



Sentencing Guidelines Council

Assault and other offences against the person

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the CJA 2003, every court must have regard to relevant guideline. This guideline applies to the sentencing of offenders convicted of one or more of the types of assault dealt with herein who are sentenced on or after **3 March 2008**.

Additional principles to be considered where the victim of an assault is a child (aged 15 years and under) and the distinct issues relating to the offence of cruelty to a child are contained in a separate Council guideline 'Assaults on children and Cruelty to a child' which is also published today.

In relation to attempted murder a separate guideline will be available in due course.

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

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council. The advice and this guideline are available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE. A summary of the responses to the Council's consultation also appears on the website.

Chairman of the Council
February 2008

CONTENTS

| | |
|--------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Foreword | i |
| Part 1: General principles: | 3-11 |
| A. Assessing seriousness | 3-8 |
| (i) Culpability and harm | 4 |
| (ii) Aggravating and mitigating factors | 5-6 |
| (a) Use of a weapon and parts of the body | 6 |
| (b) Aggravated assaults | 7 |
| (c) Transmission of infection or disease | 8 |
| (d) Provocation | 8 |
| (e) Personal mitigation | 8 |
| B. Dangerous Offenders | 8 |
| C. Compensation orders | 9 |
| D. Ancillary orders | 9 |
| E. Sentencing ranges and starting points | 10 |
| Decision making process | 11 |
| Part 2: Offence guidelines: | |
| A. Causing grievous bodily harm with intent/ Wounding with intent to do grievous bodily harm | 12-13 |
| B. Inflicting grievous bodily harm/Unlawful wounding and Racially/religiously aggravated grievous bodily harm or wounding | 14-15 |
| C. Assault occasioning actual bodily harm and Racially/religiously aggravated actual bodily harm | 16-17 |
| D. Assault with intent to resist arrest | 18-19 |

E. Assault on a Police Constable in the execution of his duty 20-21

F. Common assault and 22-23
Racially/religiously aggravated common assault

Annex A 24-27

Annex B 28-29

ASSAULT AND OTHER OFFENCES AGAINST THE PERSON

Part 1 General principles

Introduction

1. This guideline covers offences of assault which do not result in the death of the victim. They involve the infliction of permanent or temporary harm on a victim by the direct action of an offender, or an intention to cause harm to a victim even if harm does not in fact result.
2. Not all offences that come within paragraph 1 are covered in the guideline; those that are included come before a court relatively frequently. The same set of circumstances could readily result in prosecution for more than one of the offences and these guidelines are intended to bring a coherent approach. The guidelines are based on the sentencing framework introduced by the Criminal Justice Act 2003, to the extent that it has been implemented at the time of publication.
3. Legislative references, statutory definitions, maximum penalties and guidance from the Crown Prosecution Service (CPS) Charging Standard¹ as to the types of injury and other factors that may be considered to constitute each of the offences are listed at Annex A.²
4. Where the offence was committed in a domestic context, sentencers should also refer to the Council guideline 'Overarching Principles: Domestic Violence'.

A. Assessing seriousness

5. The primary factor in considering sentence is the seriousness of the offence committed; that is determined by assessing the culpability of the offender and the harm caused, intended or reasonably foreseeable.³ A community sentence can be imposed only if the court considers that the offence is serious enough to justify it⁴ and a custodial sentence can be imposed only if the court considers that a community sentence or a fine alone cannot be justified in view of the seriousness of the offence.⁵ The Council has published a definitive guideline that guides sentencers determining whether the respective thresholds have been crossed.⁶

1 *The Charging Standard on Offences Against the Person*; www.cps.gov.uk/legal/section5/index.html

2 Please note that, for the purposes of this guideline, the term 'common assault' is used to cover both assault and battery.

3 Criminal Justice Act 2003, s.152(2)

4 *ibid*, s.148(1)

5 *ibid*, s.152(2)

6 *Overarching Principles: Seriousness*, published on 16 December 2004; www.sentencing-guidelines.gov.uk

6. In considering the seriousness of an offence committed by an offender who has one or more previous convictions, the court must consider whether it should treat any of them as an aggravating factor having regard to the nature of the offence to which each conviction relates and its relevance to the current offence, and the time that has elapsed since the conviction (see also page 10 below).⁷

