

Assault Offences Consultation

April 2020

Assault Offences

Consultation

About this consultation

To:	This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
Duration:	From 16 April 2020 to 15 September 2020
Enquiries (including requests for the paper in an alternative format) to:	<p>Office of the Sentencing Council Royal Courts of Justice (full address as below)</p> <p>Tel: 020 7071 5793 Email: info@sentencingcouncil.gov.uk</p>
How to respond:	<p>Please send your response by 15 September 2020 to:</p> <p>Lisa Frost Office of the Sentencing Council Room EB20 Royal Courts of Justice Strand London WC2A 2LL</p> <p>Email: consultation@sentencingcouncil.gov.uk</p>
Additional ways to feed in your views:	<p>This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:</p> <p>www.sentencingcouncil.org.uk</p> <p>A series of consultation meetings is also taking place. For more information, please use the “Enquiries” contact details above.</p>
Response paper:	Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
Freedom of information:	<p>We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.</p> <p>In addition, responses may be shared with the Justice Committee of the House of Commons.</p> <p>Our privacy notice sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.</p>

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

Why Assault offences?

The Sentencing Council's *Assault Definitive Guideline* was the first guideline developed by the Sentencing Council and came into force in 2011. It includes guidelines for sentencing offences under the Offences Against the Person Act 1861: section 18 GBH (Causing grievous bodily harm/wounding with intent); section 20 GBH (Inflicting grievous bodily harm/unlawful wounding); section 47 ABH (Assault occasioning actual bodily harm) and section 38 Assault with intent to resist arrest.

The offences of assault on a police constable in the execution of his duty contrary to Section 89 of the Police Act 1996 and common assault contrary to Section 39 of the Criminal Justice Act 1988 are also included.

The Council carried out an [evaluation](#) of the guideline and published its assessment in 2015. The evaluation assessed the impact of the guideline on sentencing outcomes and whether there were any implementation issues.

It was identified that overall the guideline slightly decreased sentencing severity, which was attributed to the downward impact of the guideline on sentences for common assault, which is the highest volume offence covered by the assault guideline. However, despite this overall decrease in sentence severity, two offences in particular – GBH with intent (s18) and ABH (s47) – were found to have impacts different from those expected on the introduction of the guideline. For GBH with intent, the guideline resulted in sentences increasing in excess of that estimated. For ABH, despite the estimate that the guideline would result in less severe sentences the evaluation stated that sentences increased. For common assault (s39) offences, sentencing severity decreased and was broadly consistent to that anticipated. Likewise, for assault on a police officer (s89) offences, there was a shift towards less severe disposal types, as anticipated. For GBH (s20) offences, there were minor increases in sentencing severity, but these had been anticipated and were within the bounds of historic fluctuations in sentencing levels.

As a result of the evaluation findings, the Council decided to review the current *Assault Definitive Guideline* and identify the causes of the unintended impacts of the guidelines and any action which may be required to address these. This work was due to commence shortly after the evaluation was published, but around that time the Law Commission published recommendations for legislative reforms to offences against the person. The Council did not wish to revise the guideline if there were to be a risk that it would become quickly outdated, so awaited the outcome of the proposals. When it became apparent that the reforms would not be implemented in the foreseeable future, work commenced to

revise the guideline. The Council also decided to revise the *Attempted Murder Definitive Guideline* developed by its predecessor body the Sentencing Guidelines Council, and have included this in the assault offences guideline as it represents the most serious non-fatal assault offence. New legislation has also recently been introduced to increase sentences for Assaults on Emergency Workers, so the Council has reflected this legislation in the revised guideline.

Assault offences are high volume offences both in magistrates' courts and the Crown Court. In 2018 there were around 55,300 adult offenders sentenced for offences covered by the existing guideline, 83 per cent were sentenced in the magistrates' courts, and 17 per cent in the Crown Court.¹

The revised assault offences guidelines will provide sentencers across the Crown Court and magistrates' courts with guidance for sentencing all of the offences listed below, which will assist in achieving the Council's objective of consistent sentencing, and provide transparency for the public regarding the penalties for these offences.

Which offences are covered by the revised guidelines?

- Common assault – section 39 Criminal Justice Act 1988; Racially/religiously aggravated Common assault - section 29 Crime and Disorder Act 1998
- Common assault of an emergency worker - section 1 Assaults on Emergency Workers (Offences) Act 2018
- Assault with intent to resist arrest – section 38 Offences Against the Person Act 1861
- Assault occasioning actual bodily harm - section 47 Offences Against the Person Act 1861; Racially/religiously aggravated ABH - section 29 Crime and Disorder Act 1998
- Inflicting grievous bodily harm/Unlawful wounding - section 20 Offences Against the Person Act 1861; Racially/religiously aggravated GBH/Unlawful wounding - section 29 Crime and Disorder Act 1998
- Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm - section 18 Offences Against the Person Act 1861
- Attempted murder - s1(1) Criminal Attempts Act 1981

What is the Council consulting about?

The Council has produced this consultation paper in order to seek views from as many people as possible interested in the sentencing of assault offences.

