

Sentencing Council meeting:

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Lead Council member:

Lead official:

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**SC(19)MAY04 – Assault/Attempted
Murder**

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1 ISSUE

1.1 This meeting requires consideration of the offence of Attempted Murder. It was previously agreed that the existing guideline should be updated and included in the revised Assault guideline. The Council will be asked to consider changes which may be required to the guideline format and content.

2 RECOMMENDATION

2.1 That the Council:

- considers potential approaches to assessing harm and culpability in a revised guideline and;
- agrees principles relating to sentences which should be included in the revised guideline.

3 CONSIDERATION

3.1 In agreeing the scope of the revised Assault guideline it was agreed that the offence of attempted murder should be included, as this represents the most serious assault offence not resulting in the death of a victim.

3.2 There is an existing SGC guideline for Attempted Murder. This is included at **Annex A**. The Council will be asked to consider options for revising this guideline and to agree the preferred format.

Attempted Murder

3.3 For the offence of attempted murder to be made out it must be proved that the offender intended to kill the victim. This differs to murder where the intention can be broader and include the intention to kill or to inflict grievous bodily harm upon the victim. Attempted murder therefore requires a higher level of culpability. As the statutory definition of harm provides for harm caused or intended, even attempted murder with little or no impact upon a victim will always be extremely serious.

Legislation

3.4 Attempted murder is provided for by s1(1) Criminal Attempts Act 1981. The maximum sentence is life imprisonment. Schedule 15B Part 1 of the Criminal Justice Act 2003 provides that attempted murder is an offence for which an automatic life sentence must be passed where specified criteria are met, and in other cases a life sentence or an extended sentence may be passed.

3.5 The existing guideline and sentences are naturally heavily influenced by sentences for murder, which is the offence which would be charged were the attempt successful. The Council will be aware that the offence of murder carries a mandatory sentence of life imprisonment and guidance on the minimum custodial term is provided for by Schedule 21 of the Criminal Justice Act 2003. The schedule includes a number of factors which set out the most serious examples of murder, and sets minimum custodial terms for these offences. The existing guideline provides for the most serious examples of attempted murder to reflect those included in paragraphs 4 and 5 of Schedule 21. The full schedule including factors is included at **Annex B**. A summary of the indicated minimum terms for murder is as follows:

Para 4 Schedule 21 (exceptionally high seriousness)

Whole life order

Para 5 Schedule 21 (particularly high seriousness)

Minimum term of 30 years

Para 5A Schedule 21 (offences involving knife taken to scene)

Minimum term 25 years

Para 6 Schedule 21 (all other offences where offender is 18 or over)

Minimum term 15 years

Para 7 Schedule 21 (all other offences where offender is under 18 at time of offence)

Minimum term 12 years

Existing guideline serious assessment

3.6 The existing attempted murder guideline provides for an offence which, had the charge have been murder falling within para 4 or 5 of Schedule 21, to be assessed as 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.

3.7 The Court of Appeal have noted in a number of cases reviewed that the schedule should be treated as guidance, given the qualification that the legislation specifies the factors are 'normally' of the type to which the minimum sentences apply, and cases often include complex and varying factors which may influence the seriousness assessment. It is important to note that the schedule applies to offences of murder only and not to attempts. However, it would be difficult to justify the schedule not being reflected in a guideline providing for unsuccessful murder attempts, given the intent that is present.

3.8 Developing specific factors and sentences for a revised attempted murder guideline is therefore complex if factors and sentences reflecting seriousness specified by Parliament are included in a revised guideline. There is a risk that specifying factors may undermine the factors Parliament considered important in murder offences, and too much flexibility in assessing seriousness could result in a sentence which is higher or much lower than an equivalent minimum term murder sentence.

3.9 A number of options are available to consider how factors in a revised guideline should be constructed. It is important to note the potential impact of any approach on subsequent sentences which may be developed.