Culpability and harm

7. The culpability of the offender is the initial factor in determining the seriousness of an offence. All offences against the person have the potential to contain an imbalance between culpability and harm. This can produce situations where low culpability produces a high level of harm, high culpability produces no harm at all or where the two are more evenly balanced since the same act can, in different circumstances, produce varied levels of harm. Where this imbalance occurs, the harm has to be judged in the light of the culpability of the offender.⁸
8. Offences against the person are primarily distinguished in statute by the gravity of the injury caused or intended. The CPS Charging Standard follows that statutory hierarchy when deciding which offence should be charged. Although it describes offences in terms of certain injuries, it is inevitable that this cannot cover every situation and the Code for Crown Prosecutors recognises that “there will be factors which may properly lead to a decision not to prefer or continue with the gravest possible charge.”⁹
9. Although the degree of (or lack of) physical harm suffered by a victim may generally influence sentence for offences against the person, the broad statutory definition of harm encompasses not only the harm actually caused by an offence but also any harm that the offence was intended to cause or might foreseeably have caused.
10. An offender can be sentenced only for the offence of which he is convicted and the court is bound by the maximum penalty for that offence even if it considers that the harm caused was sufficient, in principle, to have merited a charge with a higher maximum penalty. However, even for the less serious offences, the range of penalties available is wide. A common assault resulting in no injury (nor involving any intention to cause injury) is likely to receive a lesser sentence than one where injury is caused even though injury is not necessary for the offence to be committed. The sentencer may legitimately sentence on the basis of the harm caused within the maximum available for the offence.
11. **The severity of an injury is not to be used as a means to secure a sentence for an offence that has not been proved but the court should take account of the fact that injury was caused or intended when assessing the seriousness of an offence.**

⁷ Criminal Justice Act 2003, s.143(2)

⁸ *Overarching Principles: Seriousness*, paragraph 1.17, published on 16 December 2004; www.sentencing-guidelines.gov.uk

⁹ *The Charging Standard on Offences Against the Person*, paragraph 1(vii); www.cps.gov.uk/legal/section5

Aggravating and mitigating factors

12. The Seriousness guideline¹⁰ sets out aggravating and mitigating factors that are applicable to a wide range of cases. Care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor. For ease of reference, extracts from the guideline are provided at [Annex B](#).
13. The most common factors that are likely to aggravate an offence against the person are:
 - planning of an offence;
 - offenders operating in groups or gangs;
 - deliberate targeting of vulnerable victim(s);
 - offence is committed against those working in the public sector or providing a service to the public;
 - use of a weapon to frighten or injure victim;
 - a sustained assault or repeated assaults on the same victim; and
 - location of the offence (for example, in an isolated place).
14. Where a number of aggravating factors are present together and form an integral part of the offence, for example in the phenomenon commonly referred to as “happy slapping”, the court will need to consider the combined aggravating effect of these factors. Particular weight will be attached to factors involving further degradation of a victim such as internet publication of the attack.
15. The extent to which prevalence should influence sentence must be determined in accordance with the Council guideline¹¹ which states that “*it is legitimate for the overall response to sentencing levels for particular offences to be guided by their cumulative effect*” but adds that “*enhanced sentences should be exceptional*” and that “*sentencers must sentence within the sentencing guidelines once the prevalence has been addressed.*”
16. Where an offence was committed in the context of an attempted honour killing or in an effort to force a victim into an arranged marriage, the general aggravating factors ‘abuse of trust’ and/or ‘abuse of power’ will invariably be present and will be taken into account when assessing the seriousness of an individual offence.
17. Many assaults or other offences against the person will take place during the hours of darkness. Of itself, that will not make an offence more serious. However, the *isolation* of the victim will be relevant, particularly where that fact was part of the reason why the offence occurred. Similarly where the offender took advantage of poor lighting. In such circumstances, both the *location* of an offence and the *timing* of it can be relevant to the assessment of seriousness of an offence against the person.
18. **Where the timing and/or location of an offence were designed to increase the vulnerability of the victim and/or to reduce the chances of discovery, this should be treated as an aggravating factor.**

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

11 *ibid*, paragraphs 1.36 and 1.37

19. There is a general aggravating factor “Offence is committed against those working in the public sector or providing a service to the public”. This would naturally include those providing emergency services. As with many offences, assaults can cause more than immediate harm to an individual; they can result in reduced, delayed or cancelled services and often involve additional costs to replace or provide cover for victims who are unable to work. They can also discourage people from working in certain jobs and can undermine public confidence. It is not appropriate to list all of those who might come within this provision, and it is for the court to assess the circumstances of an individual case.
20. Where an offence is committed against a person who falls within paragraph 19, and that worker is also particularly vulnerable, this will constitute further aggravation.
21. With the exception of provocation (see below), the guidelines do not identify mitigating factors that are particularly relevant to offences against the person, but any single mitigating factor or combination of factors from the list in the *Seriousness* guideline might be present in an individual offence; a court must always have regard to the complete list in that guideline, whilst also taking into account any other mitigating factors that may be peculiar to the case in question and which cannot be predicted in a generic guideline.

