

Sentencing Council

Meeting date: 29 January 2021
Paper number: SC(21)JAN02 - Assault
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1 ISSUE

1.1 This meeting will consider issues raised in relation to the consultation on the Assault guideline revision, specifically in respect of the ABH and GBH guidelines. The Assault working group has considered the issues raised in advance of the meeting, and proposals and options are informed by this consideration. The Council will be asked to consider consultation responses to revised guideline proposals, and the findings of additional road testing undertaken.

2 RECOMMENDATION

2.1 That the Council:

- considers issues and points raised in consultation and road-testing findings relating to factors within the ABH and GBH guidelines and;
- considers and agrees proposed revisions.

3 CONSIDERATION

3.1 The existing GBH guidelines include the same culpability and harm factors for Section 18 and Section 20 offences and the same approach to assessing seriousness as in other Assault guidelines. Based on the evaluation findings for each guideline and issues identified with application of factors, the Council decided the factors should differ in the revised guidelines to reflect the distinction in the intention of the offender in committing the respective offences. A section 18 offence requires proof of intent to cause GBH, while for a section 20 offence there is no need to demonstrate the offender

intended to inflict the harm caused; just that the offender was reckless or intended some harm. The GBH s20 guideline culpability factors are the same as for the revised ABH guideline, while the s18 guideline includes some factors which are in the attempted murder guideline. This reflects the differing statutory maximum sentences and relativity with sentences between ABH and GBH s20 and for GBH s18 and Attempted Murder. The approach to assessing harm is the same in both GBH guidelines. ABH harm is categorised as high, medium and low with information included as to how to measure the level involved in an offence. The draft guidelines are attached at Annex A.

3.2 A number of issues within the guidelines were raised by consultation respondents, and additional road testing has been undertaken on some factors.

Culpability factors – ABH and GBH S20

Weapons

3.3 The majority of respondents approved of the different treatment of weapons in the revised ABH and GBH guidelines, with highly dangerous weapons being provided for at high culpability and other weapons being captured at medium culpability;

We welcome the clarification provided between highly dangerous weapons and other weapons and the reflection of culpability based on this distinction. – CPS

Dissenting responses were received from a small number of magistrates and the Committee of HM Circuit Judges:

‘Although we recognise that the distinction between the use of a “highly dangerous weapon or weapon equivalent” and “use of a weapon or weapon equivalent which” is not “highly dangerous” seeks to reflect in sentencing the seriousness of the weapon used as well as echoing the terminology used in the bladed articles guidelines however there is real concern that seeking to over categorise in this way will lead to endless debate in sentencing as to what is, or is not, a “highly dangerous” weapon. We suggest that it is preferable to refer to weapon alone and leave it to sentencer’s judgment regarding the exact nature of the weapon – if necessary by treating the type of weapon as an aggravating factor as opposed to one of culpability. – HM Circuit Judges

The distinction was to address the issue that weapons ranging from knives to household objects (such as chairs) achieved the same culpability assessment with the

existing guideline, often resulting in disproportionate sentences. It is not proposed that the distinction be removed or provided for at Step 2 as this may undermine the objective of achieving proportionate sentences. There was broad approval and acknowledgment of the approach from other respondents;

'We are pleased to see a distinction introduced between "highly dangerous weapons and weapon equivalents" (which includes knives, firearms and corrosive substances) and other weapons. We support this development to reflect the increased concern and harm to the community from the prevalence of these weapons and the risk of death or very serious injury whenever these weapons are used as part of a violence incident. For more serious violent offences, such as this, when the chance of a custodial sentence is higher, it is right that there should be three levels of culpability, by introducing a medium level and avoid a big disparity between offences that would, under the previous guidelines, either be deemed high or low. Allowing seriousness and so sentencing to be more responsive to issues such as the type of weapon used and the role of offender within the group should allow the guidelines to more accurately reflect these types of offences than span the custody threshold and allow careful consideration of whether the use of custody is justified.' – MOPAC (Mayor of London Office for Police and Crime).

The West London Bench also approved;

We agree that the assessment of seriousness should provide for a distinction between highly dangerous weapons and other weapons or weapon equivalents. So we agree with the inclusion of a high culpability factor of 'use of a highly dangerous weapon or weapon equivalent', as long as there is guidance as to what is intended by a "highly dangerous weapon". We note there is a table note to that effect. - West London Bench

3.4 While CPS approved of the distinction in weapons in the revised guideline, they suggested that acid or corrosive substances should be specifically referenced as a highly dangerous weapon. While the Council intended that it be considered as such, the current wording in the explanatory section of culpability in the relevant guidelines may not be clear.

3.5 The working group considered and agreed a proposal that, for clarity, this wording should be amended by inserting the words 'highly dangerous' at the beginning of the second sentence of the explanatory text, so this reads 'highly dangerous weapon equivalents can include corrosive substances...' The working group also decided the word 'includes' in the first sentence should be amended to 'can include' to avoid limiting the assessment to the weapons specified. The amended wording would be illustrated as follows (revised wording underlined);

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

Question 1: Is the Council content with the amended explanatory text relating to highly dangerous weapons?

Premeditation

3.6 In the existing Assault guidelines 'lack of premeditation' is included as a factor indicating lower culpability, while 'significant degree of premeditation' is a higher culpability factor. In the revised guideline significant planning was retained at higher culpability, but the Council did not include 'lack of premeditation' as it was felt that offences involving a lack of planning could be as serious as planned attacks. The CLSA disagreed with this and thought that 'lack of premeditation' should be retained at lesser culpability for both ABH and GBH;

Impulsive/spontaneous and short lived assault should lessen culpability. If Medium culpability includes a balancing of A and C then there should be counterpoints to A in C to avoid an escalation in prison sentences. – CLSA

However, the Sentencing Academy agreed with the removal of 'lack of premeditation': '*Lack of premeditation*' has been removed. We agree. *If the absence of premeditation mitigates, and premeditation aggravates, wherein lies the base offence?*' Sentencing Academy.

3.7 There is some merit in each point, but arguably the point by the CLSA is stronger. The Attempted Murder guideline also provides for both planned and spontaneous offences, with spontaneous offences captured in a lower category of culpability. While the harm in a planned and in a spontaneous assault may be the same, the guideline does not currently reflect the spectrum of culpability if both planning, and a lack of, are not provided for.

