

# Assault Guideline

## Professional Consultation



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A consultation produced by the Sentencing Council.  
This information is also available on the Sentencing Council's website:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

## About this consultation

### To:

This professional consultation is primarily aimed at members of the judiciary, legal practitioners and any individuals and organisations involved in the criminal justice system.

### Duration:

From 13 October 2010 to 5 January 2011

### Enquiries:

(including requests for the paper in an alternative format)

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### Additional ways to feed in your views:

This consultation exercise is accompanied by a shorter public consultation paper, a separate draft guideline, a resource assessment, an equality impact assessment, and an online questionnaire, all of which can be found at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

A series of consultation meetings is also taking place. For further information please use the 'Enquiries' contact details above.

### Response paper:

Following the conclusion of this consultation exercise, a response will be published at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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# Introduction

**T**he Sentencing Council was set up on 6 April 2010 as the new, independent body responsible for developing sentencing guidelines and promoting greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The Sentencing Council also has a key role to play in promoting public awareness and confidence in sentencing.

## The Council's first guideline

The creation of the Sentencing Council presents an opportunity to take a fresh approach to sentencing guidelines and to reconsider the structure and format of guidelines.

The Council has considered how the structure of the draft guideline can aid sentencers and ensure that the guideline is as clear and user friendly as possible for a wider audience. The Council proposes a new format for its first guideline which will become the model for future guidelines. The proposed draft guideline reflects the fact that the Council believes that consistency and understanding can be promoted through a clearer and more coherent decision making process.

The definitive guideline will be applicable to both the Crown Court and magistrates' courts. It will replace the relevant sections of the Magistrates' Court Sentencing Guidelines. A copy of the definitive guideline will be sent to all courts.

## Why assault?

The Council has decided to develop this assault guideline, as its first guideline, to replace the existing Sentencing Guidelines Council assault guideline. The Council made this choice on the basis that evidence from case law on assault demonstrates that on some occasions, sentencers have not followed the existing guideline. Primarily this has been due to the fact that sentencers find the prescribed scenarios which define levels within each offence difficult to relate to some individual cases.<sup>1</sup>

Feedback from sentencers and legal practitioners has also indicated that there is concern about the existing guideline and that it would merit revision, should the opportunity arise. A widely held view is that the existing guideline places rather undue emphasis on the presence of premeditation which can make it difficult to apply the guideline properly to every case. The Council aims to address this issue in the proposed draft guideline by devising new categories within offence ranges without restrictive scenarios.

The guideline will be revised for all of the offences that feature in the existing assault guideline and this consultation paper seeks views on a number of proposed amendments to the existing guideline. Revising this guideline will impact on a large number of cases – in 2008, there were 84,000 offenders sentenced for assault offences covered in this guideline.<sup>2</sup>

<sup>1</sup> R v Morgan [2009] EWCA Crim 659 and R v Coggin [2009] EWCA Crim 2790

<sup>2</sup> Unpublished data, Ministry of Justice 2008

## The Council's aims

The Council went back to first principles in relation to crimes of violence in developing this guideline with the principal aim of promoting greater consistency of sentencing and thereby increasing public confidence in sentencing. This approach to the guideline was taken to ensure that sentences are relative to the offence within the context of all violent offences as well as the wider sentencing framework.

The Council examined current sentencing practice for assault offences and recognised two key features: that current sentencing does not always reflect the existing guideline; and, that there has been a significant change in sentencing practice unrelated to the issuing of existing guidelines. Between 1999 and 2008, there was a general trend towards longer sentences for all assault offences but in particular for ABH offences for which the average custodial sentence length increased by 39%.<sup>3</sup>

The draft guideline at Annex B reflects the Council's aim to increase proportionality in sentencing across the range of assault offences. The draft guideline maintains the availability of the existing sentences for the most serious offenders while ensuring that sentencing for less serious offences is proportionate.

## Consultation process

In this consultation paper, some areas of general application are also discussed and changes proposed, such as the application of starting points within offence ranges. These proposals could potentially affect and apply to all guidelines on specific offences in future, not just this assault guideline.

The Council is under a statutory duty to produce a resource assessment for each new guideline. Alongside this draft guideline the Council has produced a consultation stage resource assessment, which sets out the potential impact of the changes, and an equality impact assessment.

The consultation period is 12 weeks and there will also be consultation meetings held in order to seek views. A summary of the consultation questions can be found at Annex A.

3 Unpublished data, Ministry of Justice 2008

# Section one: Background

## Sentencing Guidelines Council and Sentencing Advisory Panel

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP), which were disbanded. In 2003, the SGC and the SAP had been established to work together to produce sentencing guidelines that encouraged consistency in sentencing throughout England and Wales and to support sentencers in their decision making. The SAP's role was to advise on sentencing guidelines for particular offences and other sentencing issues, and following a period of wide consultation and research if required, the Panel would produce advice for the SGC to consider. The SGC would receive advice from the SAP and use this to formulate sentencing guidelines on the subject. The SGC would publish draft guidelines for consultation and then issue definitive guidelines for sentencers.

The Sentencing Council is a more streamlined body with a greater remit to take forward work on sentencing not only through improvements to guidelines but also through the development of a robust evidence base and better engagement with the public to improve understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

## Law of assault – a description of offences covered by draft guideline

The assault offences are characterised primarily by the infliction of some harm upon a victim by a direct action or the intention to inflict such harm. The CPS *Charging Standard on Offences against the Person* provides practical interpretations of statutory definitions but brief descriptions of each offence covered in this guideline and the statutory maximum penalties available are set out within this section.

As explained in the introduction, the definitive guideline will be applicable to both the Crown Court and magistrates' courts. GBH with intent (section 18) offences are indictable offences and only ever heard in the Crown Court; GBH (section 20), ABH, assault with intent to resist arrest and racially/religiously aggravated common assault are all triable either way; and, assault on a police constable and common assault are summary only offences. Due to the greater volume of lower level offences, magistrates' courts deal with 79% of adults sentenced for assault offences covered in the draft guideline.

**Wounding or causing grievous bodily harm with intent to do grievous bodily harm – Offences against the Person Act 1861 (section 18)**

This offence occurs when an offender unlawfully and maliciously wounds or causes any grievous bodily harm (GBH) to any person, with intent to do some GBH or to resist or prevent the lawful apprehension or detainer of any person. GBH is serious physical harm or psychological harm and wounding is a cut or breaking of the skin. The types of injuries inflicted include: permanent disability, disfigurement, broken bones and injuries requiring lengthy treatment. An offender can be sentenced to a maximum of life imprisonment for this offence.

**Unlawful wounding/causing grievous bodily harm – Offences against the Person Act 1861 (section 20)**

This offence occurs when an offender unlawfully and maliciously wounds or inflicts any grievous bodily harm upon any other person, either with or without any weapon. The level of harm is the same for this offence as in the offence above (section 18); therefore, the type of injuries inflicted are the same – permanent disability, disfigurement, broken bones and injuries requiring lengthy treatment. However, there is no need for the offender to have intended to inflict GBH to the victim, which is the difference between this offence and the one above (section 18). An offender can be sentenced to a maximum of five years' imprisonment for this offence.

**Assault occasioning actual bodily harm – Offences against the Person Act 1861 (section 47)**

This offence occurs when an offender causes actual bodily harm (ABH) to any other person, which affects the victim's health or wellbeing. The harm caused would not be as serious as for section 18 or section 20. The types of injury inflicted for this offence include: loss or breaking of tooth or teeth; temporary loss of consciousness; extensive or multiple bruising; displaced broken nose; minor fractures; cuts probably requiring medical treatment (for example, stitches) and psychiatric injury not including mere emotions, such as fear, distress or panic.<sup>4</sup> An offender can be sentenced for up to five years' imprisonment for this offence.