However, it is important to clarify that the Council is consulting on sentencing guidelines for these offences and not the legislation upon which such offences are based. The

¹ The statistics in this document are sourced from the Court Proceedings Database, Ministry of Justice.

relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the types and lengths of sentence that should be passed;
- differences between the current guidelines and these new, revised guidelines; and
- anything else you think should be considered.

A summary of the consultation questions can be found at **Annex B**.

What else is happening as part of the consultation process?

This is a five month public consultation. The Council has extended the standard consultation period in recognition that many organisations and individuals are working in difficult circumstances due to the current Coronavirus health crisis and may therefore require more time to coordinate and draft a response. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all courts.

Alongside this consultation paper, the Council has produced an online questionnaire. The Council has also produced a resource assessment for the guideline, along with a statistical bulletin and data tables showing current sentencing practice for these offences. The online questionnaire, resource assessment, statistical bulletin and data tables can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

In the following sections each of the proposed guidelines is outlined in detail and you will be asked to give your views. You can give your views by answering questions on just the areas or guidelines which you are interested in or all of the questions below, either by email to consultation@sentencingcouncil.gov.uk or by using the online questionnaire.

Section One: Overarching issues and the context of the guidelines

This has been an extensive and complex project representing a major revision of the first guideline published by the Sentencing Council. While the evaluation highlighted a number of areas which may require consideration as part of revising the guideline, extensive transcript and statistical analysis and research was required to identify implementation issues and the causes of any unintended impacts which may be attributable to the guideline. In addition, it has been necessary to have regard to the current landscape and trends in assault offending, to ensure the guidelines equip the courts to deal with these offences appropriately.

The consultation seeks views on seven sentencing guidelines for a range of assault offences. These include nearly all offences covered by the existing guideline, and an additional guideline for assaults on emergency workers. A revised guideline for attempted murder is also included. The existing assault guideline includes the offence of assault on a police constable in the execution of their duty contrary to section 89 of the Police Act 1996. As this offence has effectively been replaced by the recently introduced legislative provisions providing for increased sentences for assaults on emergency workers, Crown Prosecution Service charging guidance confirms that it is unlikely the section 89 offence will continue to be charged so this has not been included in the revised guideline.

In developing these revised guidelines for consultation, in addition to transcript and statistical analysis, the Council has had regard to issues identified in the evaluation of the existing guideline which were noted through discussions with sentencers and practitioners. While these discussions showed that most users were positive about the existing guideline, the following were highlighted as particular issues which should be considered in its revision:

- There was general confusion on how to interpret and apply the step one factors of *'injury which is serious in the context of the offence'* and *'injury which is less serious in the context of the offence'*, across all the assault offences.
- The potential for differing interpretations of the step one factors *'sustained or repeated assault on the same victim'* and *'significant degree of premeditation'*.
- Whether there is potential to double count victim vulnerability in the guideline (victim vulnerability is a factor in both harm and culpability in the guideline).
- The model and structure of the guidelines, and changing to the format we have progressed to since early guideline development.
- It was noted that the existing guideline cannot currently accommodate cases of 'medium' harm: harm that is neither the most or the least serious, which may lead to an inaccurate categorisation of harm when using the guideline.

- Whether '*spitting*' should be explicitly referenced as a factor increasing offence seriousness.
- Whether the starting points/ranges within the GBH s18 guideline are too high, particularly the starting point in category one of 12 years.
- Whether the sentence ranges in ABH s47 cases are too low (the ranges were lower than those in the preceding Sentencing Guidelines Council (SGC) guideline) possibly causing some sentencers to go outside the category range.

In analysing transcripts of cases to understand how the existing guideline was being applied, the Council also identified other issues which should be considered in revising the guidelines. These are discussed in the relevant sections of this consultation paper, to explain why changes may have been made.

During the development of the revised guidelines we have held initial discussions with Crown Court and district judges and with magistrates, to understand how the guidelines may be applied in practice. These discussions have informed the content of the guidelines and the Council is very grateful for the time and efforts of those sentencers who have assisted in their development.

Applicability of guidelines

When issued as definitive guidelines these guidelines will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Sentencing Council's definitive guideline, [Overarching Principles – Sentencing Children and Young People](#).

The guidelines in relation to current practice and existing guidelines

In preparing the revised guidelines, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

As a first step, the Council considered the evaluation of the existing guideline, published in October 2015, which was based on analysis of statistical data,² and qualitative research conducted with sentencers.

The Council also considered more recent statistical data from the Ministry of Justice's Court Proceedings Database for the offences covered in the guideline to get a picture of current sentencing levels. In addition, an analysis of transcripts of Crown Court judges' sentencing remarks was carried out, covering the sentencing of around 300 offenders, in order to better understand how judges are using the existing guideline and any potential areas where change is needed, as well as how any changes made to the guideline might affect sentencing practice.

When analysing these different data sources, the Council has considered how the current guideline is being used, including which factors are currently being used as expected, and

² Sources included the Ministry of Justice's Court Proceedings Database, and the Crown Court Sentencing Survey.

whether any factors are causing problems for sentencers given the nature of offending that comes before them in the courts today.

Finally, early research was carried out to gather sentencers' views on the current assault offences guidelines, and to test the effectiveness of draft guidelines to inform their development.

Approach to revising the guidelines

The Council has considered what changes might be needed in light of the evaluation and changes to assault offending noted above.