3.8 The removal of lack of premeditation was also disapproved of by a few other respondents, including the Prison Reform Trust, although this was specifically in respect of the Common Assault guideline. The PRT response stated that lack of premeditation is often highly relevant in common assault offences committed by young people whose decision making may be impacted by their immaturity, and that its removal disadvantages this group:

'We are unclear why the Council has removed "lack of premeditation". This is particularly confusing given that common assault offences are by definition less serious in nature, and do not require any injury to be caused. We are particularly concerned that this could potentially disadvantage young adults, with lower levels of maturity and whom may act on impulse without thinking through the consequences of their actions. This is further reason why age and / or lack of maturity should be recognised as a factor indicating lower culpability'.

3.9 The working group considered the point at some length. On the one hand it was thought that lack of premeditation did not necessarily reduce the culpability of an offender, as the intention to commit the assault was not necessarily less serious if the intention was formed shortly before an attack as opposed to a longer period of planning. Domestic incidents in particular were considered, as these may commonly occur without planning, but a view was that an offender should not necessarily benefit from a reduced culpability assessment in such cases. The alternative view was also considered, and it was agreed there is merit in the argument that if planning and premeditation increases the culpability in an offence, then a lack of premeditation should reduce culpability. The CLSA argument that lack of premeditation should be included if planning is, particularly to provide fairly for balancing of factors, was also thought to have some force.

3.10 The working group also considered an option of including lack of premeditation as a mitigating factor but agreed if it is included the factors should both be assessed at the same stage and that step one is most appropriate.

3.11 A further point to consider is that lack of premeditation is included in the existing guideline, and CCSS data illustrated that this was the most frequently applied lesser culpability factor for ABH and both GBH offences. It's exclusion in the revised guideline therefore presents a risk that a higher proportion of cases will attract a higher seriousness assessment, and a higher sentence, than currently.

Question 2: Does the Council think lack of premeditation should be included at lesser culpability for ABH and GBH offences?

Provocation

3.12 In the existing guideline 'a greater degree of provocation than normally expected' is provided for at lesser culpability across the assault guidelines. This was removed from the culpability assessment and 'significant degree of provocation' provided for at step two of the revised guidelines. The East Kent Bench response thought it should be retained at lesser culpability;

'The issue of self-defence has been rebadged as 'significant provocation' in common assault. There are occasions in ABH where self-defence may not indicate lesser culpability but significant provocation would e.g. where someone's partner has been attacked to provoke a reaction, it could not be said that they acted in self-defence but were provoked by the deliberate attack on their partner. Consideration should therefore be given to including significant degree of provocation in lesser culpability.'

3.13 The working group agreed that the decision to remove provocation from the culpability assessment should not be revised, given the concession this may appear to provide to revenge type situations. At step 2 the factor can be applied where sentencers think appropriate.

Question 3: Does the working group agree that the factor relating to provocation should remain at Step 2?

S18 Culpability factors

3.9 The GBH S18 guideline includes the same factors as for ABH and GBH s20 but includes two additional factors; these are 'Revenge' at high culpability and 'Offender acted in response to prolonged or extreme violence or abuse by the victim' at lesser culpability. The latter 'abused offender' factor was included to capture cases where loss of control manslaughter may have been proved if death rather than GBH

was caused. The revenge factor was included to address concerns that such offenders who act out of vengeance rather than in circumstances analogous to a loss of control should not automatically achieve a lesser culpability assessment. An example considered was one of an offender who sees their childhood abuser in the street years after suffering abuse and attacks them out of revenge.

Revenge

3.14 The Council debated whether it was necessary to include revenge at all for s18 offences, particularly as any case involving revenge would be highly likely to involve planning or premeditation. However, it was present in a number of cases analysed and the Council agreed that consultation of the factor should be undertaken as well as additional research to test its application. The objective of the testing was to identify if the inclusion of revenge at high culpability had the effect of increasing starting points for s18 offences where other high culpability factors were also present, as there were concerns regarding potential sentence inflation. It was also agreed that 'revenge' should be tested as an aggravating factor for ABH offences, to provide for consideration of whether it should be included in the ABH and GBH s20 guidelines. A specific example was cited by a Council member of rival gang members attacking others they see in the street out of revenge for previous altercations, and such a scenario was tested.

3.15 Road testing was carried out for a s18 and an ABH scenario to explore these issues. The findings are attached at Annex B. Two versions of the guideline were used, one including the factors to be tested and one which did not, to observe the influence on the sentence.

3.16 Predominantly, the road testing sought to identify;

- i) if the inclusion of revenge as a high culpability factor increased the starting point of a sentence where premeditation was also present in a GBH s18 offence, and;
- ii) if revenge was identified as an appropriate aggravating factor in a relevant ABH case where the guideline did and did not specifically reference it. This was to determine whether it was necessary to include it in a non-exhaustive list of factors, to avoid too many aggravating factors being included.

3.17 A summary of the findings is as follows;

- i) For the s18 scenario tested, which was an offence involving both planning and revenge, the presence of both factors did not necessarily increase the starting point of the sentence. A few sentencers (3 out of 13) moved above the starting point where revenge was included as a high culpability factor, and one sentencer moved above the starting point, where revenge was not included in the guideline as a high culpability factor. It was not possible to assess the specific additional sentence imposed where the starting point was increased due to the inconsistent application of some other factors, which included the assessment of poison as a highly dangerous weapon and the harm assessment (which will be discussed later).
- ii) For the ABH scenario, revenge not being explicitly referenced as an aggravating factor did not prevent it being taken into account in sentences imposed, although it was applied more frequently where referenced. Most sentencers (11 out of 13) identified revenge when it was included in the guideline as an aggravating factor while 3 out of 13 identified revenge as an aggravating factor when it was not included in the guideline. Sentencers in Group A (revenge explicitly referenced) were slightly more likely to increase the sentence from the starting point, than those in Group B (revenge not referenced); six out of 11 in Group A, compared with four out of ten in Group B. The difference is very small, so it is difficult to draw inferences about the impact of the inclusion of revenge as an aggravating factor. The other difficulty is that other aggravating factors not specified (such as the gang context even though the scenario offence was not committed in this context) were taken into account and the sentence increased in the round.

3.18 The working group considered these findings and discussed at length whether or not revenge should be included in the guidelines. It was agreed that an offence motivated by revenge is more serious, and that it is an important aspect of assessing culpability. However, the working group noted the likelihood that the majority of offences involving revenge would involve premeditation or planning was still a valid one and presented a risk of double counting or extra weight being given to revenge in such a case. It was also noted that in some cases revenge may occur spontaneously, where an offender who has previously suffered at the hands of another then sees them by chance and acts in a state of high emotion. An alternative option was considered of including revenge at step 2 where the sentencer would have discretion in applying it rather than including as part of the culpability assessment. In the draft guideline it is

only present in the s18 culpability assessment, but it was thought that if it is included it should be in all Assault guidelines at step 2.