Option 1

3.10 One option would be to retain the approach in the existing guideline for assessing culpability. As noted earlier this provides for paragraph 4 and 5 offences to be assessed at category 1, and premeditated and spontaneous attempts to be assessed respectively:

High culpability	Offences which had the charge have been murder would fall within para.4 or para.5 of schedule 21 of the Criminal Justice Act 2003
Medium culpability	Other planned attempted murder
Lesser culpability	Other spontaneous attempted murder

3.11 Ultimately culpability in attempted murder, as in many offences, is more serious where the offence has been planned, and the distinction in the existing guideline between premeditated and spontaneous attempted murder may be considered appropriate. This ensures the offences Parliament intended in respect of substantive murder offences are treated most seriously, as is the current position.

3.12 Since the existing guideline was developed an additional minimum term category has been introduced at para 5A of Schedule 21 for offences where a knife or other weapon is taken to a scene and used in an offence. For murder this offence carries a 25 year minimum term, so it would be necessary to decide if these should fall within high or medium culpability, and determine how best to reflect the murder minimum term range of whole life to 25 years for the various offences specified in the schedule.

Option 2

3.13 An alternative option is that the factors included in the schedule could be translated into culpability factors. However, not all would be suitable for inclusion. This is because some Schedule 21 factors relate to multiple offences, and guidelines apply to individual offences. Other problematic schedule factors relate to an offender's previous convictions or age. As well as these not strictly speaking to culpability, guidelines assess offender specific factors such as previous convictions and age and maturity at step two, so this could cause the factors to be double counted. A disadvantage of this option is therefore that not all of the factors specified by Parliament in Schedule 21 could be properly reflected in the culpability assessment, and may not provide for a relative sentence to a similar circumstances murder to be achieved. A further disadvantage of listing specific factors is that Parliament may amend the schedule which could then render the guideline outdated, as with the existing due to the post guideline inclusion of para 5A in the schedule.

3.14 However, advantages of this option are that the guideline may provide greater flexibility for sentencers than the existing guideline and specify which of the schedule factors, and other factors, should increase the seriousness of an attempted murder offence. Some cases analysed have included comments from Judges which indicate that Schedule 21 factors and minimum terms should not be considered exhaustive, as other cases may involve various factors which also deem them exceptionally or particularly serious.

3.15 The schedule includes two starting points for murder offences which are of exceptionally high seriousness and particularly high seriousness. These offences are included in paras 4 and 5 of the schedule and attract whole life and 30 year minimum term sentences respectively, and the existing guideline provides for offences in both to be captured in the highest category of seriousness. It may be possible to extract aspects of

these factors and include them in the highest category of culpability in the attempted murder guideline. A suggested format and factors which could be included is as follows;

A - High culpability	<ul style="list-style-type: none"> • Substantial degree of premeditation or planning of murder • Abduction of the victim with intent to murder • Offence motivated by or involves sexual or sadistic conduct • 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 involves the use of a firearm or explosive • Offence committed for financial gain • 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 • Offender took a knife or other weapon to the scene intending to and using that knife or other weapon in committing the offence
B - Medium culpability	<ul style="list-style-type: none"> • Other planned attempt to kill not captured in category A
C - Lesser culpability	<ul style="list-style-type: none"> • Other spontaneous attempt to kill not captured in category A

3.16 The Council will note that the high culpability factors rephrase and combine some of the factors in paragraphs 4, 5 and 5A of Schedule 21, although similar circumstances murder offences range from whole life sentences to 25 year minimum terms. If the factors in the schedule are translated into culpability factors it would be difficult to separate them into separate categories, as some schedule offences share similar features, such as murders involving sexual and sadistic conduct.

Question 1: Which option for the approach to assessing culpability in attempted murder does the Council prefer?

3.17 Consideration has been given to whether some or all of the agreed s18 culpability factors should be included, as there will be cases where an attempted murder charge is reduced to a s18 GBH. The agreed s18 factors are as follows:

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

Some of the lesser culpability factors could be particularly relevant, such as excessive self defence and the abused offender factor. However, given that the intent in the offence is to kill it may be thought that it would be inappropriate to widen the culpability assessment outside of schedule 21 factors and when the intent was formed.