**Assault with intent to resist arrest – Offences against the Person Act 1861 (section 38)**

This offence occurs when an offender assaults any person carrying out a public service, such as a police officer or security officer, with intent to resist or prevent the lawful apprehension or detainer of himself or another person. The expectation is that this offence will involve little or no physical harm as more serious injuries fall under ABH, so the intention of the offender is the most important consideration for sentencers. If it involves a police officer, it may be more appropriate to bring a charge under section 89 overleaf unless there is clear evidence of intent to resist apprehension or prevent detention and the sentencing powers available under section 89 (overleaf) or for common assault are inadequate. An offender can be sentenced to up to two years' imprisonment and/or an unlimited fine.



### Assault on a police constable in execution of his duty – Police Act 1996 (section 89)

This offence occurs when an offender assaults either a constable acting in the execution of his or her public duty or a person assisting a constable in the execution of his or her duty. The assault does not usually result in serious physical harm and includes acts like spitting. The injuries sustained are equivalent to those for common assault; where the injuries suffered are serious enough, the offence will fall under ABH. This offence is a summary offence and has a maximum penalty of six months' imprisonment and/or a fine not exceeding the statutory maximum.

### Common Assault – Criminal Justice Act 1988 (section 39)

This offence occurs when an offender assaults another person or commits a battery. For the purposes of this consultation paper and draft guideline, the term 'common assault' is used to cover both assault and battery. Unlike ABH, it is not necessary for the victim to have been injured or harmed for common assault to be proved; it is enough for the victim to fear that they would have been injured. An offender can still be guilty of common assault if injury is caused, but the type of injury is usually relatively minor, such as a graze, scratch, minor bruising, swelling, or a superficial cut.<sup>5</sup> This offence is a summary offence and has a maximum penalty of six months' imprisonment.

### Existing Guidelines

There is an existing SGC guideline, *Assault and Other Offences against the Person*, which was published in February 2008, and which this guideline will replace. On 1 September 2005, the SAP published a consultation paper covering those assault offences that come before the courts in large numbers and those offences which result in significant custodial sentences. Eight offences were included: attempted murder, offences contrary to sections 18, 20, 47 and 38 of the Offences against the Person Act 1861, assault on a police constable in execution of his duty, common assault and cruelty to a child.

The SGC decided that the offence of cruelty to a child and attempted murder raised distinct issues and that separate guidelines should be produced. Therefore, on 20 February 2008, the SGC published two definitive guidelines, *Assault and Other Offences against the Person* and *Overarching Principles: Assaults on Children and Cruelty to a Child*. The guidelines applied when sentencing offenders convicted on or after 3 March 2008. A separate guideline for attempted murder was published on 16 July 2009 and applied in relation to sentencing offenders convicted on or after 27 July 2009.

The Sentencing Council agrees with the approach taken by the SGC and is only intending to revise the guideline for offences included in the existing *Assault and Other Offences against the Person* guideline. In keeping with the Council's aim for proportionality, the Council believes that the level of sentencing should be linked with that for murder. The Council intends to retain the SGC's existing guideline on attempted murder at this time. The Council will also retain the SGC's guideline, *Assaults on Children and Cruelty to a Child*, as the latter offence encompasses factors that are wider than assault and which relate specifically to children.

### Aggravated offences

The Council also agrees with the approach adopted by the SGC regarding racially or religiously aggravated assaults. The Crime and Disorder Act 1998 provides a maximum penalty of seven years' imprisonment for a racially or religiously aggravated unlawful wounding, GBH or ABH (rather than five years) and a maximum penalty of two years' imprisonment for a racially or religiously aggravated common assault (rather than six months). It also provides that racially or religiously aggravated common assault shall be triable either way, whereas common assault is a summary offence.

The existing guideline sets out that in sentencing of racially or religiously aggravated offences under section 29 of the Crime and Disorder Act 1998, a sentencer should determine the appropriate sentence for the offence without the element of aggravation and then make an addition to the sentence to take account of the aggravation, as set out in the case *Kelly and Donnelly*.<sup>6</sup> The Council recommends that this practice should continue and has decided that it is not necessary to produce separate guidelines for racially or religiously aggravated assault offences.

### Youths

In November 2009, the SGC published a guideline, *Overarching Principles – Sentencing Youths*, providing comprehensive guidance on how to sentence offenders under the age of 18 which has been welcomed by youth representative groups and youth court magistrates. The Council is of the opinion that this guideline sufficiently covers the issues for offenders under the age of 18 and should be referred to in conjunction with the proposed new assault guideline when sentencing young offenders. The age, maturity and experience of an offender are considered together as a mitigating factor in the revised assault guideline, as intended by the SGC.

6 *Kelly and Donnelly* [2001] 2 Cr App R

## Section two: Statutory requirements

### Purposes of sentencing

In producing this draft guideline, the Council has had regard to the purposes of sentencing as stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

### Sentencing Guidelines

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;

- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;<sup>7</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>8</sup> and,
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>9</sup>

Under the previous bodies (the SGC and SAP), courts had to “have regard to any guidelines which are relevant to the offender’s case”<sup>10</sup> and give reasons if a sentence fell outside of the range.<sup>11</sup> Section 125(a) of the Coroners and Justice Act 2009 states that, “every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case”. As a result, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;

7 s. 120 Coroners and Justice Act 2009

8 s. 127(2) *ibid*

9 s. 128(1) *ibid*

10 s. 172(1) Criminal Justice Act 2003

11 s. 174(2) *ibid*

- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.<sup>12</sup>

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and,
- the resources required for the provision of youth justice services.<sup>13</sup>

In having regard to these duties, the Council has considered case law on assault, and evidence on current sentencing practice as well as drawing on members' own experience. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but also for the victims and the public, so that they too can have a better understanding of how a sentence has been reached. Some of the evidence and rationale relating to these statutory duties is set out further in Section Three of this consultation paper.

In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and this is contained in the resource assessment which accompanies this consultation paper.

### Structure of the guidelines

The Coroners and Justice Act 2009 proposes a structure for guidelines and the Council is to have regard to the desirability of following this structure.<sup>14</sup> The Council has taken this proposed structure into consideration and has largely adopted this model for the new draft guideline.

The Council has taken into consideration in the draft guideline:

- the offender's culpability in committing the offence;
- the harm caused, or intended to be caused, or which might foreseeably have been caused; and,
- other factors the Council considers to be particularly relevant to the seriousness of the offence.

In order to assist the courts in discharging their duties contained in section 125 (3)-(4) of the Coroners and Justice Act 2009, the draft guideline proposed by the Council:

- specifies the range of sentences for each offence ("the offence range");
- specifies for each category the range of sentences ("the category range") within the offence range;
- specifies the sentencing starting point in the offence range for each of those categories; and,
- lists any aggravating or mitigating factors to take into account when considering the seriousness of the offence.

In order to avoid confusion, the Council has adopted the definitions contained in the Coroners and Justice Act 2009.

<sup>12</sup> s. 120(11) Coroners and Justice Act 2009

<sup>13</sup> s. 127(3) *ibid*

<sup>14</sup> s. 121 *ibid*

**Starting points – are they required or not?**

One aspect of the suggested model in the Coroners and Justice Act 2009 which the Council considered at length was whether and how to determine sentencing starting points. Starting points define the position within given ranges from which to start calculating the provisional sentence. The Council considered the value of identifying starting points within guidelines in terms of their usefulness or otherwise in achieving the key aims of sentencing guidelines, including consistency and public confidence.

In the existing SGC assault guideline, and other guidelines, it is stated that the starting points and offence ranges will apply to a first time offender who pleaded not guilty and has been convicted after a trial. Evidence from case law suggests that sentencers can find the SGC's guidelines restrictive and of limited application for the majority of offenders who come through the courts, as they are typically repeat offenders, with previous convictions. Therefore, the current starting points do not accurately reflect the circumstances of the typical offender.