3.19 It is important to note that there are risks involved in including the factor. There were initial reservations at including the factor at step two due to the potential for an imbalance between aggravating and mitigating factors. It was also noted in the ABH road testing that it was taken into account more frequently where expressly referenced, although it was still taken into account by some sentencers where it was not listed as a factor. As its absence did not prevent sentencers applying it where they thought appropriate, the Council are asked to consider if it is necessary to reference the factor, given the risks this presents to inflating sentences if it is more likely to be applied if referenced.

Question 5: Does the Council think revenge should be included as an aggravating factor for all Assault offences at Step 2, or should it be left out entirely?

Harm

3.20 While the objective of road testing was to test the application of culpability and aggravating factors, important findings arose in relation to GBH and ABH harm assessments. Harm assessments were very inconsistent, as illustrated by the tables included within Annex B. This research has therefore provided useful and important supplementary findings on the GBH and ABH harm models.

3.21 Consultation responses to GBH harm factors met with broad approval, save for the same point made in respect of responses to attempted murder harm factors (as the highest harm category is the same as for GBH) which were considered by the Council at the November meeting. At that meeting it was also highlighted that different interpretations of the term 'day to day activities' to find a category 1 harm assessment were evident in road testing undertaken for attempted murder. The Council decided it should be for the sentencer to determine whether the activity affected should fall within the assessment, and the guideline should not distinguish between recreational and necessary activities (for example, drinking alcohol and dressing independently). However, the impact of differing assessments of 'day to day activities' was starkly illustrated in the recent GBH research findings, where in one group assessments were almost equally split between harm 1 and harm 2 categorisations with differing starting point sentences of 5 years. This raises concerns that this could result in inconsistent assessments of harm and references to the Court of Appeal to interpret which activities

should be included, and the working group were asked to consider this in respect of GBH.

3.22 The phrase ‘day to day activities’ is included in the Health and Safety guideline and reflects the definition of a disability¹ as it was intended that it capture injuries which result in a disability. However, the relevant disability legislation does not define a day to day activity as these will vary between individuals and how they live their lives. While the Council considered that this was appropriate, the working group were asked to consider a concern that the guideline will be applied inconsistently if this wording is retained. They considered if amending the term ‘day to day activities’ to ‘life changing injuries’ may provide a higher threshold, although agreed that this threshold may be too high and would likely still provide for considerable discretion in determining what amounts to a life changing injury. It was considered that the factor could be limited and not assess the impact, but this could broaden its scope and capture harm which would currently fall within category 2.

3.23 Ultimately the working group decided that it is right that the assessment should be undertaken based on the impact on the victim, and that it should not seek to limit or define which activities are appropriate. It was also noted that the harm involved in the scenario tested was very unusual and it is highly likely that most cases involving this category will involve harm resulting in physical disability of a victim and the assessment will not be difficult. However, it was proposed that the Council be asked to consider if a slight wording amendment to the harm factor should be effected to be clear that ‘day to day activities’ are subjective to the victim. It is proposed that the word ‘their’ (underlined in the text below) be inserted before ‘normal day to day activities so the factor reads;

‘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 their normal day to day activities or on their ability to work’

Question 5: Does the working group agree the wording for the GBH harm factor relating to day to day activities should be retained and amended as suggested?

¹ The definition of a disability in the Equality Act 2010 is ‘a physical or mental impairment which has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.’ The Act does not define what is meant by normal day to day activities.

ABH Harm

3.24 The ABH harm model was one of the most contentious areas of the consultation. While there was broad approval of removal of 'injury serious in the context of the offence', some respondents considered the new approach to assessing ABH harm was not a significant improvement and that clearer guidance on the types of injury in each category should be provided;

The removal of the 'injury serious in the context of offence' harm factor is to be welcomed. This led to unattractive arguments about how much worse it could have been. The preamble to the three categories is not helpful. It will add to the time of sentencing hearings by submissions from advocates on the range of the harm that can be caused. This is in danger of being 'injury serious in the context of the offence' but another name. – Birmingham Law Society

We agree with the high, medium low approach to assessing harm and believe it is clear. However, we think further explanation is needed to define the range of injuries that can occur in cases of "assault occasioning actual bodily harm" (as in the header above). Whilst we understand the Council's desire not to give examples of injuries, our concern is that the court will have to have in its mind such examples of injuries and then in its judgement allocate this case into a low, medium or high category. That will be problematic, certainly for lay Benches. It leaves it very open to personal views and therefore inconsistent sentencing. Justice Clerks Society

The currently used ABH guidance provides marginally more help when trying to assess harm than the proposed guidance does. The proposed guidance makes no mention of the victim or their vulnerability, repeat attacks, disease transmission, etc.

This looks like a complete cop out in term of the 'additional wording accompanying the harm assessment', it does nothing to clarify how sentencers should assess the level of harm present within the offence. Not every Bench will contain medical experts who would have the expertise to assess injury harm. Is it expected a sentence should be based on a subjective view of high, medium, or low harm based on individual experiences, or an objectively measured view?- East Kent Bench

The relatively open wording on the definitions of harm in this section may raise concerns about consistency of assessment across cases. When assessing the level of physical and psychological harm reference could be made to the expected period of recovery and treatment that would be needed according to the harm caused (along similar, but less serious lines, to the categorisation used for GBH offences). This would be on a general basis, rather than based on the specific effects on the actual victim.

On this basis cuts and bruises given in a relatively less traumatic incident would qualify as lesser harm and more serious injuries, requiring longer term treatment in hospital or counselling, with some possible permanent effects or likely to cause longer lasting trauma would be seen as more harmful. – MOPAC

3.25 The Council had already discounted including descriptive injuries in developing the guideline as it would not be possible to gradate the broad range of potential ABH injuries by seriousness. However, some consultation respondents suggested the harm factors should focus on the level of injury and impact upon the victim in broad terms as in the GBH harm model.

3.26 Based on these responses, some additional road testing was undertaken on ABH harm. This was a very limited exercise but sought to identify if a slightly amended, more descriptive model influenced consistency of harm assessments. The findings from this additional testing are at Annex C which includes the harm models tested. The alternative model was based on an early draft which was considered by the Council and was as follows;

Harm	
Category 1	Serious physical injury or serious psychological harm and substantial or ongoing impact upon victim
Category 2	Harm falling between categories 1 and 3
Category 3	Low level of physical injury or psychological harm with no ongoing impact upon victim

3.27 In summary, assessments were consistent in one scenario adapted for sentencing by both magistrates and Crown Court Judges but were inconsistent in the other two scenarios sentenced by Crown Court judges only. The revised model did not therefore achieve greater consistency. However, it is important to note that the injury level was fairly low, and it is known that sentencers tend to avoid using a category referencing 'low' harm. Some sentencers also highlighted the limitations of sentencing a scenario rather than having the benefit of photographs and fuller information to enable them to assess injuries as they would usually.

