	<p>A1 – SP 35 years</p>
<p>Transcript case 5 – MacMillan</p>	<p>Offender drunk and attacked innocent man in street. Took a stone from a wall, large sharp edged and made of concrete. Plainly a potentially deadly weapon. Followed victim shouting and swearing at him aggressively holding stone in a raised position above head. V pleading with him and offering no threat whatsoever. V began crying and he taunted him. Brought stone over his head and struck V on head. Blow delivered with full force and immediately sent V to ground and rendered him unconscious. Struck him again, swinging the stone like a golf club and striking V in head with full force. Intent was to kill V. Believing that he had succeeded he then ran from scene. Injuries of upmost gravity. He suffered multiple skull and facial fractures, a traumatic brain injury involving bruising on the brain, and bleeding over the brain. Required surgery and was comatose for a month. Brain injury has left him with difficulties with balance, coordination, hearing loss and double vision. Has cognitive problems including confusion,</p>	<p>10% credit for plea on day of trial.</p> <p>Dangerousness found. SP 19 years, 17 years after discount for plea. Extended sentence imposed of 22 years (17 custody, 5 extended licence)</p>	<p>C1 – weapon not in cat A or B, lack of premeditation. High harm. SP 25 years</p>

	<p>poor memory and poor problem solving skills. Mobility impacted and needs a wheelchair or two sticks and a carer. Cannot bath or dress himself. His life will never be the same again. Expectation is that he will continue to suffer significant cognitive, neurological and physical problems. Aggravating; ferocious attack on unarmed and helpless man. Followed victim and struck two blows in circumstances when paused to consider actions. Not a sudden explosion of anger but a cold and calculated intent to kill. Happened in public at midday (location and timing). Under influence of alcohol and drugs. Injuries profound. Pre cons for wounding and possession of weapons. On licence at time of offence.</p> <p>Mitigation – age, 25. Pleaded G on day of trial.</p>		
<p>Transcript case 6 - Poselay</p>	<p>Offender was ex neighbour of V and suspected him of stealing a laptop from his bedsit some 6 months previously. Issue over whether offender took knife to scene or picked knife up at the scene, as would affect sentence. Judge was sceptical picked up at scene in communal kitchen but no evidence he took it so dealt with him on basis that he did not take (as in Kelly) but picked it up with intention of using it later, so some premeditation. V preparing his dinner and offered some to offender, they then spent evening watching TV together. At end of eve offender brought up issue of laptop, V denied stealing. Offender became angry and says returned his plate to kitchen and this is when he picked up knife. Upon leaving he stabbed victim at door a number of times, first in the back and then approximately 8 further times, penetrating wounds to chest, collapsed lung, lacerated kidney and spleen, stabbed to armpit and lacerations to arms and wrists (defensive). Life was in serious danger. Good recovery from physical injuries, but judge notes lasting psychological impact. Aggravating – fled the scene, discarded the knife and not recovered, burned clothes to hide evidence. Ran from police when they arrived. Pre cons, offence committed during currency of SSO. Knife used and victim stabbed in his own home. Persistent attack. Mitigation G plea but trial still necessary as he said not a S18 (intent had to be put to jury). Cat 2B -planned attempt to kill</p>	<p>G plea but only 10% discount because trial not avoided SP 15 years, would be 18 with aggravating but provides for discount and imposes 16 years – 13 years custody 3 years extended licence. Dangerousness found. Smiled at times during trial, doesn't regard what he did as excessive.</p>	<p>On cusp of B/C – some premeditation (B), weapon not in A or B used (C) Harm 1. SP if top end of C/bottom of B 25 years. 10% discount for plea – 22.5</p>