(a) Use of a weapon and parts of the body

22. The use of a weapon (which for the purposes of this guideline includes traditional items such as an iron bar, baseball bat or knife) or part of the body (such as the head or other body part which may be equipped to inflict harm or greater harm for example a shod foot) will usually increase the seriousness of an offence.
 - (i) In relation to culpability, where a weapon is carried by the offender to the scene with the intention of using it or having it available for use should the opportunity or need arise, high culpability is likely to be indicated.
 - (ii) In relation to harm, the type of weapon or part of the body and the way it is used will influence the extent of the effect on the assessment of seriousness. For instance, use of a knife or broken glass raises a high risk of serious injury. Similarly where the offender kicks or stamps on a prone victim, particularly if to a vulnerable part of the body.
23. In these guidelines, relative seriousness of an offence is based on whether the assault was pre-meditated or spontaneous and on the degree of harm that resulted. For some offences, use of a weapon will cause the offence to be in a higher sentencing range than where a weapon is not used; where that is not the case, use of a weapon will increase sentence within the range either through an increase in culpability (see para. 22(i)) or an increase in harm (actual or potential) (see para. 22(ii)).

(b) Aggravated assaults

24. The Crime and Disorder Act 1998¹² provides a maximum penalty of seven years' imprisonment for a racially or religiously aggravated unlawful wounding, GBH or ABH (rather than five years for an offence that is not so aggravated) 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 only offence.
25. The Criminal Justice Act 2003¹³ provides that hostility based on race, religion, sexual orientation or disability is an aggravating factor in relation to all other criminal offences but does not provide for any increase to the maximum penalty for an offence aggravated in this way.
26. In such circumstances, a sentencer should firstly determine the appropriate sentence for the offence without taking account of the element of racial aggravation and then make an addition to the sentence.¹⁴ Where the offence does not attract a higher maximum penalty, the increase in sentence will, of course, be limited by the maximum penalty for the offence.
27. If proved to the requisite standard, the following factors could be taken to indicate a high level of aggravation whether based on the victim's race, religion, disability or sexual orientation:

The offender's intention:

- the aggravated element was a planned part of the offence;
- the offence was part of a pattern of offending by the offender;
- the incident was deliberately set up to be offensive or humiliating to the victim or to the group of which the victim is a member.

The impact on the victim or others:

- the nature, timing or location of the offence was calculated to maximise the harm or distress it caused;
- the offence is shown to have caused fear and distress throughout a local community.

At the lower end of the scale, the aggravated element might be considered as less serious if:

- it was limited in scope or duration;
- the motivation for the offence was not hostility based on the victim's race, religion, disability or sexual orientation, and the element of hostility or abuse based on prejudice was minor or incidental.

12 s.29

13 s.146

14 *Kelly and Donnelly* [2001] Cr App R(S) 73

(c) Transmission of infection or disease

28. Where an offence involves the transmission of infection or disease, (including HIV or a sexually transmitted infection), issues of offender culpability and harm to the victim are complex, particularly where the transmission is through consensual sexual activity. Such an offence is most likely to be prosecuted as contrary to section 18 or section 20. The starting points for such offences under section 18 and 20 are based on an offence committed intentionally. An intention to infect another is likely to be treated as a bad example of the offence charged. Culpability is reduced where an offence is committed recklessly. Where charged as an offence under section 18 or 20, matters of personal mitigation may have particularly high significance.

(d) Provocation

29. The Council has published definitive guidelines which consider the impact that provocation will have on sentencing for manslaughter by reason of provocation (where provocation has been accepted as a partial defence to a charge of murder)¹⁵ and on sentencing offences involving domestic violence.¹⁶
30. The principles established in those guidelines should be taken into account whenever provocation is put forward as a mitigating factor in relation to offences against the person. Where evidence relating to the offender's personal circumstances – such as a history of domestic violence or abuse suffered at the hands of the victim; threats made by the victim; or fear generated by the victim's actions – is entered in mitigation, the court will need to give careful consideration to the degree to which this can be said to have provoked the offence.
31. When sentencing an offender who claims to have been provoked into committing an offence against the person, the court must have regard to the nature and duration of the provocation and any fear, threat or violence generated by the actions of the victim. Where the offence charged was the result of excessive force used in self defence, the degree of provocation will often be recognised in mitigation.

(e) Personal mitigation

32. The sentencing court will take any matters of personal mitigation, including any advanced medical condition, into account and may reduce sentence in an individual case accordingly. The fact that an offender is suffering from any illness should not, of itself or by way of general principle, militate against the imposition of a custodial sentence.

B. Dangerous Offenders

33. Where an offence is a "specified offence" the court will need to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.¹⁷

15 *Manslaughter by Reason of Provocation*, published 28 November 2005; www.sentencing-guidelines.gov.uk

16 *Overarching Principles: Domestic Violence*., published 7 December 2006; www.sentencing-guidelines.gov.uk

17 Criminal Justice Act 2003, ss.225-229. For details of the legal provisions and relevant case law, see the Sentencing Guidelines Council's *Guide for Sentencers and Practitioners* www.sentencing-guidelines.gov.uk

C. Compensation orders

34. A court must consider making a compensation order in respect of any personal injury, loss or damage occasioned. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender for an assault or other offence against the person may cause distress. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered. The views of the victim regarding compensation should be made known to the court and respected and, if appropriate, acknowledged at the time of sentencing. A victim may not want compensation from the offender, but this should not be assumed.