The Council has reviewed all elements of the current guidelines, including harm and culpability factors, sentence levels, aggravating and mitigating factors and other elements of guidance to sentencers, and has considered both the overall approach taken and the detail of factors and sentence levels.

Since the existing *Assault Definitive Guideline* was developed the structure of guidelines has evolved. The Council has revised the format to reflect the current approach to its guideline structure, and the stepped approach to sentencing.

Section Two: Common assault and related offences

Common Assault

This section covers the less serious assault offences. Assault and battery, sometimes collectively called “common assault” are the highest volume offences covered by the assault guideline, with around 36,900 adult offenders sentenced in 2018. An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A battery is committed when a person intentionally or recklessly applies unlawful force to another. Battery is any act of unlawful personal violence; mere touching is enough – no injury need be caused. “Unlawful” means that the physical contact was neither consented to nor justified in the circumstances. Assault and battery are summary offences and carry a maximum penalty of six months’ imprisonment. Section 29 of the Crime and Disorder Act 1998 provides for a racially/religiously aggravated version of the offence which is triable either way and carries a maximum penalty of two years’ imprisonment. In 2018, around 800 adult offenders were sentenced for racially/religiously aggravated common assault.

Common assault will usually involve injuries which are minor and have no lasting impact. Current Crown Prosecution Service (CPS) charging guidance indicates that the types of injuries which would lead to a common assault charge would be grazes, scratches, abrasions, minor bruising, swellings, reddening of the skin and superficial cuts. More serious injuries would properly be charged as ABH.

The existing common assault guideline and evaluation findings

The assessment of seriousness in the existing common assault guideline includes factors indicating higher culpability, lower culpability, greater harm and lesser harm. A combination of the factors will result in one of three potential seriousness assessments, as illustrated below:

Seriousness assessment – existing guideline	
Category 1	Greater harm (injury or fear of injury must normally be present and higher culpability)
Category 2	Greater harm (injury or fear of injury must normally be present) and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The assessment of the impact and implementation of the common assault guideline noted that, as anticipated, sentencing severity decreased following the introduction of the guideline. However, while sentencing severity decreased, this was towards the lower end of seriousness and not as a result of fewer custodial sentences being imposed as had been anticipated on the introduction of the guideline:

For common assault, there was a shift away from suspended sentences and community orders, and towards fines and discharges. The use of immediate custody was broadly similar before and after the guideline came into force, as was the adjusted average custodial sentencing length (ACSL) of 0.3 years. Sentence severity also decreased, despite the overall trend of a steady increase since 2004. Analysis suggests these changes were caused by the new guideline, with actual sentencing going outside the “forecasted severity region”.

This impact of the guideline in decreasing sentence severity is broadly consistent with the impact anticipated in the resource assessment – which included between 400 to 900 fewer community orders and additional fines and conditional discharges (between 1,200 and 2,900, and 400 and 900, respectively). However, while the resource assessment anticipated between 1,300 and 3,000 fewer custodial sentences, analysis shows there was no change in the use of custodial sentences before and after the guideline came into force. It was also broadly in line with sentencers’ perceptions that sentences have decreased for common assault, which was attributed to the difficulty in establishing injury in cases of common assault, especially “in the context of the offence”.

Observations of sentencers included the following:

It’s often hard to get into category 1 because there really has to be some injury...and common assault doesn’t usually involve injury (District judge).

We find that if you follow the guidelines properly that a lot of common assaults end up category 3...if there is no injury then you are automatically down a category (magistrate).

The main conclusion drawn from sentencer comments and evidence of sentencing trends is that the decrease in sentences occurred at the lower end of the scale, rather than at the top end as was anticipated in the resource assessment. Statistical analysis identified that there was no change in custody rate or sentence length following the introduction of the guideline, indicating that the cases at the upper end of seriousness were treated broadly the same pre and post guideline. The shift from community orders to fines appears to be largely attributable to a high threshold of harm being required for a case to be captured by the top and middle categories of the guideline, with only the lowest category providing for less serious harm. As noted in sentencer comments, given the low level of harm which will be present in this offence, it is likely that a high proportion of cases have been assessed as category 3 seriousness which provides a starting point of a Band A fine, with a range of a discharge to a Band C fine. This is likely to be the predominant factor causing the decrease in sentences at the lower end of seriousness rather than at the top end.

In interviews with sentencers and practitioners as part of the guideline evaluation, issues which emerged related to the guideline not adequately providing for ‘middling’ harm (where the injury is neither more nor less serious in the context of the offence), and while most thought the factors appropriate, issues were highlighted with interpretation of some of the factors. These included the potential for differing interpretations of sustained or repeated assault on the same victim in greater harm; the difficulty in establishing injury in cases of common assault, especially “in the context of the offence”; concerns over the potential to double-count victim vulnerability as it is included in both greater harm and higher culpability and the potential to interpret the phrase “a significant degree of premeditation” in different ways. The absence of spitting as a factor increasing seriousness was also highlighted.