On the other hand, the Council had concerns that not specifying starting points might negatively impact on the consistency of sentencing because sentencers benefit from having an anchor within the range which makes it easier to sentence within the range. It might also be more difficult for legal practitioners to predict what sentence is likely to be passed in individual cases, thus impacting on victims as well as public understanding of the sentencing process.

In reaching a recommended position on starting points, the Council considered creating a draft guideline without starting points. However, the Council's recommended guideline does contain starting points on the basis that it believes that retaining starting points is likely to promote greater consistency of sentencing. Further detail of the Council's consideration of starting points can be found at Section Three of this consultation paper.

In this draft guideline, the Council proposes to make a significant change to the applicability of the starting point in order to address the concerns outlined above. The Council proposes to remove the assumption that the starting point and offence ranges apply only to first time offenders. It is proposed that starting points should apply to all offences which fall within the corresponding category in order to ensure that the guideline is applicable to all offenders, in all cases. Only once the starting point has been established should the court take into consideration further aggravating and mitigating factors and previous convictions to adjust the sentence within the range.

Section 121(10) of the Coroners and Justice Act 2009 provides that starting points should be based on the assumption that the offender has pleaded not guilty. The Council considers that the purpose of this is to preserve the ability for courts to give credit for guilty pleas in accordance with section 144 of the Criminal Justice Act 2003. In order to avoid confusion, the Council proposes that the guideline will state that the starting point will apply to all offenders irrespective of the plea. Credit for a guilty plea is to be taken into consideration at a later step in the decision making process only after the provisional sentence has been identified. The Council considers that this will achieve greater consistency and will reduce the potential for double counting.

## Section three: Development of guideline

**In revising the existing guideline on assault, the Sentencing Council is consulting on a new structure for this and future guidelines. The Council is also consulting on a number of issues in relation to its new duties in the Coroners and Justice Act 2009.**

The Council is proposing a guideline which can serve as the principal point of reference in all assault cases. Therefore, the draft guideline has incorporated some relevant aspects and content of the SGC's existing guidelines, *Overarching Principles: Seriousness*, *Overarching Principles: Domestic Violence* and *New Sentences: Criminal Justice Act 2003*. For assault cases, sentencers should refer to these guidelines if they require further clarification of an issue.

It is proposed that this guideline will be applicable to all offences irrespective of the date of the offence.

### Guideline structure

As set out in the introduction, the Council considered how the structure of the draft guideline could be developed to aid sentencers. The existing SGC guidelines follow a structure of providing general principles in the first part and then offence guidelines in the second part. The Council considered the merits of replicating that structural design or devising a new structure for this guideline.

The Council has decided to propose a new structure for the draft guideline at Annex B which sets out the applicability of the guideline very briefly and then incorporates all necessary information into individually tailored offence specific decision making processes. The Council believes that this new structure will make it easier for sentencers, legal practitioners and victims to follow the sentencing process and make the process more transparent.

Q1

Do you agree that the proposed structure of the draft guideline incorporating an individually tailored sentencing process for each offence is the right approach?

### Assault occasioning actual bodily harm

One of the main reasons for the Council electing to revise the assault guideline was that evidence from case law demonstrated that on occasion, sentencers have not followed the existing guidelines because they have found it difficult to fit the facts of some offences into the sentencing ranges. This is particularly true of the guideline for ABH offences where spontaneous assaults that result in a relatively serious injury cannot easily be placed into any of the defined levels. The Council aims to address this issue in the proposed draft guideline through the new categories within offence ranges.

### Common assault

In the existing SGC guideline, common assault is categorised in a different way to the other offences. Where other assault offences were divided into levels which all had sentencing ranges set out including a recommended starting point, the guideline for common assault simply stated a recommended starting point for each level and defined where the sentencing thresholds would be crossed. The Council recommends that there should be consistency in approach across all of the assault offences within the proposed guideline. Therefore, the draft guideline follows the same decision making process in cases of common assault as for the other offences.

### Compensation and ancillary orders

It is proposed that there will not be a section on compensation orders or ancillary orders, as sentencers should be familiar with both of these orders and they are not central to the decision making process for determining the level of sentence. It is proposed that they are not included in any future offence specific guidelines.

Q2

Do you agree that compensation and ancillary orders should not be included in the new assault guideline or any future offence specific guidelines?

### The decision making process

The Council is proposing to base the structure of the revised guideline on a new decision making process. In creating this proposed decision making process, the Council has considered research and evidence on the psychology of decision making. This new decision making process has been used to shape the format of the draft guideline and could be used in future offence specific guidelines.

The draft guideline sets out a new step by step decision making process for sentencers to follow. Sentencers are already familiar with the concept of decision making processes as they are included in existing SGC guidelines and are also integral to guidelines within the Magistrates' Court Sentencing Guidelines.

The Council has taken into account the fact that sentencers are required to pass a sentence that is commensurate with the seriousness of the offence and the Council is proposing a new method of determining seriousness. The existing SGC guideline includes a generic list of aggravating and mitigating factors taken from the SGC's guideline, *Overarching Principles: Seriousness*, which is not tailored to assault offences. The Council's intention is to provide a comprehensive, but not exhaustive, list of aggravating and mitigating factors specifically for each assault offence, designed to help the court assess the level of seriousness. These lists have been compiled using relevant factors from the overarching guidelines on seriousness and domestic violence. This approach could be replicated in future offence specific guidelines.

The proposed decision making process is explained in this section.

**STEP ONE**

**Determining the offence category**

The proposed process includes two steps at which the seriousness of the offence is to be assessed. Step 1 is where the court should determine the offence category by assessing the offender’s culpability in committing the offence and the harm caused, or intended to be caused.

**Number of offence categories**

The Council considered how many offence categories would be required within each offence, to be determined by the first assessment of seriousness conducted by sentencers. The Council proposes that the court should determine the levels of harm and culpability in the individual case as either high or low. The Council considered levels which could incorporate medium levels of harm and culpability. However, this was thought to be overly complex and it was considered that sentencers should be able to use their discretion to place medium levels of harm and culpability into the category that most closely resembled the case. Having agreed only to define harm and culpability as either high or low, the Council then formulated two possible approaches.

The first option, which the Council recommends, is for three different offence categories to be used in assessing the seriousness of the offence and dividing up the offence range. They are as follows:

**TABLE 1 – Three offence categories model**

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The Council also considered a second option which included four offence categories:

**TABLE 2 – Four offence categories model**

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability
<b>Category 3</b>	Lesser harm <b>and</b> higher culpability
<b>Category 4</b>	Lesser harm <b>and</b> lower culpability

However, the Council thought that the distinction between categories 2 and 3 was neither sufficiently clear, nor likely to provide significantly different outcomes or greater clarity for sentencers. Therefore, it was agreed that the first option with three offence categories would be the most appropriate model.

**Q3** Do you agree with the Council’s recommendation that there should be three offence categories for all assault offences? If not, how many would be appropriate?

**Determining harm and culpability**

In order to assess the offender’s culpability in committing the offence and the harm caused, or intended to be caused, the court should use the factors listed in Table 3 overleaf (the lists of factors have been tailored for each offence and therefore not all of these factors appear for every offence within the draft guideline). The Council believes that this list of factors comprising the principal factual elements of the offence are the most important in an assessment of seriousness. Therefore, it is these principal factors which should be taken into account when determining the offence category which has the most significant bearing on the sentence length and/or disposal type.