3.28 While the alternative model was not proven to produce greater consistency of assessment of harm in the limited exercise undertaken, the working group were asked to consider if it may still be an improvement on the high/medium/low model. The SGC Assault guideline included three categories of harm: *injury just short of GBH; relatively*

serious injury and *minor injury*. The Council did not wish for the revised guideline to reference GBH to avoid ‘guideline shopping’ and did not wish to include the word ‘serious’ in revising the guideline given that GBH is defined as ‘really serious harm’. However, this latter decision limited the potential for other factors to be developed. ABH injuries can be serious, and in fact many are, and the assessment would be based on the level of harm involved in the offence being sentenced. The model also includes a ‘low’ category which it has been noted in other road testing exercises that sentencers may avoid using as it may not justly reflect or recognise the harm suffered by a victim, and this may have led to underuse of the category.

3.29 The working group were asked to consider an alternative model which sought to ‘benchmark’ the level of injury as requested by consultation respondents. This was as follows;

Harm	
Category 1	Serious physical or psychological harm
Category 2	Substantial physical or psychological harm
Category 3	Some physical or psychological harm

3.30 The working group preferred the alternative model tested, but with the lowest harm category amended to from ‘low’ to ‘some’. Other minor wording changes were suggested and it was agreed that the following model should be proposed to the Council;

Harm	
Category 1	Serious physical injury or serious psychological harm <u>and/or</u> substantial or ongoing impact upon victim
Category 2	Harm falling between categories 1 and 3
Category 3	Some level of physical injury or psychological harm but no ongoing impact upon victim

3.31 The working group did raise concerns as to whether the middle category may be underused in the alternative model, as previous research into overarching findings on categories worded as ‘cases falling between categories 1 and 3’ had highlighted this as a finding. This research has been reviewed and the finding was in relation to this approach being included at culpability. Specifically, it related to where specific factors in the highest and lowest categories did not logically have a middle ground or

provide for high and low factors to be balanced. The approach has been used in harm in child cruelty, breach offences and harassment where road testing did not identify issues with underuse. It is also thought that given the threshold for application of categories 1 and 3 it is unlikely that category 2 harm findings will be uncommon.

3.32 The working group considered that the options should be between retaining the existing model or adopting the revised model proposed at paragraph 3.30. The Council are asked to consider which option is preferred. It is intended that research will be undertaken using both models prior to sign off of the guideline to test its application against a range of ABH injuries, and that the findings presented to the Council prior to sign off to inform a final decision if this would be preferred.

Question 6: Does the Council prefer the original or revised ABH harm model, and is it content for the revised model to be tested?

DRAFT GUIDELINES – ASSAULT OFFENCES

COMMON ASSAULT

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances • Prolonged assault • Use of substantial force • Strangulation • Threatened or actual use of weapon or weapon equivalent* • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category A factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point High level Community Order</p> <p>Category Range Low level Community Order - 26 weeks' custody</p>	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>
Harm 2	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - low level Community Order</p>
Harm 3	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - Low level Community Order</p>	<p>Starting point Band A Fine</p> <p>Category Range Discharge – Band C Fine</p>

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

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none">Racial or religious aggravation was the predominant motivation for the offence.Offender was a member of, or was associated with, a group promoting hostility based on race or religion.	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.

<ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

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

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of Part 12 of the Criminal Justice Act 2003. The court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to impose an extended sentence (section 226A).

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 *Totality* guideline.

STEP SEVEN

Compensation and ancillary orders

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

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 (tagged curfew)

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

ASSAULT ON EMERGENCY WORKER

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 8 months</p> <p>Category Range 26 weeks' – 1 years' custody</p>	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>
Harm 2	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>
Harm 3	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>	<p>Starting point ML CO</p> <p>Category Range Band B Fine – HL CO</p>

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

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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

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

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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

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 *Totality* guideline.

STEP SIX

Compensation and ancillary orders

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

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

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

ASSAULT WITH INTENT TO RESIST ARREST

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 36 weeks' custody</p> <p>Category Range 26 weeks' custody – 15 months</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range High level Community Order - 9 months' custody</p>
Harm 2	<p>Starting point 26 weeks' custody</p> <p>Category Range High level Community Order - 36 weeks' custody</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks' custody</p>
Harm 3	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks' custody</p>	<p>Starting point Medium Level Community Order</p> <p>Category Range Band B Fine – High Level Community Order</p>

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

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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

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

Commission of offence whilst under the influence of alcohol/drugs

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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**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 *Totality* guideline.

STEP SIX**Compensation and ancillary orders**

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

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail (tagged curfew)**

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

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A - High culpability

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

B – Medium culpability

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

C – Lesser culpability

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

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

Harm

To assess the level of harm caused by the offence, the court must consider;

- The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm
- Where in **that range** of injuries the injury caused falls

Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

STEP TWO

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

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point</p> <p>2 years 6 months' custody</p> <p>Category Range 1 year 6 months' – 4 years' custody</p>	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>
Harm 2	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>	<p>Starting point</p> <p>High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks' custody</p>
Harm 3	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>	<p>Starting point</p> <p>High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks' custody</p>	<p>Starting point</p> <p>Medium Level Community Order</p> <p>Category Range Band B Fine – 26 weeks' custody</p>

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

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

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

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 7 years’ custody (maximum when tried summarily is 6 months’ custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family (over and above the distress already considered at step one).</p> <ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

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 an extended sentence (section 226A).

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 *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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 (tagged curfew)**

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

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:

A - High culpability

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

B – Medium culpability

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

C – Lesser culpability

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

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

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

STEP TWO

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

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 4 years' custody</p> <p>Category Range 3 years– 4 years 6 months' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>
Harm 2	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>
Harm 3	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range Medium Level Community Order – 1 years' custody</p>

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

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

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

Other aggravating factors:

Spitting

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

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 7 years’ custody (maximum when tried summarily is 6 months’ custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family (over and above the distress already considered at step one).</p> <ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

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 an extended sentence (section 226A).