Given that common assault is a summary offence and nearly always sentenced in magistrates' courts, early in the revised guideline development a feedback exercise was undertaken with magistrates to gather current views on three aspects of the existing common assault guideline. This sought views on factors, the structure of the guideline and the sentence starting points and ranges in the existing guideline. Other more general comments were also invited. Broad findings were:

- Factors which were raised as problematic corresponded with views in the evaluation of the guideline. A number of responses also expressed concern at the factor 'deliberately causes more harm than is necessary for commission of offence', and potential interpretation issues. For the factor relating to injury in the context, the 'context' aspect was questioned and examples given of how this could be inconsistently interpreted.
- The majority of respondents thought the sentence starting points were too low, particularly for a category 3 offence. Some of these responses related to the guideline factors not providing for medium harm cases adequately, resulting in a low categorisation of an offence where a high threshold of harm could not be demonstrated.
- In other comments, a number of responses mentioned charging of offences. It was noted that under past sentencing practice, an offence resulting in injury which could amount to ABH may have been charged as common assault in order to expedite proceedings in the magistrates' courts, which was thought to be preferable for victims. Since then, the CPS have revised their charging guidance and are clear that common assault should not be preferred as an alternative charge where the offence can be properly assessed as ABH.

The conclusion drawn from sentencer comments and in considering the unanticipated decrease in sentences is that the existing guideline is causing a higher proportion of offences to be captured at category 3 than had been anticipated.

The revised guideline

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

High culpability factors

A number of the factors included in the existing guideline as factors indicating higher culpability have been retained in the revised guideline, although some have been removed or rephrased to address interpretation issues identified by the evaluation of the existing guideline. 'Targeting of a vulnerable victim' has been included as a culpability factor and not as a harm factor, and expanded to include victims who are vulnerable through personal characteristics or circumstances, rather than just circumstances. 'Sustained and repeated assault' which is included as a factor indicating greater harm in the existing guideline has been replaced with 'prolonged assault' as a high culpability factor. 'Threatened or actual use of weapon or weapon equivalent' has been retained, and guidance included as to what may constitute a weapon equivalent. 'Leading role' has been retained but slightly rephrased to 'leading role in group activity'. 'A significant degree of premeditation' has been removed, as the Council considered that this rarely applies in common assault offences. The factors 'intention to commit more serious harm than

actually resulted from the offence' and 'deliberately causes more harm than is necessary for the commission of offence' have been removed due to issues identified with interpreting these factors. New factors included are 'use of substantial force', which would indicate an intention by the offender to cause more serious harm than may result from the offence. The guideline also includes a factor relating to strangulation, following the Council considering research which highlighted the seriousness of this particular method of assault.

An additional high culpability factor 'Intention to cause fear of serious harm, including disease transmission' is proposed. The Council considers that where an offender intends to cause a victim to fear they will suffer serious harm or contract a disease, this represents a high level of culpability which should be assessed at the upper end of seriousness. This would include (but is not limited to) situations where common assault offences have been committed by offenders coughing and spitting at victims with a direct or implied threat of Covid-19 or other disease transmission. Public facing workers are particularly at risk from this type of offence, and a number of successful prosecutions have recently taken place. Where an offender intentionally spits or coughs at a victim, in situations such as the current epidemic, an intention to cause fear of transmission could be inferred even where there is no explicit assertion that an offender has a disease capable of transmission.

Lesser culpability factors

There are three lesser culpability factors: 'lesser role in group activity' which replaces 'subordinate role in group or gang'. 'Mental disorder or learning disability where linked to the commission of the offence' has been retained. A catch all factor of 'all other cases not captured by category 1 factors' has been included.

The factors 'lack of premeditation' and 'excessive self-defence' have been removed, with 'significant degree of provocation' provided for as a mitigating factor.

The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

Culpability demonstrated by one or more of the following

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

A - High culpability

- Intention to cause fear of serious harm, including disease transmission
- Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances
- Prolonged assault
- Use of substantial force
- Strangulation
- Threatened or actual use of weapon or weapon equivalent*
- Leading role in group activity

B - Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

*Examples of a weapon equivalent can include but are not limited to; a shod foot, use of acid, use of animal in commission of offence

Question 1: Do you have any comments on the proposed culpability factors?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused or intended to be caused by the offence. As already noted, the absence of a middle category of harm from the existing guideline was identified in the evaluation as a significant issue, given the fact that a common assault injury is unlikely to be considered serious and will attract a lesser harm categorisation. The harm factor '*injury which is serious in the context of the offence*' also proved problematic and difficult to interpret or apply.

The Council decided that for all assault guidelines the factor '*serious in the context of the offence*' should be removed. As already noted, any common assault harm is likely to include a low level of injury. The Council considered if descriptions of injuries such as bruising or reddening of the skin should be included, but decided that this may not assist the court in determining the overall level and impact of the injury and achieving an appropriate harm categorisation, as there is potential for a range of harm within specific injuries depending on factors such as the location, severity and pain suffered. For example, an injury commonly known as a 'black eye' may include swelling and bruising and take longer to heal than another black eye type injury where some bruising to the eye is caused but no swelling. The harm assessment therefore includes three categories which gradate levels of harm which may be found within an offence of common assault. Category 1 provides for injuries which cause more than minor physical or psychological harm or distress. Category 2 provides for minor injuries, and category 3 for cases involving no or a low level of physical injury and distress. The Council considers that sentencers are experienced in dealing with these types of offences and the factors will provide for an appropriate assessment of the level of harm inflicted. Views are sought on whether the factors are appropriate, bearing in mind the level of injury will always be low.