**TABLE 3 –  
Factors determining harm and culpability**

<b>Factors indicating greater harm</b>	
Injury which is serious in the context of the offence (must normally be present)	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Victim is particularly vulnerable because of personal circumstances	Intention to commit more serious harm than actually resulted from the offence
Sustained or repeated assault on the same victim	Deliberately causes more harm than is necessary for commission of offence
<b>Factors indicating lesser harm</b>	
Injury which is minor in the context of the offence	Deliberate targeting of vulnerable victim
	Offender operating in group or gang
<b>Factors indicating higher culpability</b>	
<i>Statutory aggravating factors:</i>	
Offence racially or religiously aggravated	<b>Factors indicating lower culpability</b>
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Minor role
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	A greater degree of provocation than normally expected
	Lack of premeditation
	Mental illness or disability where linked to commission of offence
	Excessive self defence
<i>Other aggravating factors:</i>	
Degree of premeditation	

The court should only use the list of factors provided at this step to determine the offence category as all other factors, including those relating to the offender, should be taken into account later in the process at step 2.

The Council has also taken into account the available research which has been carried out on public attitudes to aggravating and mitigating factors. For example, participants in research which used an ABH case study thought that the fact that a victim was elderly and that a greater level of injury was caused to a victim were the factors that were significant enough to push the offence over the custody threshold. In a separate survey, the three aggravating factors that the public perceived to increase crime seriousness were whether a weapon was used, whether

harm was increased because the victim was vulnerable or because the offence caused harm to others.<sup>15</sup> These factors are all included in the draft guideline.

Q4

Are there any other factors determining harm and culpability that should be taken into account at step 1 of the decision making process?

## Premeditation

One factor which is important in assessing culpability, and to which the Council is proposing to revise the approach, is the degree of premeditation. The issue of premeditation, and the difficulties resulting when using the ABH guideline in particular, was the focus of a great deal of feedback from sentencers and legal practitioners. It is clear that the categories set out in the existing guideline do not cover all possible outcomes of the offence. Any offences that are deemed to be spontaneous and not premeditated fall within the bottom category range, ‘other assault resulting in minor, non-permanent injury’. However, assaults such as drunken brawls outside pubs, which are not premeditated but can cause quite serious injury and may involve the use of a weapon, do not fit within any of the current categories. In *R v Parker* [2010],<sup>16</sup> the court stated that although not premeditated, the sustained nature of the attack, which resulted in far from minor injuries on a vulnerable victim, rendered the case not much less serious than a truly premeditated offence. It was among the most serious of section 47 offences and after trial would have warranted a sentence of two and a half to three years, which falls within the highest category range.

As well as the issue of identifying a suitable category within the existing ABH guideline, there is also a degree of ambiguity about the definition of premeditation. In the existing guideline, premeditation is not defined and is presumed to be either present or absent. In reality, there is a sliding scale of premeditation and the Council believes that sentencers should assess the weight to be given to the degree of premeditation as an aggravating or mitigating factor when determining the level of culpability. The court should be able to take into account the fact that premeditation in some cases of assault could involve a significant level of planning (acquisition of a weapon in advance, specific choice of time and location, involvement of others) whereas in others, premeditation will be present but could involve less planning (a weapon being to hand at the scene of offence, a short period between any initial incident and the commission of the offence). Equally, the Council considers that the absence of any premeditation should be taken into account as a mitigating factor.

**Q5**

Do you agree with the revised approach to premeditation as an aggravating or mitigating factor proposed to be included in the new assault guideline?

### Mental illness or disability

Another factor on which the Council wishes to consult is that of mental illness or disability. The Council believes that in cases where it is proved that an offender has a mental illness or disability which was wholly or partly responsible for the commission of the offence, it should be taken into account at step 1 in the process as a mitigating factor and could influence the choice or severity of sentence. Where an offender has a mental illness or disability but it is proved that it was in no way responsible for the commission of the offence, it should not be considered a mitigating factor.

Q6

Do you agree that consideration for mental illness should be included at step 1 of the process and/or do you think that it should be built into the guideline in any other way?

### Guidance

The Council considered the extent to which guidance should be provided for sentencers on how to decide what levels of harm and culpability the offence falls into. The Council's recommended option is to set out the offence specific factors from Table 3, and leave it to judicial discretion to determine which factors are present, how many factors are required to be present in order to determine the levels of harm and culpability, and how much weight to give to each of the factors present. Therefore, it would not be necessary for all factors listed to be present in order to select the corresponding levels of harm and culpability. However, the one exception is that the Council does believe that it is appropriate for serious injury (bearing in mind the offence with which the offender has been charged) normally to be present in order to determine a greater level of harm caused.

The Council has also considered the alternative option of providing sentencers with more defined guidance by specifying certain aggravating and mitigating factors that would be indicative of each offence category, providing a greater steer on factors which are deemed more serious. The guidance could be further enhanced by indicating to sentencers the number of factors that should be present to indicate a certain level of seriousness. For instance, a minimum of two specified aggravating factors could be required to be present to indicate a high level of culpability. This could be along similar lines to the category definitions within the existing SGC guideline. However, the Council was concerned that the selection of the level should not be a numerical exercise as not all factors carry the same weight. The Council was also concerned that this approach could lead to problems with the guideline being too prescriptive and would result in situations where a case would not fit within any of the defined categories.

The Council would welcome views on the recommended approach and any alternative suggestions on the extent to which guidance is required to determine the levels of harm and culpability.

Q7

Do you agree with the level of guidance and the extent of discretion that is proposed in step 1 for determining the offence category?

**STEP TWO****Starting point and category range**

At step 2, the court should determine a sentence within the corresponding category range set out in the guideline.

**Starting points**

As explained in Section Two of this consultation paper, the Council considered the value of starting points within guidelines and concluded that the draft guideline should include starting points but should redefine their applicability in order to encompass all cases that come before a court by removing the assumption that the starting point and offence ranges apply only to first time offenders pleading not guilty. The starting points within the draft guideline would apply to all offences which fall within the corresponding category.

Before reaching a decision on starting points, the Council developed and considered a model guideline without starting points which required a slightly different decision making process. In a guideline without starting points, the assessment of seriousness at step 1 of the process could take into account all factors relating to the offence itself, including any offence-related factors not listed.

At step 1, the court could select the relevant offence category just as in the starting point model proposed, but there would be no starting point specified. Moving on to step 2 of the process, sentencers would have complete discretion to identify an entry point within the category range provided, based on the severity of the offence within the category selected. In this model, sentencers would then apply only offender-related factors at step 2 to move up or down within the selected category range.

The Council's preferred model includes starting points and allows for some offence-related factors to be taken into account at step 2 as well as step 1, as explained below. This is because the Council believes that there would be insufficient discretion for sentencers to take account of the varying severities of offences within an offence category should they only be able to take account of offender-related factors at step 2. In order to avoid the risk of double counting the guideline provides the list of factors to be taken into account only at step 1 and then another list of factors to be taken into account only at step 2.

Q8

Do you agree that the starting point and category ranges should be applicable to all offenders, not just first time offenders, and regardless of plea entered?

Q9

Do you agree that starting points should be set out in the assault guideline?

### Category Ranges

After identifying the relevant starting point, step 2 of the guideline is the second stage of assessing seriousness and the point at which the court should identify whether there are any further aggravating or mitigating factors which could result in a provisional sentence that is lower or higher than the suggested starting point. The Council proposes that in cases of particular gravity, reflected by multiple features of culpability in step 1, a court should be able to decide that the sentence would merit an upward adjustment from the starting point before further consideration to seriousness is given at this step of the process. This flexibility is intended to ensure that sentencers can exercise their discretion where it is in the interests of justice to

do so, while continuing to be able to make use of the proposed decision making process.