D. Ancillary orders

35. A number of ancillary orders are available in relation to offenders convicted of assault or another offence against the person and should be considered in appropriate cases. These include:
- **Exclusion orders** – available where an offence involving the use or threat of violence is committed on licensed premises. An order prohibits the offender from entering specified licensed premises without the consent of the licensee for a period between three months and two years.¹⁸
 - **Drinking banning orders** – an order prohibiting an individual from doing things specified in the order to protect other persons from criminal or disorderly conduct while under the influence of alcohol.¹⁹ An order can have effect for a period of not less than two months and not more than two years.
 - **Anti-social behaviour orders** – can be made in respect of any person convicted of an offence²⁰ where the offender acted in a manner likely to cause harassment, alarm or distress. The court must consider that an order is required to protect against further anti-social acts by the offender and must have effect for at least two years.
 - **Football banning orders** – an order must be made where an offender is convicted of a relevant offence and the court is satisfied that an order would help to prevent violence or disorder.²¹ The term of the order must be between six and ten years if imposed in addition to immediate imprisonment and between three and five years in other cases.

¹⁸ Licensed Premises (Exclusion of Certain Persons) Act 1980, s.1

¹⁹ Violent Crime Reduction Act 2006, s.1 when in force

²⁰ Crime and Disorder Act 1998, s.1C

²¹ Football Spectators Act 1989, s.14A and schedule 1

E. Sentencing ranges and starting points

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a first time offender who has been convicted after a trial. Within the guidelines, a first time offender is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guidelines describe a number of types of activity which would fall within the broad definition of the offence. These are set out in a column headed “type/nature of activity”.
3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the type or nature of offence activity) to reach a **provisional sentence**.
4. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the **provisional sentence** has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.²²

²² Criminal Justice Act 2003, s.174(2)(a)

The Decision Making Process

The process set out below is intended to show that the sentencing approach for assault and other offences against the person is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Many assault offences are specified offences for the purposes of the public protection provisions in the 2003 Act. The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders who do not meet the dangerous offender criteria and b) as the basis for the setting of a minimum term within an indeterminate sentence for those who do meet the criteria.

2. Identify the appropriate starting point

Because many acts can be charged as more than one offence, consideration will have to be given to the appropriate guideline once findings of fact have been made. The sentence should reflect the facts found to exist and not just the title of the offence of which the offender is convicted.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), below the range provided, or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "*Reduction in Sentence for a Guilty Plea*" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so.

Part 2 Offence guidelines

A. Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Factors to take into consideration:

1. Causing GBH or wounding with intent is a serious offence for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above).
3. As conviction for a section 18 offence requires proof of an intention to cause grievous bodily harm, the level of culpability is high. A significant custodial sentence should be expected.
4. If an offender was acting in self-defence originally but then went on to use an unreasonable degree of force this might mitigate sentence. However, because of the requirement to prove intention, the offence will still be at the higher end of the seriousness scale. Depending on the degree of harm caused, a lengthy custodial sentence would normally be justified.
5. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²³

²³ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

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)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTIONS 225 AND 227 CRIMINAL JUSTICE ACT 2003.

Maximum penalty: Life imprisonment.

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

| Additional aggravating factors | Additional mitigating factors |
|--------------------------------|-------------------------------|
| | Provocation |

B. Inflicting grievous bodily harm/Unlawful wounding

Factors to take into consideration:

1. Inflicting GBH/Unlawful wounding and the aggravated form of the offence are specified offences for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above). Matters of personal mitigation are often highly relevant to sentencing for this offence and may justify a non-custodial sentence, particularly in the case of a first time offender. Such a disposal might also be considered appropriate where there is a guilty plea.
3. As conviction for a section 20 offence requires proof that the offender inflicted a wound or caused serious harm²⁴ to the victim, the nature and degree of harm caused by a section 20 offence can be the same as for a section 18 offence; the difference is in the level of culpability. The maximum penalty is significantly lower (5 years' as opposed to life imprisonment) and the sentencing ranges proposed below reflect the significant difference in culpability and maximum penalty.
4. Offences contrary to section 20 and section 47 carry the same maximum penalty of 5 years imprisonment. However, the definitions of the offences make it clear that the degree of harm in a section 20 offence will be more serious. The CPS Charging Standard provides that more minor injuries should be charged under section 47. Where the offence ought to be sentenced as an assault occasioning actual bodily harm, that guideline should be used.
5. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²⁵
6. For racially or religiously aggravated offences, sentencers should use the guideline to determine the appropriate sentence for the offence before taking account of the aggravation by applying the principles summarised in paragraphs 24-27 above.