Question 2: If the Council agrees to a model describing culpability factors, does the Council think any s18 factors should be included in the culpability assessment?

Harm Factors

3.18 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.

3.19 Analysis of cases has identified that the majority of cases involve serious injuries and/or a significant psychological impact upon victims. Currently it is thought that very few cases would be captured within little or no physical or psychological harm, as even in cases where little or no physical harm is caused, victims are often severely psychologically affected by an attempt having been planned or made on their life.

3.20 The Council has noted in considering harm in GBH offences that often it is sheer luck that the death of the victim is not caused in those offences. In a case where causing death is fully intended, the offence is of the utmost seriousness. However, the harm assessment in the existing guideline gradates actual harm caused in the harm assessment, and it is proposed that this approach should be maintained in the revised guideline. While sentences for the offence will reflect the fact that causing death was intended by the offence, if the factors provide only for harm intended there could only be one harm category.

3.21 It is thought that a more descriptive approach as agreed for the GBH draft revised guidelines may provide for an improved assessment of harm than the existing approach. Potential harm in the offences is similar at the higher and medium levels, although the threshold for lesser harm is higher in a GBH offence as really serious harm must be caused in the offence. The factors agreed for GBH are as follows;

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 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	Grave injury Offence results in a permanent, irreversible injury or condition not falling within category 1
Category 3	All other cases

Question 3: Does the Council agree that the GBH harm model including descriptive factors is suitable for assessing harm in attempted murder offences?

Sentences

3.22 The existing sentences and starting points for the offence can be seen at **Annex A**. No life sentences are included in the guideline, but where a life sentence is imposed the determinate sentence for the relevant category should be used as the basis for the setting of a minimum term.

3.23 Statistics illustrating current sentence volumes and the estimated pre-guilty plea distribution of sentences are included below. It will be 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 will be 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	79	66	52	55	77	68	70

3.24 Discussions with Judges when developing the Manslaughter guideline gave some indication that sentences for attempted murder are currently considered to be too low in comparison to sentences for murder. As only half, or two thirds if an offender is assessed as dangerous, of a determinate sentence will be served in custody, some Judges have concerns that attempted murder sentences do not reflect the gravity of an offence where death is intended but is narrowly avoided, often through pure chance or skilled medical intervention. A para 4 or 5 type offence where death results will attract life and a minimum custodial term of 30 years, whereas an attempted murder in the highest category of seriousness 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.

3.25 To assist in developing sentence levels, the Council is asked to consider if sentences in the existing guideline should be revised. In particular the Council is asked to

¹ Legal Aid and Punishment of Offenders Act 2012
² Indeterminate sentences for public protection

confirm if life sentences should be included within the revised guideline. It is important to note that in all cases of attempted murder where the automatic life ('two strikes') provisions or the dangerous provisions apply legislation provides life sentences which are considered at step 5 of all relevant Sentencing Council guidelines. Currently the only Council guideline explicitly including life sentences in the sentencing table is Terrorism offences, but there is some parity with attempted murder in the harm intended by some of these offences.

3.26 The approach agreed to assessing culpability and harm is an important consideration, given that the seriousness categorisation will determine the starting point. Relativity will be required to minimum murder terms if life sentences and minimum terms are included, and this may affect the number of culpability categories included. For example, using a knife taken to the scene in a murder has a lower minimum term than the murder of a prison or police officer in the course of duty, so if this distinction is maintained in sentences for attempted offences the factors will need to be in different culpability categories, or attract the same minimum terms.

Question 4: Does the Council think that sentences should be revised in the attempted murder guideline, and if so should life sentences and minimum terms be included in the sentencing table?

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 very important, and ensuring sentences reflect the offence 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.

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Sentencing Guidelines Council

Attempted Murder

Definitive Guideline

FOREWORD

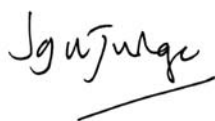
In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

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

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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