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 *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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 (tagged curfew)**

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

GBH S18

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**. The level of culpability is determined by weighing up all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability

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

B – Medium culpability

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

C – Lesser culpability

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

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

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or 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</p>
Category 2	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

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

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

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

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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

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

Other aggravating factors:

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

Offence committed in prison

Offence committed in domestic context

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

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

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

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

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 *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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 (tagged curfew)**

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

ATTEMPTED MURDER

STEP ONE

Determining the offence category

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

Culpability demonstrated by one or more of the following:

A – Very High culpability	<ul style="list-style-type: none"> • 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 or fire • 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 commit any offence or have it available to use as a weapon, and used that knife or other weapon in committing the offence. • 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/spontaneous attempt to kill
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

	<ul style="list-style-type: none"> • Genuine belief by the offender that the offence was an act of mercy
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Harm	
Category 1	<p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or 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</p>
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 before further adjustment for aggravating or mitigating features, set out below.

For offences involving an extreme nature of one or more very high or 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.

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

Offence committed in domestic context

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

Abuse of position of trust

Gratuitous degradation of victim

Others put at risk of harm by the offence

Use of duress or threats against another person to facilitate the commission of the offence

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

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

Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)

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

Attempt by offender to give assistance/summon help when the attempted murder failed

Remorse

Good character and/or exemplary conduct

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)

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

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.

STEP SEVEN

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.

Assault guideline: Crown Court road testing Revenge in GBH (s18) and ABH offences

Aims of the research

This research was conducted to assess the impact of the high culpability factors for GBH (s18) on sentencing practice, and specifically whether the inclusion of revenge, in addition to planning/pre-meditation, as a culpability factor, leads to an inflation of sentences. The research also aimed to test whether sentencers take revenge into account as an aggravating factor in ABH cases that are gang/group-related.

Methodology

The research was carried out by online survey, which included two scenarios of GBH (s18) and ABH (see annex), and took participants through the guideline, asking how they would apply each step. We sent the survey to 48 Crown Court judges, all of whom had been previously approached in late 2018 to take part in road testing on assault offences prior to the drafting of the new guideline. The survey was open for three weeks and a reminder was sent a week before closing to all those who had not responded at that point. Participants were not told that the research was focussed on revenge, in order not to influence their responses.

We received responses from 26 judges, half of whom (n=13) received the guidelines with revenge included in culpability factors for GBH and aggravating factors for ABH, and half of whom received the guidelines without any inclusion of revenge.

Due to the small sample size, the findings are not necessarily representative of sentencing practice, and should be taken as indicative rather than conclusive. Furthermore, the scenarios were designed to test one element of the sentencing process only and therefore included only limited details of the cases.

Key findings

The key findings for GBH (s18) and ABH are set out below.

GBH (s18)

- where revenge was included in the guideline as a culpability factor, all sentencers identified both planning/pre-meditation and revenge as high culpability factors, and placed the offence at high culpability
- where revenge was not included in the guideline as a high culpability factor, all but one of the sentencers placed the offence at high culpability
- most sentencers also interpreted poisoning as equivalent to a highly dangerous weapon, and identified this as a high culpability factor
- a few sentencers (3 out of 13) moved above the starting point, where revenge was identified as a high culpability factor, and one sentencer moved above the starting point, where revenge was not included in the guideline as a high culpability factor
- it is not possible to say whether the inclusion of revenge as an additional high culpability factor may lead to inflation of sentences, where planning or pre-meditation is also a factor in the case

ABH

- sentence starting points varied considerably for this scenario
- most sentencers (11 out of 13) identified revenge when it was included in the guideline as an aggravating factor
- a few sentencers (3 out of 13) identified revenge as an additional factor, when it was not included in the guideline
- about half of sentencers who identified revenge as an aggravating factor (across both groups) increased the sentence from its starting point

Detailed findings – GBH (s18)

Participants were given a scenario in which the defendant had poisoned her husband with non-prescribed medication, after discovering he was having an affair. Her internet history indicated she had searched for ways ‘to poison someone but not kill them.’ Half (n=13) of participants (Group A) were sent a version of the guideline which included revenge as a high culpability factor, and half (n=13; Group B) were sent a version of the guideline which did not include revenge as a factor.

It was expected that participants would apply high culpability due to the element of planning. We wanted to understand whether sentencers in Group A would move above the starting point due to the inclusion of an additional factor.

Culpability

Almost all sentencers placed the offender in the high culpability category, regardless of whether revenge had been included as a factor in the guideline.

	Culpability		
	High	Medium	Low
Group A	13		
Group B	12	1	

In both groups, all sentencers identified significant degree of planning or pre-meditation as a factor, and most (18 out of 26) identified use of a highly dangerous weapon or weapon equivalent as a factor. Three sentencers also identified the victim as obviously vulnerable, and four identified prolonged assault as additional high culpability factors.

We asked participants why they had chosen the level of culpability they did. Seven sentencers from Group A stated the presence of three high culpability factors as their reason for placing the offence in high culpability. Their comments included:

Planned, highly dangerous substance and revenge attack over a period of time
(placed in high culpability)

Because it was a well-planned and highly dangerous poisoning of an unsuspecting victim in order to wreak revenge
(placed in high culpability)

One indicated that they would have placed the offence in high culpability, regardless of the presence of a highly dangerous weapon equivalent:

Whilst I accept it may be open to argument whether the particular poison falls under the definition of 'weapon equivalent' the research into the substance amounts to a significant degree of planning and premeditation and there is an obvious motive of revenge
(placed in high culpability)

In Group A, there were three sentencers who did not include use of a highly dangerous weapon equivalent as a factor, and two of them instead identified use of a weapon or weapon equivalent which does not fall into Category A. The comments from these two sentencers indicate that the presence of both planning and revenge led them to place the offence into high culpability. All three had identified revenge as a high culpability factor.

Five sentencers in Group B did not identify use of a highly dangerous weapon or weapon equivalent as a culpability factor, and four out of five still placed the offender in the high culpability category based on one factor: significant degree of planning or pre-meditation. One sentencer placed the offender in the medium culpability category and stated in their comments:

there was significant planning but no weapon as defined (placed in medium culpability)

Harm

In Group A, six sentencers applied category 1 harm, and seven applied category 2 harm. In Group B, five applied category 1 harm, seven applied category 2 and one applied category 3.

	Harm		
	Cat 1	Cat 2	Cat 3
Group A	6	7	
Group B	5	7	1

The comments from both groups in response to why they chose the level of harm indicated that it depended on how the sentencer viewed the impact on the victim of no longer being able to drink alcohol.