Transcript case 6 - Webster	<p>Att murder of ex partner and mother of his three children. Couple estranged and she was in Sctoland with children, but brought them down to have a few family days together. Planned family day out, she was late he went in pub. Argument started when she arrived. He threw a glass which smashed and shards went into hair of victim and one of children. She took children to a friends and ignored his messages. Knew that her and children were staying at a friends house, went there in morning and carried attack out knowing children and others would witness. She came out to speak to him and he attacked her, first with knife taken to scene then with a glass. Knife broke during attack such was ferocity, so he continued kicking and punching V. Neighbour stopped it and victim went inside, he kicked the door in to get to her again, taking broken glass from front door to use as a weapon. Friend took children and jumped out of window, everyone petrified. Inflicted 22 stab wounds, three to side of her face, multiple to her neck, four to shoulder, one to chest wall and defensive injuries. Cat 1. Planned, knife taken to scene, sustained and vicious. Some blows aimed at her neck. Left with lifelong scars, fracture to orbit of eye and possibility of blood clot and injury to vein in neck. Pre cons for attacking another woman (ABH reduced from GBH/Att murder) and other convictions for violence. Also DV related. Impact on children. Offence committed on bail for assault against victim and criminal damage. Mitigating; mental disorder as diagnosed with paranoid schizophrenia.</p>	<p>Considered Vowles, but also circumstances of offence and did not think hospital order appropriate so imposed HO with limitation direction under s45a. 25 year SP aggravated up to 27, reduced by 8 for mitigating and one extra for remorse. Final sentence 18 years. No dangerousness finding but considered.</p>	<p>B (weapon taken to scene, planning) Harm cat 1 or 2 (not specified if injuries life threatening or ongoing impact). SP 30/25 years</p>
Transcript case 33 –	<p>V had been D's partner for 6 mths. Attended Halloween party and D described by witnesses as acting strangely; returned home, having consumed alcohol, and embarked on unprovoked, murderous, frenzied and sustained attack on V – attempted to butcher her to death with a meat cleaver, deliberately targeting her neck shouting "I'm going to cut your fucking throat. I'm going to shred your throat". Continued until thought had killed her. Injuries - horrific, including a severe gaping wound around neck from ear to ear, the tissues, tendons and muscle tissue being exposed. Multiple lacerations to face, chest and arms as she tried to fight D off. Judge said but for the intervention of the skilled medical personnel, there can be no doubt that she would have died - V's survival miraculous. V cannot not use right arm and there is an</p>	<p>GP – late plea, 10% Says seriousness warrants a life sentence If passed determinate sentence would have started at Level 3 and after taking account of agg and mit would have come to 20</p>	<p>C – weapon not in cat A or B. Harm 1 – life threatening injuries SP – 25 years. Life minimum 12.5</p>

ANNEX C

	<p>ongoing effect on her mental health. V's daughter witnessed and has nightmares and is scared to cut her food up. Aggravated by being in the presence of V's daughter, previous convictions (reckless arson in respect of a previous partner – received 6 years for this and this offence was whilst on licence for this). Mitigation: remorse; also mentions personal mitigation but doesn't say what this is.</p>	<p>years; After plea=18 years. So life with minimum term=9 years</p>	
--	---	--	--

Blank page

STEP ONE**Determining the offence category**

- The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence.
- The court should avoid an overly mechanistic application of these factors

For offences involving an extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.

Culpability demonstrated by one or more of the following:

A – Very High culpability	<ul style="list-style-type: none"> • Substantial degree of premeditation or planning of murder • Abduction of the victim with intent to murder • Attempted murder of a child • Offence motivated by or involves sexual or sadistic conduct • Offence involves the use of a firearm or explosive • Offence committed for financial gain • Attempted murder of a police officer or prison officer in the course of their duty • Offence committed for the purpose of advancing a political, religious, racial or ideological cause • Offence intended to obstruct or interfere with the course of justice • Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity
B- High culpability	<ul style="list-style-type: none"> • Offender took a knife or other weapon to the scene intending to and using that knife or other weapon in committing the offence • Some planning or premeditation of murder
C - Medium culpability	<ul style="list-style-type: none"> • Use of weapon not in category A or B • Lack of premeditation
D- Lesser culpability	<ul style="list-style-type: none"> • Excessive self defence • Offender acted in response to prolonged or extreme violence or abuse by victim • Offender's responsibility substantially reduced by mental disorder or learning disability

Harm	
Category 1	Particularly grave or life-threatening injury caused Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment Offence results in a permanent, irreversible injury or psychological 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
Category 2	Serious physical or psychological harm not in category 1
Category 3	All other cases

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 or a sentence at the top of the category range 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	D
Harm 1	Starting point 35 years Category Range 30 - 40	Starting point 30 Category Range 25-35	Starting point 25 Category Range 20-30	Starting point 14 Category Range 10-20
Harm 2	Starting point 30 years Category Range 25-35	Starting point 25 Category Range 20-30	Starting point 20 Category Range 15-25	Starting point 8 Category Range 5-12
Harm 3	Starting point 25 Category Range 20-30	Starting point 20 Category Range 15-25	Starting point 10 Category Range 7-15	Starting point 5 Category Range 3-6

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

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

Victim vulnerable

Revenge attack

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

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

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 (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

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

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

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.