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Question 2: Do you agree with the revised approach to assessing harm, and with the factors included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

Although the evaluation of the guideline highlighted that sentences decreased for this offence and were broadly considered too low, the Council decided that this was due to the structure of the guideline and the difficulty with an offence which inherently includes a low level of injury attracting anything higher than a category 3 seriousness assessment. As already noted, the high harm factor requirement of an 'injury serious in the context of the offence' presents difficulties in these offences, which will always involve a low level of injury, achieving a seriousness categorisation higher than a category 2 or 3 which directly influences the starting point of the sentence. The category starting points in the existing guideline have therefore informed the revised guideline sentences. The Council considers that the existing starting points are proportionate and the revision to factors within the guideline will achieve appropriate distribution of seriousness categorisation. While the revised guideline replicates the existing in that none of the categories include a custodial starting point, half of the sentence ranges provide for a custodial sentence to be imposed where appropriate:

Culpability		
Harm	A	B
Category 1	Starting point	Starting point
	High level community order	Medium level community order
	Category range	Category range
	Low level community order – 26 weeks' custody	Low level community order – 16 weeks' custody
Category 2	Starting point	Starting point
	Medium level community order	Band B fine
	Category range	Category range
	Low level community order – 16 weeks' custody	Band A Fine – Low level community order
Category 3	Starting point	Starting point
	Band B fine	Band A fine
	Category range	Category range
	Band A fine – Low level community order	Discharge – Band C fine

Question 3: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

The Council has revised the aggravating and mitigating factors for this offence to ensure they are the most relevant to the offence, and are clear and are consistent with how factors are presented across more recent guidelines. The Council considered the evaluation finding that a number of sentencers thought that 'spitting' should be explicitly referenced as a factor increasing the seriousness of an offence. The Council agreed that it should and, taking into account recent offending trends, the Council has included 'spitting or coughing' as an aggravating factor. The existing guideline includes an aggravating factor of 'Offence committed against those working in the public sector or providing a service to the public'. This factor provides for increased sentences for offences against, among others, shop workers, security staff and traffic wardens. The factor has been retained and expanded to provide for offences committed towards a person coming to the assistance of an emergency worker. Mitigating factors include standard factors relevant to personal mitigation, as well as 'significant degree of provocation'. While provocation is not a defence and the Council do not believe it should reduce the culpability of an offender at step one, it recognises that the factor may be relevant in some cases, and that the guideline should provide for this.

The revised aggravating and mitigating factors are set out below:

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity.

Other aggravating factors:

- Spitting or coughing
- Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker
- Offence committed in prison
- Offence committed in domestic context
- Presence of children
- Gratuitous degradation of victim
- Abuse of power and/or position of trust
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offences taken into consideration (TICs)
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Significant degree of provocation
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 4: Do you have any comments on the proposed aggravating and mitigating factors?

Question 5: Do you have any other comments on the Common assault guideline?

Assaults on emergency workers

The Assaults on Emergency Workers (Offences) Act 2018 introduced a higher statutory maximum sentence of 12 months for offences of common assault towards those specified as emergency workers. Between 13 November – 31 December 2018, around 290 adult offenders were sentenced for this offence. During the first three quarters of 2019, a further 6,400 offenders were sentenced for this offence.^{3,4}

The definition of emergency workers is contained within s3(1) of the Act. As well as frontline staff such as police officers, prison officers, fire fighters, search and rescue personnel, NHS medical and support staff are also provided for, which can include doctors' receptionists and NHS administrative staff whose activities involve face to face interaction with the public.

While the legislation provides for a higher maximum sentence for offences of common assault on these categories of persons, the offence is common assault and the elements of the offence are the same as those discussed in the preceding common assault section of this document. The offence involves causing another to apprehend the immediate infliction of unlawful force or application of unlawful force, and the level of injury which will be involved is likely to be low. More serious injuries would be charged as ABH or GBH. The legislation has not increased maximum sentences for these more serious offences, but instead makes the commission of an ABH or GBH against an emergency worker a statutory aggravating factor, to provide for an uplift to be applied to the sentence in the same way in which other statutory aggravating factors, such as previous convictions of an offender, provide for an increased sentence.

Culpability and Harm factors

As the offence is essentially common assault, the factors included are the same as for the common assault offence relevant to non-emergency workers. The exception is the culpability factor relating to vulnerable victims, which is not included in the emergency workers guideline. For the non-aggravated common assault offence the factor captures vulnerable victims such as the elderly and children, and homeless individuals who are exposed to attacks by reason of their circumstances. The Council considers that the vulnerability and special status of emergency workers is already reflected in the higher statutory maximum sentence where an offence is committed against them, and to include vulnerability as a factor in this guideline would 'double count' this factor. However, the Council does believe that there are circumstances where emergency workers may be more vulnerable to assaults and have provided for specific situations where emergency

³ This offence came into force on 13 November 2018. As less than two months of data were available for this offence for 2018, statistics provided here have been extended to include data up until the end of September 2019 (the latest data currently available).