It seems to me that drinking alcohol would be seen objectively as a normal day to day activity which has been substantially affected on a long-term basis (placed in category 1)

I cannot quite describe an inability to drink alcohol as a "grave injury" ... it rather depends on the part that alcohol played in the victim's life (placed in category 3)

Starting points

Sentencing starting points varied, largely due to the variation in categories of harm. There was also some variation as a result of sentencers deviating from the guideline starting point. In Group A, three sentencers started above the guideline starting point, and two started below it. In Group B, one sentencer started above the guideline starting point, and two started below it.¹

It is not possible to say whether the inclusion of revenge has led to an inflation of sentences, because sentencers placed the offence at high culpability regardless of whether revenge was present as a factor.

Group A sentencers	Culp factors identified	Culpability	Harm	Starting point	Used guideline SP?
1	4	High	Category 1	12 years	Yes
2	4	High	Category 1	12 years	Yes
3	3	High	Category 1	12 years	Yes
4	3	High	Category 1	12 years	Yes
5	2	High	Category 1	12 years	Yes
6	5	High	Category 1	10 years	Below SP
7	4	High	Category 2	8 years	Above SP
8	3	High	Category 2	8 years	Above SP
9	3	High	Category 2	7.5 years	Above SP
10	3	High	Category 2	7 years	Yes
11	3	High	Category 2	7 years	Yes
12	3	High	Category 2	7 years	Yes
13	3	High	Category 2	5 years	Below SP
Group B sentencers					
1	2	High	Category 1	12 years	Yes
2	2	High	Category 1	12 years	Yes
3	2	High	Category 1	10 years	Below SP
4	1	High	Category 1	10 years	Below SP
5	3	Medium	Category 1	7 years	Yes
6	3	High	Category 2	8.5 years	Above SP
7	3	High	Category 2	7 years	Yes
8	2	High	Category 2	7 years	Yes
9	2	High	Category 2	7 years	Yes
10	2	High	Category 2	7 years	Yes
11	2	High	Category 2	7 years	Yes
12	2	High	Category 2	7 years	Yes
13	2	High	Category 3	5 years	Yes

¹ Starting points in the GBH guideline are as follows:

A1 – 12 years; A2 – 7 years; A3 – 5 years; B1 – 7 years

Detailed findings – ABH

Participants were given a scenario in which the defendant had seen a member of a rival gang over the road, run and pushed him over, and then kicked and punched him. The defendant was carrying a knife which he used to threaten the victim but did not use to physically attack him. Half (n=13) of participants (Group A) were sent a version of the guideline which included revenge as an aggravating factor, and half (n=13; Group B) were sent a version of the guideline which did not include revenge as a factor.

Culpability, harm and starting points

There was considerable variation in sentence starting points, ranging from 36 weeks to 2 years and 6 months. This is in part due to the variation in harm and culpability levels applied. In Group A, ten sentencers applied high culpability and three applied medium culpability, and all in this group applied Category 2 for harm. In Group B, all sentencers applied high culpability, and four applied Category 1 for harm, seven applied Category 2 and two applied Category 3.²

Group A	Culpability		
Harm	High	Med	Low
Category 1			
Category 2	10	3	
Category 3			

Group B	Culpability		
Harm	High	Med	Low
Category 1	4		
Category 2	7		
Category 3	2		

Group A sentencers	Culpability	Harm	Starting point	Followed guideline?
1	High	Category 2	30 months	Above SP
2	High	Category 2	24 months	Above SP
3	High	Category 2	18 months	Yes
4	High	Category 2	18 months	Yes
5	High	Category 2	18 months	Yes
6	High	Category 2	18 months	Yes
7	High	Category 2	18 months	Yes
8	High	Category 2	18 months	Yes
9	High	Category 2	18 months	Yes
10	High	Category 2	18 months	Yes
11	Medium	Category 2	15 months	Above SP
12	Medium	Category 2	48 weeks	Above SP
13	Medium	Category 2	36 weeks	Yes
Group B sentencers				
1	High	Category 1	42 months	Above SP
2	High	Category 1	30 months	Yes
3	High	Category 1	30 months	Yes
4	High	Category 1	18 months	Below SP
5	High	Category 2	18 months	Yes
6	High	Category 2	18 months	Yes

² The associated comment and sentence starting point (36 months) from one of the sentencers who applied Category 3 suggests they intended to apply Category 1.

7	High	Category 2	18 months	Yes
8	High	Category 2	18 months	Yes
9	High	Category 2	18 months	Yes
10	High	Category 2	18 months	Yes
11	High	Category 2	9 months	Below SP
12	High	Category 3	12 months	Above SP
13	High	Category 3	36 months	Above SP

Aggravating factors

In Group A, 11 out of 13 sentencers identified revenge as an aggravating factor, and five of these went on to increase the sentence from its starting point. Three of these sentencers also noted the gang-related element as an aggravating factor, and of these one increased the sentence from its starting point, while two remained the same. One sentencer who identified revenge as a factor also noted in their comments that they “*must be careful not to double count re revenge.*” One sentencer did not identify revenge as an aggravating factor but included under ‘other’ factors: “*the gang context leading to tit-for-tat attacks.*”

In Group B, three sentencers identified “revenge” under ‘other’ aggravating factors; two of these also identified “gang-related” in their comments. Two out of three sentencers who identified revenge under ‘other’ factors went on to increase the sentence from the starting point.

In both groups, four sentencers out of 13 identified the gang-related context under ‘other’ factors.

Mitigating factors

Very few sentencers applied mitigating factors. In Group A, four sentencers identified no previous convictions as a mitigating factor, and in Group B, one sentencer identified this. No other mitigating factors were identified, though a number of sentencers commented that they would need more information to complete this step.

Final sentences

Sentencers in Group A were slightly more likely to increase the sentence from the starting point, than those in Group B (six out of 11 in Group A, compared with four out of ten in Group B). The difference is very small, so it is difficult to draw inferences about the impact of the inclusion of revenge as an aggravating factor. The identification of revenge as an aggravating factor did not necessarily lead to the sentence being increased from its starting point.

Change from starting point	Group A	Group B
Reduced	1	0
Stayed the same	5	7
Increased	6	4
Did not answer ³	1	2

³ Some participants did not feel able to apply a final sentence without additional information. The information provided had been limited because the research set out to test a specific element of the case (revenge) and we were most interested in how this would affect the final sentence.

This table shows starting points and final sentences for each sentencer. The sentences in which revenge was identified as an aggravating factor have been highlighted green.