²⁴ The Charging Standard indicates that an offence contrary to section 20 should be reserved for those wounds considered to be serious (thus equating the offence with the infliction of grievous or serious bodily harm under the other part of the section).

²⁵ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Inflicting grievous bodily harm/Unlawful wounding

Offences Against the Person Act 1861 (section 20)

and

Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

THESE ARE SPECIFIED OFFENCES FOR THE PURPOSES OF SECTION 224 OF THE CRIMINAL JUSTICE ACT 2003.

Maximum Penalty (section 20): 5 years imprisonment.

Maximum Penalty (section 29): 7 years imprisonment

| Type/nature of activity | Starting point | Sentencing range |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------|
| Particularly grave injury or disfigurement results from a pre-meditated assault where a weapon has been used | 3 years custody | 2 – 4 years custody |
| Pre-meditated assault where a weapon has been used OR Other assault where particularly grave injury results or a weapon has been used | 18 months custody | 12 months – 3 years custody |
| Pre-meditated assault where no weapon has been used | 36 weeks custody | 24 weeks – 18 months custody |
| Other assault where no weapon has been used | 24 weeks custody | Community Order (High) – 36 weeks custody |

| Additional aggravating factors | Additional mitigating factors |
|--------------------------------|-------------------------------|
| | Provocation |

C. Assault occasioning actual bodily harm

Factors to take into consideration:

1. Assault occasioning actual bodily harm and the aggravated form of the offence are specified offences for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above). Matters of personal mitigation are often highly relevant to sentencing for this offence and may justify a non-custodial sentence, particularly in the case of a first time offender. Such a disposal might also be considered appropriate where there is a guilty plea.
3. The level of culpability for an offence of ABH is the same as that for an offence of common assault; all that the prosecution must prove is that force was intentionally or recklessly used on another. What distinguishes the two offences is the nature of the injury caused to the victim and this will be the key factor for the CPS to consider when deciding which offence to charge. Injuries consistent with an offence of ABH are likely to be of a type listed in Annex A.
4. Where a weapon is used and the assault is pre-meditated, that will cause the offence to be in the highest sentencing range. Where that is not the case, possession and/or use of a weapon is likely to increase sentence within the range either through an increase in culpability or an increase in harm (actual or potential). See paragraphs 22-23 above.
5. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²⁶
6. For racially or religiously aggravated offences, sentencers should use the guideline to determine the appropriate sentence for the offence before taking account of the aggravation by applying the principles summarised in paragraphs 24-27 above.

²⁶ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Assault occasioning actual bodily harm

Offences Against the Person Act 1861 (section 47)

and

Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

THESE ARE SPECIFIED OFFENCES FOR THE PURPOSE OF SECTION 224 OF THE CRIMINAL JUSTICE ACT 2003.

Maximum Penalty (section 47): 5 years imprisonment

Maximum Penalty (section 29): 7 years imprisonment

| Type/nature of activity | Starting point | Sentencing range |
|-----------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|----------------------------------------------------|
| Pre-meditated assault EITHER resulting in injuries just falling short of GBH OR involving the use of a weapon | 30 months custody | 2 – 4 years custody |
| Pre-meditated assault resulting in relatively serious injury | 12 months custody | 36 weeks – 2 years custody |
| Pre-meditated assault resulting in minor, non-permanent injury | 24 weeks custody | 12 – 36 weeks custody |
| Other assault resulting in minor, non-permanent injury | Community Order (HIGH) | Community Order (MEDIUM) – 26 weeks custody |

| Additional aggravating factors | Additional mitigating factors |
|--------------------------------|----------------------------------------|
| | 1. Provocation 2. Unintended injury |

D. Assault with intent to resist arrest

Factors to take into consideration:

1. Assault with intent to resist arrest is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above).
3. The expectation is that this offence will involve little or no physical harm (it is anticipated that more serious injuries would result in a charge of assault occasioning ABH) and so sentencing will largely be guided by the level of offender culpability.
4. The additional element of intent in this offence relates to the attempt to resist arrest and involves an inherent aggravating factor not present in the offence of common assault in that the victim (whether a police officer or a member of the public carrying out a citizen's arrest) was performing a public service.
5. If the offender is prosecuted for the offence which gave rise to the arrest, the sentences imposed would normally be consecutive.
6. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²⁷

²⁷ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Assault with intent to resist arrest

Offences Against the Person Act 1861 (section 38)

THIS IS A SPECIFIED OFFENCE FOR THE PURPOSE OF SECTION 224 OF THE CRIMINAL JUSTICE ACT 2003.