Table 4 contains a list of further additional factual elements providing the context of the offence that the Council recommends should be considered at this step in the process. They also include factors relating to the offender. These lists are not intended to be exhaustive and any other factors present should be taken into account by the court at this step. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. The Council believes that in some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

**TABLE 4 –  
Further factors determining harm and culpability**

<b>Factors increasing seriousness</b>	
<i>Statutory aggravating factors:</i>	
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	Failure to respond to warnings or concerns expressed by others about the offender's behaviour
Offence committed whilst on bail	Commission of offence whilst under the influence of alcohol or drugs
<i>Other aggravating factors include:</i>	Abuse of power and/or position of trust
Location of the offence	Exploiting contact arrangements with a child to commit an offence
Timing of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance
Ongoing effect upon the victim	<b>Factors reducing seriousness or reflecting personal mitigation</b>
Offence committed against those working in the public sector or providing a service to the public	No previous convictions <b>or</b> no relevant/recent convictions
Presence of others including relatives, especially children or partner of the victim	Single blow
Additional degradation of victim	Remorse
In domestic violence cases, victim forced to leave their home	Good character and/or exemplary conduct
Failure to comply with previous court orders	Determination to address addiction or offending behaviour
Offence committed whilst on licence	Serious medical conditions requiring urgent, intensive or long-term treatment
An attempt to conceal or dispose of evidence	Isolated incident
	Youth/lack of maturity or age
	Lapse of time since the offence where this is not the fault of the offender

Q10

Are there other additional aggravating and mitigating factors that should be included at step 2 of the decision making process?

### Racially/religiously aggravated assaults

As set out in Section One of this consultation paper, the Council is recommending that in sentencing for racially or religiously aggravated offences under section 29 of the Crime and Disorder Act 1998, the court should firstly determine the appropriate sentence without the element of aggravation and then make an addition to the sentence to take account of the aggravation. Therefore, the following section is present in step 2 of the decision making process within each of the offences covered by section 29.

#### Further statutory aggravating factor

Offence racially or religiously aggravated

When considering an offence which does not fall within the scope of section 29 of the Crime and Disorder Act 1998, the court should consider racial or religious aggravation at step 1.

Q11

Do you agree that the court should take account of an assault offence covered by section 29 having been racially or religiously aggravated, and increase the severity of the sentence accordingly, only after having reached an initial view on the sentence for the offence?

### Previous convictions

There is a statutory requirement for sentencers to take account of previous convictions when assessing the seriousness of an offence. The Council recommends that an offender's previous convictions should be considered at Step 2, only after the starting point has been established. This is required if this revised guideline, and all future guidelines on specific offences, is to be more easily applicable to all offences, and not just those committed by first time offenders.

Research suggests that previous convictions are important to public sentencing preferences<sup>17</sup> and that the existence of previous convictions generally increases the seriousness of the crime in the public's opinion. A case study shows that if the offender has no prior convictions, the public believes that a more lenient sentence is appropriate. Therefore, in the public's view previous convictions are an important aggravating factor.

### Youth/lack of maturity

The Council has considered youth as a mitigating factor and recommends changing the wording in the new guideline to incorporate an assessment of maturity as well as simply the actual age of the offender. The SGC gave consideration in the guideline on the *Overarching Principles – Sentencing Youths* to the need for sentencers to weigh up the actual age of an under-18 offender against their emotional maturity in considering an appropriate sentence, an approach agreed by the Council as set out in Section One of this consultation paper. This was welcomed by respondents to the consultation but there was concern about how maturity might be assessed. The SGC's intention was not to assess maturity in a technical way but for the court to use the information presented to them from advocates and in the pre-sentence report.<sup>18</sup>

It has been argued that youth should be a mitigating factor in sentencing on the basis that: offending by a young person can be a phase which passes fairly rapidly; a criminal conviction may have a disproportionate impact on the ability of a young person to gain meaningful employment and play a worthwhile role in society; and, young people may be more receptive to changing their conduct and be able to respond more quickly to interventions.<sup>19</sup>

However, little consideration has been given to these factors potentially being equally valid when sentencing some offenders aged 18 and over. In 2008, 18-24 year olds accounted for 31% of all offenders sentenced for one of the assault charges covered in this guideline indicating that this type of offence is particularly prevalent in this age group.<sup>20</sup> Cognitive evidence demonstrates that, “the human brain continues to mature until at least the age of 25 particularly in areas of judgment, reasoning and impulse control”<sup>21</sup> and people no longer reach all of the associated responsibilities and recognised attributes of adulthood by the age of 18.

Therefore, the Council is interested in views about whether and how sentencers should take youth and lack of maturity into account as a mitigating factor in the decision making process.

Q12

Do you agree with the Council's proposed change to include lack of maturity and/or is there any further role for the guideline to play in addressing the specific issue of offenders aged 18–24?

<sup>18</sup> *Overarching Principles – Sentencing Youths, Response to Consultation – Sentencing Guidelines Council – November 2009*

<sup>19</sup> *Sentencing Advisory Panel, Consultation paper on principles of sentencing for youths, 2008*

<sup>20</sup> *Unpublished data, Ministry of Justice, 2008*

<sup>21</sup> *Caulum, Melissa Postadolescent Brain Development: A disconnect between neuroscience emerging adults and the corrections system, 2007*

**STEP THREE Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, sentencers will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

The Sentencing Council is required to prepare a new guideline about the reduction in sentence for guilty pleas and will be consulting on this in due course.<sup>22</sup>

**STEP FIVE Totality principle**

Many offenders are sentenced for multiple offences committed. When a court is sentencing an offender for more than one offence, firstly it needs to consider whether those sentences should be consecutive or concurrent. It then needs to decide whether the total sentence is appropriate to the offending behaviour and balanced. The latter is known as the ‘totality’ principle.

The Sentencing Council has a duty to prepare sentencing guidelines about the application of any rule of law as to the totality of sentences<sup>23</sup> and until it does so, the draft guideline does not provide any further guidance on the totality principle.

**STEP SIX Dangerousness**

This step is included for offences which are either a serious offence or a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and is the point at which the court should consider whether having regard to the criteria contained in that Chapter, it would be appropriate to impose a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence for the offence should be used as the basis for the setting of a minimum term.

**STEP SEVEN Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain effect of, the sentence being passed. The Council proposes that this constitutes Step 7 at the end of the decision making process.

**STEP EIGHT Consideration for remand time**

Sentencers must take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003. The Council proposes that this constitutes the final step of the process.

<sup>22</sup> s. 120(3)(a) Coroners and Justice Act 2009

<sup>23</sup> s. 120(3)(b) *ibid*



Q13

Do you agree with the eight-step proposed decision making process?

### Offence ranges, category ranges and starting points

As the Council has proposed a new decision making process for the assault guideline and new offence categories it presents an opportunity to consider how to set the ranges and starting points for each offence category within the assault offences. In preparing this, and any other, draft guideline the Council must have regard to the purposes of sentencing and a number of statutory duties, as set out in Section Two of this consultation paper.

As explained in the introduction, the Council's aim in this draft guideline is for increased proportionality in sentencing across the range of assault offences. The result is the draft guideline at Annex B which aims to maintain the availability of the existing sentences for the most serious offenders while ensuring that sentencing for less serious offences is proportionate.

Using the information and evidence available, the Council has proposed new ranges and starting points in the draft guideline. When setting the new ranges, the Council considered the fact that data relating to the sentences imposed in the Crown Court for offences in the assault guideline indicates that in a small number of cases the sentences imposed fell outside the offence range.<sup>24</sup>

The data suggests that those who sentence outside the range tend to award a lower sentence not sufficiently covered in the existing guideline. However, it must be noted that the data does not set out the reasons why the court departed from the guideline or whether the departure was justified.

This indicates that there might be potential benefits in allowing more flexibility for sentencers at the bottom end of the existing ranges, and for lowering some of the offence ranges to incorporate these lower sentences. In extending the flexibility around the lower end of offence ranges, the Council hopes to see fewer sentences outside the offence range, thus increasing consistency of sentencing as well as confidence in the guidelines and the sentences reached.