Group A sentencers	Starting point	Final sentence	Change in sentence
1	30 months	n/a	n/a
2	24 months	24 months	Stayed the same
3	18 months	24 months	Increased
4	18 months	24 months	Increased
5	18 months	21 months	Increased
6	18 months	21 months	Increased
7	18 months	20 months	Increased
8	18 months	18 months	Stayed the same
9	18 months	18 months	Stayed the same
10	18 months	18 months	Stayed the same
11	15 months	12 months	Decreased
12	48 weeks	48 weeks	Stayed the same
13	36 weeks	12 months	Increased
Group B sentencers			
1	42 months	42 months	Stayed the same
2	30 months	30 months	Stayed the same
3	30 months	30 months	Stayed the same
4	18 months	24 months	Increased
5	18 months	24 months	Increased
6	18 months	18 months	Stayed the same
7	18 months	18 months	Stayed the same
8	18 months	18 months	Stayed the same
9	18 months	n/a	n/a
10	18 months	n/a	n/a
11	9 months	9 months	Stayed the same
12	12 months	15 months	Increased
13	36 months	48 months	Increased

Overall, seven out of 14 sentencers who had identified revenge as an aggravating factor went on to increase the sentence from its starting point. However, it is not possible to say whether identifying revenge as an aggravating factor had increased the sentence in each case, because other aggravating factors may also have influenced decisions to increase the sentence. For example, one participant commented:

The context of gang violence caused me to raise the sentence above the starting point. The Defendant's (presumed) good character to a limited extent operates to cancel out the revenge nature of the attack.

Scenarios

GBH (s18)

The defendant (D) had discovered her husband (V) was having an affair. D was enraged and confided in a friend that she wasn't going to confront him but would make sure he paid for humiliating and cheating on her. A few weeks later V was admitted to hospital with severe stomach pains and vomiting, and was put into a medically induced coma. Toxicology reports confirmed the presence of an unprescribed medication in his system which was known to cause liver failure and other serious health issues.

The hospital asked D if he was taking medication and she denied all knowledge but seemed nervous so the hospital contacted the police. Examination of D's internet history found search history for 'medication with painful side effects' and 'how to poison someone but not kill them'. V recovered but his liver suffered irreparable damage, and he was advised he would not be able to drink alcohol again without risk of liver failure.

D pleaded not guilty to GBH and was found guilty after trial.

ABH

The defendant (D) was out at night when he saw a member of a rival gang member (V) across the road. In a recent fight V had attacked D's friend and injured him very badly. D knew this was an opportunity to get V on his own and make sure he paid and ran towards him taking a knife out of jacket pocket, telling him "let's see how you like getting shanked". V managed to kick the knife out of D's hand, so D overpowered him and punched and kicked V multiple times while he was on the floor.

A passing dog walker witnessed the event and called out to D to stop and that he was calling the police. D ran off leaving V on the floor. V suffered extensive bruising and a number of small cuts requiring stitches.

D pleaded not guilty to ABH and was found guilty after trial.

Findings – ABH road testing

Aims

This research was conducted to understand how harm is assessed using the draft guidelines for ABH. Previous testing indicated that this step may allow for a wide range of outcomes, depending on the sentencer’s interpretation.

Methodology

Three ABH scenarios (see Annex A) were tested with six Crown Court judges. One of the scenarios was adapted by adding a guilty plea, and this version was also tested with five magistrates.¹ An alternative harm model was developed (see Annex B), to understand how this might impact on assessment of harm and was tested at a slightly later date. The second model used different wording for each of the categories, including changing category 2 (medium level) of harm in both offences to: ‘Harm falling between categories 1 and 3.’

A sample of magistrates and judges was taken from the OSC’s research pool. The scenarios used were similar to those used in a previous road testing exercise, so any previous participants were deselected, as were any sentencers who had taken part in OSC research in the last year. Sentencers were approached by email, and the draft guidelines were sent to those who said they would like to take part. Interviews were conducted on Microsoft Teams and scenarios were sent to participants shortly before the interviews.

In total, five magistrates and six Crown Court judges were interviewed about the ABH guideline. There was a lower response rate in the second round, after the second harm model was developed, so this model was tested with fewer participants.

	Harm model 1	Harm model 2
Magistrates	4	1
Crown Court judges	3	3

Participants were asked to sentence up to three scenarios using the draft guideline. Responses were collated in an Excel grid and tables with individual sentencing outcomes are set out below. Where participants were given the second harm model, their responses are highlighted in green in the tables.

Key findings on harm

- Scenario A, involving **hitting with a photo frame**, was sentenced by both magistrates and Crown Court judges, most of whom (10 out of 11) placed harm in category 2.
- For scenario B, involving **punching to the face**, sentencers were divided between categories 1 and 2 for harm (one placed it on the cusp of the two categories). Those who placed harm in category 1 focussed on the damage to the victim’s front tooth.
- For scenario C, which was a **prolonged attack with a piece of wood**, sentencers were again divided between categories 1 and 2 for harm (and three were undecided). Some said they would need to see photographs of the injury or a Victim Personal Statement (VPS) to make their assessments.

¹ The research took place alongside road testing of the common assault guideline and these magistrates were also interviewed about common assault scenarios.

- There were no significant differences identified where sentencers were using the second harm model. However, it is not possible to draw conclusions due to the very small number of sentencers interviewed.
- In a number of interviews, sentencers said they would want to see the VPS and/or photographs of injuries before assessing the harm.
- One judge reasoned that ABH cases would almost always fall into category 2 for harm, because a less significant injury would be charged as common assault, and a more significant injury would be charged as GBH.

Summary findings on harm

Scenario A – hitting with a photo frame (5 magistrates)

All five sentencers placed the harm in category 2. Two noted that the victim required stitches.

Two inch gash on his forehead which needed stitches so that's quite nasty... when you think about someone having an arm broken or a leg broken, a gash on your forehead seems medium, but then it's a gash on your forehead (placed in category 2)

One said it had caused a wound and that there had also been a verbal altercation. One sentencer, who used the second model of harm, said they placed it in category 2 because it was not serious harm.

Scenario A – hitting with a photo frame (6 Crown Court judges)

5 out of 6 sentencers placed the harm in category 2, and one placed it in category 3, describing it as a 'low level of injury.' Of those who placed harm in category 2, one said it was a serious offence for ABH, and one thought the gash could have amounted to GBH s20.

I can't describe a 2 inch gash which requires stitches as low level... a wound like that could have been charged as a s20 not that the sentence is any different (placed in category 2)

One sentencer thought it came between categories 1 and 2 and chose a starting point of 12-15 months, in between these two ranges.

There would be photographs of the injury and I would be better able to make an assessment... a 2 inch gash is quite a big cut so I might go towards the upper end of category 2 or the bottom end of category 1 (placed in category 2)

Another said they would need a VPS to fully assess the harm.