Maximum Penalty: 2 years imprisonment.

| Type/nature of activity | Starting point | Sentencing range |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-------------------------------------------------|
| Persistent attempt to resist arrest OR Use of force or threats of force over and above that inherent in the offence | 36 weeks custody | 24 weeks – 18 months custody |
| Assault (defined as including spitting) resulting in minor, non-permanent injury | Community Order (HIGH) | Community Order (LOW) – 26 weeks custody |
| Assault where no injury caused | Community Order (LOW) | Fine to Community Order (HIGH) |

| Additional aggravating factors | Additional mitigating factors |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. Escape 2. Head butting, kicking or biting 3. Picking up an item to use as a weapon, even if not used | <ol style="list-style-type: none"> 1. Genuine belief that the arrest was unlawful where this does not found a defence to the charge |

E. Assault on a police constable in execution of his duty

Factors to take into consideration:

1. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above).
2. The expectation is that this offence will involve little or no physical harm (it is anticipated that more serious injuries would result in a charge of assault occasioning ABH) and so sentencing will largely be guided by the level of offender culpability. In common with assault with intent to resist arrest, the offence involves an inherent aggravating factor not present in the offence of common assault in that the victim was performing a public service.
3. The levels of harm and culpability will be comparable to the offence of assault with intent to resist arrest and the offences are likely to be committed in similar circumstances. However, the maximum penalty for this offence is lower and this has influenced the sentencing ranges proposed.
4. Where the offence involves a sustained assault it will generally fall into the highest category of seriousness. Where no injury is occasioned, the appropriate sentence may be at the lower end of the range.
5. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²⁸

²⁸ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

THE FOLLOWING GUIDELINE IS BASED ON THE ASSUMPTION THAT MORE SERIOUS INJURIES WOULD BE CHARGED AS ABH.

Maximum Penalty: 6 months imprisonment

| Type/nature of activity | Starting point | Sentencing range |
|----------------------------------------------------------------------------------|-------------------------------|--------------------------------------------------|
| Sustained assault resulting in minor, non-permanent injury | 18 weeks custody | Community Order (HIGH) – 24 weeks custody |
| Assault (defined as including spitting) resulting in minor, non-permanent injury | Community Order (HIGH) | Fine – 18 weeks custody |
| Assault where no injury caused | Community Order (LOW) | Fine to Community Order (MEDIUM) |

| Additional aggravating factors | Additional mitigating factors |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> 1. Escape 2. Head butting, kicking or biting 3. Picking up an item to use as a weapon, even if not used | <ol style="list-style-type: none"> 1. Genuine belief that the arrest was unlawful where this does not found a defence to the charge |

F. Common assault

Factors to take into consideration:

1. Racially or religiously aggravated common assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guidelines apply to offenders who have not been assessed as dangerous.**
2. The suggested starting points in the guideline are based upon a first-time adult offender convicted after a trial (see page 10 above).
3. An offence is committed when a defendant intentionally or recklessly causes a victim to apprehend immediate unlawful force, or when such force is used. This offence is different from the other offences covered in this guideline in that there is no need for injury to have been sustained or intended. In many cases, however, it is likely that there will be such an injury; indeed, there may be an overlap with the offence of assault occasioning actual bodily harm.
4. Since there is likely to be a wider range of relevant factors than for the other offences included in this guideline, a different approach has been adopted which defines where the sentencing thresholds are crossed by reference to the type and number of aggravating factors.
5. In accordance with the Seriousness guideline, the culpability of an offender is the initial factor in determining the seriousness of an offence. Factors indicating higher culpability are most relevant in terms of the threshold criteria for certain sentences in cases of common assault where no injury may have been inflicted but the victim was put in fear of violence. The list on the facing page is not intended to be exhaustive.
6. Where aggravating factors indicating a more than usually serious degree of harm are present, they will influence the determination of the appropriate sentence within the bracket of options available where a particular threshold has been crossed.
7. It is recognised that not all aggravating factors carry the same weight and that flexibility is required to avoid an over-prescriptive approach to when a threshold is passed. For that reason, the word “normally” has been used in relation to the point at which the sentencing thresholds are crossed.
8. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.²⁹
9. For racially or religiously aggravated offences, sentencers should use the guideline to determine the appropriate sentence for the offence before taking account of the aggravation by applying the principles summarised in paragraphs 24-27 above

²⁹ *Overarching Principles: Seriousness*, published on 16 December 2004; www.sentencing-guidelines.gov.uk

Common assault

Criminal Justice Act 1988 (section 39)
and

Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

RACIALLY OR RELIGIOUSLY AGGRAVATED COMMON ASSAULT IS A SPECIFIED OFFENCE FOR THE PURPOSES OF SECTION 224 OF THE CRIMINAL JUSTICE ACT 2003