⁴ The Ministry of Justice (MoJ) published ad hoc statistics on this offence alongside their latest 'Criminal Justice Statistics Quarterly' publication, available here: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-september-2019>. The figures in this document differ from those published by the MoJ, as these figures relate to adult offenders only, whereas the MoJ figures also include juvenile offenders.

workers are at greater risk of attack and their vulnerability may be increased as an aggravating factor, which is discussed below in the aggravating factors section.

The proposed culpability factors are as follows:

Culpability demonstrated by one or more of the following

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

A - High culpability

- Intention to cause fear of serious harm, including disease transmission
- Prolonged assault
- Use of substantial force
- Threatened or actual use of weapon or weapon equivalent*
- Strangulation
- Leading role in group activity

B - Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category A factors

*Examples of a weapon equivalent can include but are not limited to; a shod foot, use of acid, use of animal in commission of offence

The proposed harm factors are as for the non-aggravated offence, as potential injuries are the same:

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Question 6: Do you agree with the approach to assessing culpability and harm, and with the factors included?

Sentences

It is important to note that the provisions relate to the lowest level assault offence and the starting points and categories reflect a range of seriousness within this low level offence. S152(2) of the Criminal Justice Act 2003 provides a general restriction on the imposition of discretionary custodial sentences and directs that “*the court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.*” At the lower end of seriousness, offences may involve only the apprehension of an assault and no physical harm and a very low level of distress, for which the Council considers a custodial sentence would not be justified. Even the most serious offences which will now achieve a fairly high custodial sentence will involve a high culpability factor and an injury which is of a temporary nature such as bruising or more than minor distress. Any more serious injury would be charged as a more serious assault offence and not as common assault on an emergency worker.

While sentences must have regard to the provisions in s152(2) the Council has balanced this with the clear intention of Parliament to increase sentences for assaults on those designated as emergency workers. All but one offence category therefore provides for a custodial sentence to be imposed, and half of the categories include custodial starting points. The most serious offence category provides for a sentence of up to the full statutory maximum sentence of 12 months’ custody to be imposed. While Parliament may yet consider if this maximum sentence should be increased further, the guideline reflects the current statutory provisions.

The Council considers that the proposed sentence starting points and ranges reflect the new legislative provisions while achieving sentences which are proportionate to the culpability and harm present in the respective categories of offence. Views are sought on whether the sentences are appropriate, noting the points above and taking into account the legislative framework within which the guideline must operate.

Culpability		
Harm	A	B
Category 1	Starting point	Starting point
	8 months’ custody	16 weeks’ custody
Category 2	Category range	Category range
	26 weeks’ – 1 year’s custody	High level community order – 26 weeks’ custody
Category 2	Starting point	Starting point
	16 weeks’ custody	High level community order
Category 2	Category range	Category range
	High level community order – 26 weeks’ custody	Low level community order – 16 weeks’ custody

Category 3	Starting point	Starting point
	High level community order	Medium level community order
	Category range	Category range
	Low level community order – 16 weeks' custody	Band B fine – High level community order

Question 7: Do you have any comments on proposed sentence levels?

Aggravating and mitigating factors

The majority of aggravating and mitigating factors are the same as for the basic offence, although some have been excluded. One such factor is 'offence committed against those working in the public sector or providing a service to the public', as this factor is inherent in the offence and all victims will fall within that description. In the non-aggravated common assault guideline a factor of 'offence committed in prison' is included, but is not included in the aggravated offence guideline as prison officers are a specified protected group this could cause double counting of this as a factor in offences committed against them which are highly likely to be committed in prison. The factor 'abuse of power and/or position of trust' is also excluded as is not likely to apply in these cases. An additional aggravating factor has been included to capture emergency workers who may be isolated and unable to escape an assault. This would capture offences such as medical staff who are assaulted when isolated while treating an individual. The Council considers that this type of situation represents a specific vulnerability on the part of the victim which aggravates the offence and will provide for an increased sentence for an offence in any category of seriousness. As for the non-aggravated offence, spitting or coughing has been included as an aggravating factor. A factor included in the basic common assault guideline is 'significant degree of provocation'. This is not available as a mitigating factor for assaults on emergency workers as the Council considers this would be inappropriate to suggest an emergency worker acting in the course of their duty has provoked an assault.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Spitting or coughing
- Victim isolated and/or had no opportunity to escape situation
- Presence of children
- Gratuitous degradation of victim
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from supporting the prosecution

- Commission of offence whilst under the influence of alcohol/drugs
- Other offences taken into consideration (TICs)
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 8: Do you agree with the proposed aggravating and mitigating factors?

Question 9: Do you have any other comments on the Assault on emergency workers guideline?

Assault with intent to resist arrest

Section 38 of the Offences Against the Person Act 1861 provides for the offence of assault with intent to resist arrest. The evaluation of the existing guideline did not include assault with intent to resist arrest due to low volumes of offences, but the offence is included in the revised guideline.

The offence is committed when a person assaults another person with intent to resist arrest or prevent the lawful apprehension/detention of himself/herself, or another, for any offence. It is an either way offence, which carries a maximum penalty on indictment of two years' imprisonment. CPS charging guidance confirms that a charge contrary to s38 may be used for assaults on persons other than police officers, for example store detectives, who may be trying to apprehend or detain an offender.