One judge reasoned that ABH cases would almost always fall into category 2 for harm, because a less significant or transient injury would be charged as common assault, and a more significant injury would be charged as GBH. They noted that they thought this was due to charging policies of the CPS, with which they disagreed.

Scenario B – (6 Crown Court judges)

Sentencers were divided between placing harm in categories 1 or 2. Three placed harm in category 1, one said it was either 1 or 2, and two placed it in category 2. Those who placed it in category 1 referenced damage to the victim's front tooth, which was described as a serious physical injury and would have an ongoing impact on the victim, including damage to long-term appearance.

Although the black eye is transient, it's damage to his front tooth which becomes loose, nerve damage and permanent discolouring, and of course that's to his teeth and therefore his face and long-term appearance (placed in category 1)

One sentencer who placed harm in category 2 did not think the broken tooth was as serious.

By the sound of it there's probably not a great deal of damage... broken tooth (placed in category 2)

Scenario C – (5 Crown Court judges)

Again, sentencers were divided between placing harm in categories 1 or 2. One said it was in category 1, one said it was in category 2, and three thought it was borderline between categories 1 and 2,

A nasty cut to his face requiring five stitches, again I'm not told whether they would be permanent scarring, but it's a very visible facial injury with five stitches so it's clearly going to be around for a while and in the context of ABH – and this could very well be charged as a s20 – I think this is serious physical injury (placed in category 1)

Sentencers who thought it was borderline said they would need more information to assess the harm.

I would want to have a look at photographs to see whether or not that's going to produce scarring and if so is it to a prominent part of the face (placed between categories 1 and 2)

Depending on what the impact statement is, it would be category 2 tending to category 1 if there'd been... you know he's attacked with a blunt [piece of] wood... (placed between categories 1 and 2)

ABH

Scenario A – hitting with a photo frame – magistrates

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	B	• Use of weapon	2	high level community order	• Domestic context • Alcohol	• Remorse • Previous good character • Degree of provocation	low level community order
2	B	• Use of weapon	2	36 weeks	• Alcohol	• Previous good character	high level community order
3	A	• Use of highly dangerous weapon	2	1 year 6 months	• Alcohol • Presence of others	• Remorse • Previous good character	to Crown Court
4	B	• Use of weapon	2	36 weeks	• Presence of others	• Funeral setting • Remorse • Previous good character	high level community order
5	B	• Use of weapon	2	36 weeks	• Domestic context • Alcohol	• Previous good character	community order

Scenario A – hitting with a photo frame – Crown Court judges

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence
1	B	• Use of weapon	2	36 weeks	• Alcohol	• Previous good character	community order
2	B	• Use of weapon	2	36 weeks	• Alcohol	• Previous good character	36 weeks, suspended
3	B	• Use of weapon	2	12-15 months	• Alcohol		15-18 months
4	B	• Use of weapon	3	medium level community order	• Domestic context • Alcohol		medium level community order
5	B	• Use of weapon	2	36 weeks	• Alcohol	• Previous good character	high level community order
6	B	• Use of weapon	2	36 weeks	• Alcohol • Presence of others	• Previous good character	high level community order

Responses highlighted in green signify where sentencers used Harm Model 2.

Scenario B – punching to the face

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence
1	C	• No weapon used	1/2	36 weeks	• Alcohol • Repeated punching		suspended sentence or community order
2	B/C	• No weapon used	2	high level community order		• No previous convictions	community order
3	C	• No weapon used	1	36 weeks	• Alcohol		12 months custody
4	B	• Falls between A and C	1	18 months			18 months custody
5	C	• No weapon used	2	high level community order	• Domestic context		medium level community order
6	B	• Falls between A and C	1	18 months	• Alcohol		community order or suspended sentence

Scenario C – prolonged attack with a piece of wood

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	A	• Use of weapon • Prolonged	1 or 2	18 months	• Use of weapon • Prolonged	• Previous good character	15 months (due to Covid)
2	A	• Prolonged	1 or 2	2 years 6 months		• Provocation • Previous good character	2 years
3	B	• Use of weapon	1 or 2	12 months		• Provocation • Previous good character	10 months
4	B	• Use of weapon • Kicking	2	36 weeks	• Presence of others	• Provocation • Previous good character	6 months, suspended 2 years (after guilty plea)
5	B	• Use of weapon • Sustained	1	18 months	• Presence of others	• Previous good character • Excessive self-defence	Suspended sentence

Responses highlighted in green signify where sentencers used Harm Model 2.

Annex A – scenarios

Scenario A – hitting with a photo frame – magistrates

J was at the funeral of her mother-in-law when her estranged husband, N, arrived with his new partner, K. J was very upset as she suspected he had been having an affair with K during the marriage. She got drunk at the wake, and confronted N for bringing K, and embarrassing her. N told her she was making a scene and embarrassing herself. J became angry and picked up a photo frame, hitting him over the head with it. The glass in the frame broke causing a two-inch gash to N's forehead which required stitches.

J was extremely upset and embarrassed after the incident, and numerous character references expressed shock at such out of character behaviour. J pleaded guilty at the first hearing.

Scenario A – hitting with a photo frame – Crown Court judges

J was at the funeral of her mother-in-law when her estranged husband, N, arrived with his new partner, K. J was very upset as she suspected he had been having an affair with K during the marriage. She got drunk at the wake, and confronted N for bringing K, and embarrassing her. N told her she was making a scene and embarrassing herself. J became angry and picked up a photo frame, hitting him over the head with it. The glass in the frame broke causing a two-inch gash to N's forehead which required stitches.

J was found guilty after trial.

Scenario B – punching to the face

R was living in a shared house with V. Tension had arisen as R was leaving communal areas in a mess which had led to arguments with his housemates. One night, V returned to find R had gone out and left the kitchen and shared bathroom in a mess. When R returned home drunk later in the evening, V confronted him, and an argument began. V rose his voice and told R his behaviour was unacceptable and that the housemates all wanted him to leave. R punched V in the face 3 times, causing a black eye and damaging one of his front teeth which became loose and suffered nerve damage and permanent discolouring.

R was found guilty after a trial.

Scenario C – prolonged attack with a piece of wood

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

D is of previous good character and pleaded guilty on the day of trial.

Annex B – harm models

Model 1 (as in the draft guideline)

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

Model 2

Harm	
Category 1	Serious physical injury or serious psychological harm and substantial or ongoing impact upon victim
Category 2	Harm falling between categories 1 and 3
Category 3	Low level of physical injury or psychological harm with no ongoing impact upon victim

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