Maximum Penalty (section 39): 6 months imprisonment

Maximum Penalty (section 29): 2 years imprisonment

| Nature of failure & harm | Starting point |
|---------------------------------------------------------------------------------------------------------------------------|------------------------|
| The custody threshold normally is passed where two or more aggravating factors indicating higher culpability are present | Custody |
| The community sentence threshold normally is passed where one aggravating factor indicating higher culpability is present | Community Order |
| Assault where no injury caused | Fine |

| Common aggravating factors | Common mitigating factors |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <p>Factors indicating higher culpability:</p> <ol style="list-style-type: none"> 1. Use of a weapon to frighten or harm the victim 2. Offence was planned or sustained 3. Head-butting, kicking, biting or attempted strangulation 4. Offence motivated by, or demonstrating, hostility to the victim on account of his or her sexual orientation or disability 5. Offence motivated by hostility towards a minority group, or a member or members of it 6. Abuse of a position of trust 7. Offence part of a group action <p>Factors indicating a more than usually serious degree of harm:</p> <ol style="list-style-type: none"> 8. Injury 9. Victim is particularly vulnerable or providing a service to the public 10. Additional degradation of the victim 11. Offence committed in the presence of a child 12. Forced entry to the victim's home 13. Offender prevented the victim from seeking or obtaining help 14. Previous violence or threats to same victim | <ol style="list-style-type: none"> 1. Provocation 2. Single push, shove or blow |

Annex A: Statutory provisions and CPS guidance relating to offences covered in the guideline

| Offence | Statutory provision creating offence | Statutory definition | Maximum custodial term available in Crown Court | Maximum custodial term available in Magistrates' Court |
|------------------------------------------------------------------------------------------------|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|--------------------------------------------------------|
| Attempted Murder | Criminal Attempts Act 1981 Section 1(1) | If with intent to unlawfully kill another...a person does an act...which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit murder. | Life | N/A |
| Causing grievous bodily harm with intent or wounding with intent to cause grievous bodily harm | Offences Against the Person Act 1861 Section 18 | Unlawfully and maliciously by any means whatsoever wounding or causing any grievous bodily harm to any person, with intent to do some grievous bodily harm or to resist or prevent the lawful apprehension or detention of any person. | Life | N/A |
| Unlawful wounding /causing grievous bodily harm | OAPA Section 20 | Unlawfully and maliciously wounding or inflicting any grievous bodily harm upon any other person, either with or without a weapon | 5 years | 6 months |
| Assault occasioning actual bodily harm | OAPA Section 47 | Any assault occasioning actual bodily harm | 5 years | 6 months |
| Assault with intent to resist arrest | OAPA section 38 | Assaulting any person with intent to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence. | 2 years | 6 months |
| Assault on a police constable in execution of his duty. | Police Act 1996 section 89 | An assault on a police officer in the execution of his duty, or someone assisting a police officer in execution of his duty. ³⁰ | N/A | 6 months |
| Common assault | Criminal Justice Act 1988 section 39 | Intentionally or recklessly causing the complainant to apprehend or sustain immediate unlawful personal violence. | N/A | 6 months |

³⁰ This definition has been abridged.

CPS Guidance

1. The individual circumstances of assaults vary widely and the statutory definitions allow a wide interpretation as to what constitutes a particular offence. The CPS Charging Standard provides a practical interpretation of the statutory definitions and includes a helpful list of the types of injuries and other factors that may be considered as constituting a particular offence. The following paragraphs provide a description of each offence covered in the, based on the wording in the Charging Standard.

Attempted Murder

2. An offence of murder is committed where it is proven that the defendant unlawfully killed the victim having had the intention to kill or to cause grievous bodily harm. According to the CPS Charging Standard, evidence of the following factors may assist in proving an intention to kill:³¹
 - calculated planning;
 - selection and use of a deadly weapon;
 - threats;
 - severity or duration of attack;

Wounding with Intent to do Grievous Bodily Harm or Causing Grievous Bodily Harm with Intent to do Grievous Bodily Harm (section 18)

3. Grievous bodily harm has the meaning of really serious bodily harm³² and can include psychological harm, usually referred to by the courts as psychiatric injury.³³ Wounding means the breaking of the continuity of the outer skin. The CPS Charging Standard advises that the following injuries usually amount to really serious bodily harm:³⁴
 - injury resulting in permanent disability or permanent loss of sensory function;
 - injury which results in more than minor permanent, visible disfigurement; broken or displaced limbs or bones, including fractured skull;
 - compound fractures, broken cheek bone, jaw, ribs, etc;
 - injuries which cause substantial loss of blood, usually necessitating a transfusion;
 - injuries resulting in lengthy treatment or incapacity;
 - psychiatric injury (appropriate expert evidence is essential to prove the injury).