There was hardly any deviation in those sentenced above the ranges. Furthermore, current sentencing data shows that there are relatively few offenders being sentenced near the top of the current ranges – the majority of offenders receive sentences which fall within the ranges of the middle and lower offence categories.

Data also shows that there has been a general trend towards longer sentences for all of the assault offence types covered in the existing assault guideline. The Council has had regard to this evidence in setting the proposed category ranges across the assault offences.

<sup>24</sup> Justice Statistics – Analytical Service, Ministry of Justice, Sentences and average custodial sentence length for assaults and other offences against the person, 2008. The data relates to persons aged 18 and over.

### GBH offences

For these reasons, the Council is proposing offence range upper limits which are the same as in the existing guideline for the most serious assault offences of GBH with intent and GBH. There is also no proposed decrease in the lower limits of either offence range. This intention is also reflected in the Council's resource assessment which anticipates that the impact of the draft guideline on average sentence lengths and the types of disposal used will be minimal for offences of GBH with intent and GBH.

The Council would be particularly interested in views about the category range which should be made available to the courts for category 3 GBH (section 20) offences. The Council has considered a guideline which excludes custody from the category 3 range but has decided to impose an upper limit of six months' imprisonment in order to be proportionate with the proposed offence ranges for other offences within the guideline taking into account the level of harm sustained in order to justify a GBH (section 20) charge.

Q14

Do you think that the range for category 3 GBH (section 20) cases should include custody at its upper limit or recommend only non-custodial disposals?

### ABH offences

The Council believes that some examples of current sentencing practice for the less serious assault offence of ABH are disproportionate to the level of harm necessary for the commission of the offences. As for the GBH offences, the proposed offence range upper limit for ABH is the same as in the existing guideline in order to maintain the availability of appropriate sentences for serious offenders. However, for lower offence categories the guideline

proposes lower ranges and starting points, more proportionate within the context of the range of offences. Therefore, the resource assessment anticipates a greater impact on average sentence lengths and the types of disposal used for ABH offences.

### Common assault

At the Constitutional Affairs Select Committee, the Criminal Bar Association said that they felt the starting point (custody) for the top category of common assault, for a first time offender pleading guilty, was too high, and that alternative sentencing options should be considered.

In 2008, 6,312 custodial sentences were passed for common assault. The 11% increase in average custodial sentence length between 1999 and 2008, combined with a 94% increase in the number of adults sentenced for common assault offences over the same period, has resulted in a significant rise in the prison population as well as an additional burden on probation services.

The Council considered the relative level of severity in comparison with the other assault offences and concluded that in some cases current sentencing practice for common assault is disproportionate. Again, the proposed offence range upper limit for common assault is the same as in the existing guideline in order to maintain the availability of appropriate sentences for more serious offenders.

The Council has had regard to its statutory duties when considering the starting points for common assault. A key consideration is the Council's duty to consider the cost of different sentences and their relative effectiveness in preventing reoffending. Research on the cost and effectiveness of short custodial sentences versus community sentences is inconclusive and, in the absence of evidence that custody can improve outcomes for offenders and society more than community alternatives, the Council

proposes to change the starting point for the most serious forms of common assault from custody to a community order. The Council believes that this proposal is consistent with the offence ranges for more serious assault offences and is also in line with the Council's intention to increase flexibility for lower level offences.

Custody remains within the proposed range for category 1 common assault but aggravating factors at step 2 would be required in order to justify moving up from the starting point and imposing a custodial sentence.

As for ABH offences, the resource assessment anticipates a greater impact on average sentence lengths and the types of disposal used for common assault than for the more serious GBH offences.

Q15

Do you agree that the starting point for common assault should be a community order?

### Assaults with intent to resist arrest and on a police constable in execution of his duty

The other two offences covered in the draft guideline are assault with intent to resist arrest, and assault on a police constable in execution of his duty. The expectation for both of these offences is that the level of harm caused would be consistent with that for common assault and the seriousness is only increased on the basis of the offender's culpability. The proposed offence ranges and starting points, which are higher than those for common assault but lower than those in the current guideline, reflect the Council's aim for proportionality. Again, the resource assessment anticipates some significant impact on average sentence lengths and the types of disposal used for these offences. It should be noted that the charge of

assault with intent to resist arrest is rarely used and therefore the effect on resources of the draft guideline for this offence is minimal.

Q16

Do you agree with the proposed offence ranges, category ranges and starting points for all of the offences in the draft guideline?

### Community sentences

The Council has considered what guidance is required within the guideline on community sentences which are commonly used in assault cases. The existing assault guideline specifies levels of community orders within ranges and the Council would welcome views on its recommendation set out below. This is an important issue given that the offence ranges for all of the assault offences in the proposed guideline, with the exception of GBH with intent (section 18), include the option of a community order.

Where a community order is the outcome of the decision making process, the initial factor in defining which requirements to include in a community sentence should be the seriousness of the offence committed. The SGC guideline, *New Sentences: Criminal Justice Act 2003*, sets out a framework to help sentencers decide on the most appropriate use of a community sentence.

Community sentences can consist of two elements: punishment and reparation and/or rehabilitation of the offender. If the main object of the sentence is to punish, typically by the imposition of an unpaid work requirement, then it is easy to strike a balance between the seriousness of the offence and of the punishment. But not unusually, an offender will have committed offences which are not particularly serious but will be made the subject of a long order with demanding requirements without which rehabilitation cannot be effected.

*New Sentences: Criminal Justice Act 2003*, sets out three levels of seriousness for classifying community orders (high, medium or low), as it was felt that it would be helpful for sentencers to have a framework to decide the most appropriate use of the community sentence.

A low community order would typically have only one requirement and be for those offenders whose offence was relatively minor. There is no limit for a high community order but in most cases there should be a minimum of three to four core requirements, one of which should be supervision. This is for offenders who have just fallen short of a custodial sentence. Within these ranges there is sufficient flexibility to allow the sentence to be tailored to the particular circumstances of the offender.

This classification is used in the existing SGC assault guideline and feedback from sentencers indicates that the seriousness classification for community orders restricts them in their use of community orders. For instance, a sentencer who deems the offence to be of low seriousness justifying a low community order may feel restricted giving just one requirement on a community order, as they may wish to award community payback to punish the offender, but also add a requirement to assist the rehabilitation of the offender. The sentencer may feel constrained from doing this by virtue of the SGC definition of a low community order.

The Sentencing Council proposes that in the revised assault guideline, where a community order is recommended in the sentencing range, there is no specific correlation between the severity of the offence and the number of requirements within a community order, or whether there should be a high, medium or low community

order. Instead, the Council proposes incorporating appropriate guidance from the SGC's guideline, *New Sentences: Criminal Justice Act 2003*, into the draft guideline and leaving it to the discretion of sentencers to impose a community order that is suitable for the individual case.

Q17

Do you agree with removing the distinction between a high, medium and low community order from the offence ranges?

### Impact of sentencing decisions on victims

The Sentencing Council must have regard to the impact of sentencing decisions on victims.<sup>25</sup> The draft guideline includes a number of aggravating and mitigating factors which allow the court to take account of victims. For the varying degrees of assault, victims may suffer a wide range of harm from physical injury, damage to health or psychological distress. Injuries caused to victims may not be particularly significant, but humiliation endured by a victim can increase the offender's culpability.

In research into public attitudes to sentencing,<sup>26</sup> the public rate the vulnerability of the victim as a significant factor in increasing the seriousness of the crime. In a case study on assault to explore public opinion regarding the custody threshold, the victim's wish for a community penalty was a significant justification for imposing a community penalty and not custody. This demonstrates that the circumstances of the victim and the impact of the crime on them, as well as the victim's views about the crime, are important factors for the public about sentencing.