While the level of assault is not specified it is likely that it would only be charged in common assault type cases, as any ABH or GBH type injury caused by an assault in these circumstances would be charged as the relevant offence.

Culpability and Harm

Although this offence can be charged where an assault is committed against any individual seeking to apprehend or detain an offender, the most likely victims would be police officers assaulted in the course of their duty. Given the similarity between offences and that the offence is effectively assault on an emergency worker with the additional element of intending to resist arrest, the Council decided that the same culpability and harm factors as agreed for the *Assault on emergency workers* guideline should be included for this offence.

The Council did consider whether the resisting arrest element of the offence represented broader harm than for common assault in that it may relate to an offender resisting arrest and evading justice. However, the Council decided that the same principle applied as for the emergency workers offence in that this broader harm is inherent in the higher statutory maximum sentence. The offence will still be common assault as a more serious offence would otherwise be charged; it is the circumstances in which the assault is committed which differs.

Culpability demonstrated by one or more of the following

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

A - High culpability

- Intention to cause fear of serious harm, including disease transmission
- Prolonged assault
- Use of substantial force
- Threatened or actual use of weapon or weapon equivalent*
- Strangulation
- Leading role in group activity

B - Lesser culpability

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category A factors

*Examples of a weapon equivalent can include but are not limited to; a shod foot, use of acid, use of animal in commission of offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Question 10: Do you agree with the approach to assessing culpability and harm, and with the factors included?

Sentences

Volumes of this offence are low with around 150 adult offenders sentenced in 2018. The highest starting point in the existing guideline is 26 weeks' custody, although the highest category range provides for a sentence of up to 51 weeks' custody to be imposed. As the proposed highest starting point in the draft *Assault on emergency workers* guideline is 8 months' custody, the starting point for the resist arrest offence will need to be higher to reflect its higher statutory maximum sentence. It is proposed the highest starting point for the most serious offences is 9 months' custody. While this is considerably lower than the statutory maximum sentence, this does represent a 50 per cent increase on the existing guideline sentences in this category and the Council considers that it would be disproportionate to the overall seriousness of the offence to increase this further.

Views are sought on the proposed sentences, taking into account the existing starting points and the relativity required with proposed sentences for assaults on emergency workers.

Culpability		
Harm	A	B
Category 1	Starting point 36 weeks' custody Category range 26 weeks' custody – 1 year 3 months' custody	Starting point 26 weeks' custody Category range High level community order – 36 weeks' custody
Category 2	Starting point 26 weeks' custody Category range High level community order – 36 weeks' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Medium level community order Category range Band B fine – High level community order

Question 11: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

The proposed aggravating and mitigating factors are as for the assault on emergency workers offence:

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Spitting or coughing
- Victim isolated and/or had no opportunity to escape situation
- Presence of children
- Gratuitous degradation of victim
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offences taken into consideration (TICs)
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 12: Do you agree with the proposed aggravating and mitigating factors?

Question 13: Do you have any other comments on the Assault with intent to resist arrest guideline?

Section Three: Assault occasioning actual bodily harm (ABH)

This offence is provided for by section 47 of the Offences Against the Persons Act 1861. The offence is committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm (ABH). It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment, or seven years' imprisonment for the racially aggravated version of the offence. This offence is more serious than common assault and is generally less serious than causing grievous bodily harm/wounding (s20 GBH) although the s20 offence shares the same statutory maximum sentence.

In law, the only factors that distinguish common assault from ABH are the degree of injury that results and that ABH may be tried in magistrates' courts or the Crown Court and attracts a significantly higher sentence. There is no statutory definition of an injury that amounts to 'actual bodily harm'. Case law principles which have developed are that the assault must cause hurt or injury interfering with the health or comfort of the victim. Harm does not need to be permanent but must be more than trifling or transient. The injury can be psychiatric but not merely fear or anxiety.

The number of adult offenders sentenced for ABH has generally decreased over the last decade, although some of this decline could be attributable to some ABH cases involving a low level of injury being charged as common assault prior to revision of CPS charging guidance. In 2018 there were around 5,600 offenders sentenced for ABH, and two thirds of offenders were sentenced in the Crown Court. In 2018 around 40 adult offenders were sentenced for racially/religiously aggravated ABH.

The existing ABH guideline & evaluation findings

The existing guideline includes the same seriousness assessment as for other Assault guidelines, and the same culpability and harm factors. The assessment of the impact and implementation of the actual bodily harm guideline highlighted the following as areas for particular consideration in revising the guideline.

1. Analysis showed that there was a shift towards more serious disposal types– an increase in the use of custodial sentences (immediate and suspended) and a corresponding decrease in the use of community orders. This was in contrast to the prediction in the resource assessment which envisaged a drop in the severity of sentencing, due to the decrease in the sentencing range in the Sentencing Council guideline when compared to the previous guideline. A possible cause is that the types of injury being charged as ABH involved injuries more akin to GBH, which was evidenced in analysis of cases and supported by the following evaluation evidence;

2. A regression analysis using CCSS data was carried out and showed that “injury which is serious in the context of the offence” was the most important factor for ABH and added 26 per cent (0.2 years) to the length of immediate custodial sentences. It was noted that this was suggestive of a higher level of injury than may be expected in ABH cases.
3. Sentencer perceptions were broadly that the sentences in the guideline were too low. This was largely thought to be attributable to the decrease in the sentencing range in the guideline when compared to the previous SGC guideline, although it was noted that the types of cases being charged as ABH may have been a contributory factor.