³¹ *The Charging Standard on Offences Against the Person*, paragraph 7(vii); www.cps.gov.uk/legal/section5/index.html

³² *Brown; Stratton* [1998] Crim LR 485

³³ *Burstow; Ireland* [1998] A.C 147

³⁴ *The Charging Standard on Offences Against the Person*, paragraph 5(v); www.cps.gov.uk/legal/section5/index.html

4. In addition to showing that the offence resulted in grievous bodily harm, the prosecution must prove that the offender had a specific intent to cause that level of harm. The CPS suggests that factors which may indicate a specific intent include:³⁵
- a repeated or planned attack;
 - deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack;
 - making prior threats;
 - using an offensive weapon against, or kicking, the victim's head.

Unlawful Wounding or Inflicting Grievous Bodily Harm (section 20)

5. The level of harm involved in a section 20 offence is the same as that for a section 18 offence and the types of injury that may constitute either offence are the same (see paragraph 3). However, the Charging Standard³⁶ advises that, while the definition of wounding “*may encompass injuries that are relatively minor in nature, for example a small cut or laceration, an assault resulting in such minor injuries should more appropriately be charged contrary to section 47*” (ABH – see below). “*An offence contrary to section 20 should be reserved for those wounds considered to be serious (thus equating the offence with the infliction of grievous or serious bodily harm under the other part of the section).*”
6. The prosecution does not need to prove that the defendant either intended or foresaw that the unlawful act might cause physical harm amounting to grievous bodily harm, but only that some harm was either intended or could have been foreseen.³⁷

Assault Occasioning Actual Bodily Harm (ABH)

7. Bodily harm is any hurt or injury calculated to interfere with the health or comfort of the victim³⁸ (including psychiatric harm or injury³⁹).
8. The CPS Charging Standard states that the following injuries should lead to a charge of assault occasioning actual bodily harm:⁴⁰
- loss or breaking of a tooth or teeth;
 - temporary loss of sensory functions (which may include loss of consciousness);
 - extensive or multiple bruising;
 - displaced broken nose;
 - minor fractures;
 - minor, but not merely superficial, cuts of a sort probably requiring medical treatment (e.g. stitches);
 - psychiatric injury that is more than mere emotions such as fear, distress or panic. (Where psychiatric injury is relied upon, as the basis for an allegation of assault occasioning actual bodily harm, and the matter is not admitted by the defence, expert evidence must be called by the prosecution.)

35 *ibid.*, paragraph 6(vii)

36 *ibid.*, paragraph 5(iv)

37 *ibid.*, paragraph 5(vii)

38 *Donovan* [1994] 2 KB 498, 25 Cr App R 1, CCA

39 *Burstow; Ireland* [1998] A.C 147

40 *The Charging Standard on Offences Against the Person*, paragraph 4(ii); www.cps.gov.uk/legal/section5/index.html

Assault With Intent to Resist Arrest.⁴¹

9. This assault may be committed against persons other than police officers – for example store detectives who may be trying to apprehend or detain an offender. The CPS Charging Standard⁴² advises that, if an assault is committed against a police officer, a charge of assaulting a police constable (see paragraph 10) may be more appropriate unless there is clear evidence of an intention to resist arrest.

Assault on a Police Constable in Execution of his Duties

10. The CPS Charging Standard⁴³ advises that this offence should be charged where the injuries sustained are equivalent to those for common assault (see paragraph 11) and that *“when the injuries are such that an offence contrary to section 47 (ABH) would be charged in relation to assault on a member of the public, section 47 will be the appropriate charge for an assault on a constable.”*

Common Assault

11. An offence of common assault is committed where it is proven that the defendant assaulted the victim or committed a battery. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force.⁴⁴ A battery is committed when a person intentionally and recklessly applies unlawful force to another.⁴⁵ For the purposes of this paper the term ‘common assault’ is used to cover both assault and battery.
12. The broad definition of common assault covers conduct that does not result in any injury but which puts the victim in fear of violence. Such conduct can include an attempted blow which is not competently executed and acts such as spitting. Where an injury has occurred, the CPS Charging Standard advises that the following injuries justify a charge of common assault:⁴⁶
 - grazes;
 - scratches;
 - abrasions;
 - minor bruising;
 - swellings;
 - reddening of the skin;
 - superficial cuts;

41 Offences Against the Person Act 1861, s.38

42 *The Charging Standard on Offences Against the Person*, paragraph 3(iv); www.cps.gov.uk/legal/section5/index.html

43 *ibid*, paragraph 2(iv)

44 Archbold 19-166

45 *ibid*. 19-166a

46 *The Charging Standard on Offences Against the Person*, paragraph 1(vii); www.cps.gov.uk/legal/section5/index.html

Annex B: The factors below apply to a wide range of offences. Not all will be relevant to assault and other offences against the person.

Factors indicating higher culpability:

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

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)

- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

Factors indicating significantly lower culpability:

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

Personal mitigation

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

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

ARCHIVED: NOT IN USE - FOR REFERENCE ONLY

ARCHIVED: NOT IN USE - FOR REFERENCE ONLY