<sup>25</sup> s. 120(11)(c) Coroners and Justice Act 2009

<sup>26</sup> Public attitudes to the principles of sentencing by Hough, Roberts, Jacobsen ICPR, Moon and Steel GfK NOP, June 2009

It is important that victims, and the wider public, gain a better understanding of sentencing through the new guideline. To this end, the Council proposes that new guidelines should better manage the expectations of victims ahead of any sentence being passed. The formulation of a clearer decision making process will aid victims' understanding of how a sentence is likely to be reached and what range of sentences is available to the court when considering individual cases. Following the passing of a sentence, the clarity of the process will further help in understanding what considerations were taken into account and how the final sentence was reached.

The Council would welcome views from victims and representative bodies of victims as to whether more needs to be done in relation to the impact on victims within the assault guideline and future guidelines.

Q18

Do you think that the aggravating/mitigating factors of harm within the draft guideline sufficiently allow the court to take into account consideration of victims, or are there other ways in which victims could be considered?

### Public confidence

In preparing guidelines, the Council must have regard to promoting public confidence. The Council's intention is that the proposed decision making process will be clearer for both sentencers and the public to understand. Public attitudes to sentencing show that people overestimate the leniency of the courts but research indicates that when presented with sentencing exercises through 'You be the Judge' style events, they award the same, if not lower, sentences. The public also believes that the courts do not place sufficient weight on

punishment as a sentencing goal.<sup>27</sup> Therefore, if the proposed guideline, including the revised process and rationale for the offence ranges and starting points, is clear the public are likely to have increased confidence in the guideline.

Public attitudes to non-custodial sentences have been explored for cases that are on the cusp of custody.<sup>28</sup> When asked, the public's immediate response about sentencing is in regard to imprisonment, but this is because there is a lack of knowledge about sentencing alternatives, such as community penalties. Research found that there is a significant level of acceptance of alternative sanctions to custody, but that this acceptance decreases with the severity of the offence. Participants were presented two case studies about theft and assault. In the case of theft, almost three quarters of the sample's immediate response was custody, but once provided with an alternative, almost half found the alternative acceptable. However, in the assault case, just over a third who initially favoured custody accepted the alternative sanction, which could be because assault is a more serious offence.

The Council would welcome views on the clarity of the proposed decision making process and its public accessibility.

Q19

Do you agree that the proposed decision making process will increase transparency and therefore public confidence in the sentencing process? Are there any other ways in which the proposed guideline could increase public understanding and confidence?

<sup>27</sup> Public attitudes to the principles of sentencing by Hough, Roberts, Jacobsen ICPR, Moon and Steel GfK NOP, June 2009

<sup>28</sup> Ibid

# Annex A: Summary of consultation questions

- Q1 Do you agree that the proposed structure of the draft guideline incorporating an individually tailored sentencing process for each offence is the right approach?
- Q2 Do you agree that compensation and ancillary orders should not be included in the new assault guideline or any future offence specific guidelines?
- Q3 Do you agree with the Council's recommendation that there should be three offence categories for all assault offences? If not, how many would be appropriate?
- Q4 Are there any other factors determining harm and culpability that should be taken into account at step 1 of the decision making process?
- Q5 Do you agree with the revised approach to premeditation as an aggravating or mitigating factor proposed to be included in the new assault guideline?
- Q6 Do you agree that consideration for mental illness should be included at step 1 of the process and/or do you think that it should be built into the guideline in any other way?
- Q7 Do you agree with the level of guidance and the extent of discretion that is proposed in step 1 for determining the offence category?
- Q8 Do you agree that the starting point and category ranges should be applicable to all offenders, not just first time offenders, and regardless of plea entered?
- Q9 Do you agree that starting points should be set out in the assault guideline?

Q10

Are there other additional aggravating and mitigating factors that should be included at step 2 of the decision making process?

Q11

Do you agree that the court should take account of an assault offence covered by section 29 having been racially or religiously aggravated, and increase the severity of the sentence accordingly, only after having reached an initial sentence for the offence?

Q12

Do you agree with the Council's proposed change to include lack of maturity and/or is there any further role for the guideline to play in addressing the specific issue of offenders aged 18–24?

Q13

Do you agree with the eight-step proposed decision making process?

Q14

Do you think that the range for category 3 GBH (section 20) cases should include custody at its upper limit or recommend only non-custodial disposals?

Q15

Do you agree that the starting point for common assault should be a community order?

Q16

Do you agree with the proposed offence ranges, category ranges and starting points for all of the offences in the draft guideline?

Q17

Do you agree with removing the distinction between a high, medium and low community order from the offence ranges?

Q18

Do you think that the aggravating/mitigating factors of harm within the draft guideline sufficiently allow the court to take into account consideration of victims, or are there other ways in which victims could be considered?

Q19

Do you agree that the proposed decision making process will increase transparency and therefore public confidence in the sentencing process? Are there any other ways in which the proposed guideline could increase public understanding and confidence?

# Annex B: Draft guideline

## Introduction

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this as a draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older regardless of the date of the offence.

This guideline covers the following offences:

- offences contrary to sections 18, 20, 47 and 38 of the Offences against the Person Act 1861;
- assault on a police constable in execution of his duty; and
- common assault.

When preparing sentencing guidelines, the Council has had regard to the following statutory duties set out in the Coroners and Justice Act 2009:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring the operation and effect of its sentencing guidelines.

Section 125(1)(a) of the Coroners and Justice Act 2009 provides that:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline is the principal point of reference in all assault cases. This guideline incorporates some relevant parts of the Sentencing Guidelines Council’s existing guidelines, *Overarching Principles: Seriousness* and *Overarching Principles: Domestic Violence*. For assault cases, courts should refer to these guidelines if they require further clarification of an issue. In particular, courts should regard offences committed in a domestic context as being no less serious than offences committed in a non-domestic context. Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious.



This guideline applies only to the sentencing of offenders aged 18 and older. General principles to be considered in the sentencing of youths are contained in the Sentencing Guidelines Council's definitive guideline, *Overarching Principles – Sentencing Youths*.

Where the court has decided to impose a community sentence, deferred sentence, suspended sentence or a custodial sentence of twelve months or more, they should refer to the Sentencing Guidelines Council's guideline, *New Sentences: Criminal Justice Act 2003*.

### Structure of the guideline, sentencing ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for the court to impose for each type of offence. The Council has specified three *categories* within each offence that reflect the varying degrees of seriousness in which the offence can be committed. The offence range is split into *category ranges* – the range of sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

This guideline introduces a significant change to the applicability of starting points and category ranges. Starting points define the position within given ranges from which to start calculating the provisional sentence within an offence range. Existing Sentencing Guidelines Council guidelines state that the starting point applies only to first time offenders. This guideline moves from an offender based starting point to an offence based starting point. **Within this guideline, starting points should apply to all offences which fall within the corresponding category and are now applicable to all offenders, in all cases.** Only once the starting point has been established should the court take into consideration further aggravating and mitigating factors and previous convictions to adjust the sentence within the range. Similarly, the starting points and category ranges apply to all offenders, whether they have entered a guilty plea or have been convicted following trial. Credit for a guilty plea is only to be taken into consideration at step 4 in the decision making process, after the appropriate sentence has been identified.

# Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

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This is a serious offence for the purposes of sections 225 and 227  
of the Criminal Justice Act 2003

Maximum: Life imprisonment  
Offence range: 3–16 years' imprisonment

**STEP ONE**

**Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender’s culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

**Factors indicating greater harm**

Injury which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is minor in the context of the offence

**Factors indicating higher culpability**

*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)

*Other aggravating factors:*

Degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Offender operating in group or gang

**Factors indicating lower culpability**

Minor role

A greater degree of provocation than normally expected

Lack of premeditation

Mental illness or disability where linked to commission of offence

Excessive self defence

**STEP TWO****Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	12 years' custody	9–16 years' custody
<b>Category 2</b>	6 years' custody	5–9 years' custody
<b>Category 3</b>	4 years' custody	3–5 years' custody

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

**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

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Additional degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Any steps taken to prevent the victim reporting an incident or obtaining assistance

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age

Lapse of time since the offence where this is not the fault of the offender

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Dangerousness**

Causing grievous bodily harm with intent to do grievous bodily/wounding with intent to do grievous bodily harm is a serious offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP EIGHT****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

# Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

GBH s.20

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These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 20): 5 years' imprisonment

Maximum (section 29): 7 years' imprisonment

Offence range: Community order – 4 years' imprisonment

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

**Factors indicating greater harm**

Injury which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is minor in the context of the offence

**Factors indicating higher culpability***Statutory aggravating factors:*

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

*Other aggravating factors:*

Degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Offender operating in group or gang

**Factors indicating lower culpability**

Minor role

A greater degree of provocation than normally expected

Lack of premeditation

Mental illness or disability where linked to commission of offence

Excessive self defence

**STEP TWO****Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	3 years' custody	2–4 years' custody
<b>Category 2</b>	12 months' custody	6 months – 2 years' custody
<b>Category 3</b>	Community order	Community order – 6 months' custody

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions <b>or</b> no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

<b>Further statutory aggravating factor</b>	Offence racially or religiously aggravated
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**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP EIGHT****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

# Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

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These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 47): 5 years' imprisonment

Maximum (section 29): 7 years' imprisonment

Offence range: Fine – 4 years' imprisonment

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) <b>and</b> lower culpability; <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender’s culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

<b>Factors indicating greater harm</b>	
Injury which is serious in the context of the offence (must normally be present)	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Victim is particularly vulnerable because of personal circumstances	Intention to commit more serious harm than actually resulted from the offence
Sustained or repeated assault on the same victim	Deliberately causes more harm than is necessary for commission of offence
<b>Factors indicating lesser harm</b>	Deliberate targeting of vulnerable victim
Injury which is minor in the context of the offence	Offender operating in group or gang
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Minor role
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental illness or disability where linked to commission of offence
Degree of premeditation	Excessive self defence

## STEP TWO

### Starting point and category range

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
<b>Category 1</b>	2 years 6 months’ custody	2–4 years’ custody
<b>Category 2</b>	6 months’ custody	Community order – 2 years’ custody
<b>Category 3</b>	Community order	Fine – Community order

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions <b>or</b> no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

<b>Further statutory aggravating factor</b>	Offence racially or religiously aggravated
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**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP EIGHT****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault with intent to resist arrest

## Offences against the Person Act 1861 (section 38)

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This is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum: 2 years' imprisonment

Offence range: Fine – 12 months' imprisonment

## STEP ONE

### Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender’s culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

#### Factors indicating greater harm

Sustained or repeated assault on the same victim

#### Factors indicating lesser harm

Injury which is minor in the context of the offence

#### Factors indicating higher culpability

##### *Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)

##### *Other aggravating factors:*

Degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Offender operating in group or gang

#### Factors indicating lower culpability

Minor role

Lack of premeditation

Mental illness or disability where linked to commission of offence

**STEP TWO****Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	6 months' custody	3–12 months' custody
<b>Category 2</b>	Community order	Community order
<b>Category 3</b>	Fine	Fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

**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

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Additional degradation of victim

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Any steps taken to prevent the victim reporting an incident or obtaining assistance

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age



**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP EIGHT****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

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Maximum: 6 months' imprisonment

Offence range: Fine – 6 months' imprisonment

**STEP ONE**

**Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> Lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender’s culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

<b>Factors indicating greater harm</b>	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Sustained or repeated assault on the same victim	Intention to commit more serious harm than actually resulted from the offence
<b>Factors indicating lesser harm</b>	Deliberately causes more harm than is necessary for commission of offence
No injury	Offender operating in group or gang
<b>Factors indicating higher culpability</b>	<b>Factors indicating lower culpability</b>
<i>Statutory aggravating factors:</i>	Minor role
Offence racially or religiously aggravated	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Mental illness or disability where linked to commission of offence
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)	
<i>Other aggravating factors:</i>	
Degree of premeditation	

**STEP TWO****Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	3 months' custody	Community order – 6 months' custody
<b>Category 2</b>	Community order	Community order
<b>Category 3</b>	Fine	Fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

**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

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Additional degradation of victim

Failure to comply with previous court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Any steps taken to prevent the victim reporting an incident or obtaining assistance

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination to address addiction or offending behaviour

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

Isolated incident

Youth/lack of maturity or age

Lapse of time since the offence where this is not the fault of the offender

**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP SEVEN****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Common Assault

Criminal Justice Act 1988 (section 39)

# Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

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Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum (section 39): 6 months' imprisonment

Maximum (section 29): 2 years' imprisonment

Offence range: Discharge – 6 months' imprisonment

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> higher culpability
<b>Category 2</b>	Greater harm (injury or fear of injury must normally be present) <b>and</b> lower culpability; <b>or</b> Lesser harm and higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine the offender's culpability in committing the offence and the harm caused, or intended to be caused, by reference only to the factors identified in the table below. These factors comprise the principal factual elements of the offence and should therefore determine the offence category.

<b>Factors indicating greater harm</b>	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
<b>Factors indicating lesser harm</b>	Offender operating in group or gang
No injury	<b>Factors indicating lower culpability</b>
<b>Factors indicating higher culpability</b>	Minor role
<i>Statutory aggravating factors:</i>	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	Lack of premeditation
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Mental illness or disability where linked to commission of offence
<i>Other aggravating factors:</i>	Excessive self defence
Degree of premeditation	

**STEP TWO****Starting point and category range**

The court should determine a sentence within the category range set out in the table below. Starting points apply to all offences which fall within the corresponding category. A case of particular gravity, reflected by multiple features of culpability in step 1, could merit an upward adjustment from the starting point before adjusting further for aggravating or mitigating features as set out below.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	Community order	Community order – 6 months' custody
<b>Category 2</b>	Community order	Fine – community order
<b>Category 3</b>	Fine	Discharge – fine

The factors in the table below comprise additional factual elements providing the context of the offence. They also include factors relating to the offender. The court should identify whether any combination of these factors should result in a sentence that is lower or higher than the starting point. In some cases, having considered these factors, it may be appropriate for a court to move outside the identified category range.

These lists are not exhaustive and any other factors not listed here or at step 1 should be taken into account at this stage.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Commission of offence whilst under the influence of alcohol or drugs	
Offence committed whilst on bail	Abuse of power and/or position of trust	
<i>Other aggravating factors include:</i>	Exploiting contact arrangements with a child to commit an offence	
Location of the offence	Any steps taken to prevent the victim reporting an incident or obtaining assistance	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions <b>or</b> no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Additional degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination to address addiction or offending behaviour	
Failure to comply with previous court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Youth/lack of maturity or age	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	

**Section 29 offences only:** The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved.

<b>Further statutory aggravating factor</b>	Offence racially or religiously aggravated
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**STEP THREE****Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

**STEP FOUR****Reduction for guilty pleas**

Once the seriousness of the offence has been established and aggravating and mitigating factors have been taken into consideration, the court will need to take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the existing guilty plea guideline.

**STEP FIVE****Totality principle**

If a court is sentencing an offender for more than one offence, it needs to consider whether the total sentence is balanced and appropriate to the offending behaviour.

**STEP SIX****Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SEVEN****Reasons**

Section 174 of the Criminal Justice Act 2003 places the court under a duty to give reasons for, and explain the effect of, the sentence at the end of the decision making process.

**STEP EIGHT****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