The evaluation of the guideline stated that contrary to expectations ABH sentences increased, although some sentencers reported that sentence ranges were too low. The sentences in the existing Sentencing Council guideline represented a significant reduction from the SGC sentences, with the highest starting point for ABH in the SGC guideline being 30 months’ custody, and the highest starting point in the existing Sentencing Council guideline 1 year 6 months representing a 1 year decrease in starting point for the most serious offences:

Previous SGC ABH guideline

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

Existing ABH guideline – sentences

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	1 year 6 months’ custody	1 – 3 years’ custody
Category 2	26 weeks’ custody	Low level community order – 51 weeks’ custody
Category 3	Medium level community order	Band A fine – High level community order

In considering statistics and other evidence the Council noted the evaluation finding that the guideline did not result in a decrease in sentence severity as had been anticipated.

CCSS data⁵ illustrated a high proportion (on average around 40 per cent) of offenders placed in the lowest category of seriousness under the existing guideline received a custodial sentence, even though this category does not provide for a custodial sentence to

⁵ Source: Crown Court Sentencing Survey, 2013 – 2015 Q1

be imposed. This suggested that sentencers do not believe the existing guideline sentences are adequate, and that the types of case found to be at the lower end of seriousness in the guideline are considered too serious for the sentencing options available. This seems likely when comparing sentences for ABH and common assault, as a case of lower seriousness in ABH, which is likely to be more serious than a high category common assault, currently attracts a lower starting point than the most serious common assault offence.

The revised guideline

The Council decided that the format of the guideline should follow that of its more recent guidelines, and research and transcript analysis was undertaken to identify how factors in the existing guideline were being interpreted and applied.

Culpability factors

In revising the guideline, consideration was given to aligning culpability factors with common assault factors. However, in developing the s20 GBH guideline and analysing cases, it became clear that the culpability factors developed for GBH were better suited to ABH offences. As with the other assault offences, the Council has removed or rephrased factors which the evaluation identified had the potential for inconsistent interpretation.

High culpability

A factor included in the existing guideline is 'a significant degree of premeditation'. This factor was not retained at culpability in the revised common assault guideline but has been included as an aggravating factor. However, for ABH offences the Council considers it should be retained at high culpability as analysis of transcripts has illustrated that it may be present in revenge attacks and domestic violence incidents, for example, where perpetrators planned and lay in wait to carry out an attack on an ex-partner.

In the existing guideline a high culpability factor included is 'deliberate targeting of vulnerable victim', and this wording has been retained in the common assault guideline where such targeting would increase the offence seriousness. However, rephrasing of the factor is proposed for ABH to avoid too high a threshold of application where a victim cannot necessarily be described as targeted. Proposed wording of the factor is 'victim obviously vulnerable by age, personal characteristics or circumstances', which captures the offender's awareness that a victim was vulnerable.

The existing guideline includes the same factor relating to weapons as for common assault. However, analysis of cases identified that the phrasing and placement of the factor in the existing guideline is leading to sentences which may not reflect the seriousness of the weapon used. This was significantly more of an issue in GBH cases, but the Council decided that culpability factors in the ABH and GBH (s20) guidelines should be the same and that the seriousness assessment should provide for a distinction between highly dangerous weapons and other weapons or weapon equivalents. It is therefore proposed that a high culpability factor be included of 'use of a highly dangerous weapon or weapon equivalent.'

The wording has been largely replicated from the bladed articles guideline where a distinction between weapons is made. It is anticipated that this would capture, among other weapons, knives, firearms and acid. Explanatory wording to assist in identifying the nature of the weapon is included in the guideline.

The other high culpability factors are as included in the common assault guideline: strangulation, leading role in group activity and prolonged assault.

Medium culpability

This category provides for weapons not assessed as highly dangerous, and a lesser role in group activity. The category also includes a factor providing for cases falling between high and low culpability, which is used in some other Council guidelines where competing factors may be present to provide for a proportionate seriousness assessment.

Lesser culpability

This category includes factors which the Council considers indicate lesser culpability, including no weapon used, excessive self-defence and where the offender possesses a mental disorder or learning disability which is linked to the commission of the offence.

Culpability demonstrated by one or more of the following

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

A - High culpability

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

B - Medium culpability

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

C - Lesser culpability

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

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

Question 14: Do you agree with the approach to assessing culpability and with the factors included?

Harm

The range of injuries within ABH offences are broad: from an injury slightly more serious than a common assault injury to injury falling just short of the really serious harm required for GBH. Development of the ABH harm model therefore initially focused on describing injuries as a more serious common assault in lesser harm, and just short of GBH in high harm, which was the approach used in the preceding SGC guideline. Versions of these models were tested with sentencers who approved of the reference to other offences. However, this caused significant issues with sentence development for more serious ABH offences, as including a factor 'injury just short of GBH' meant relativity was required with GBH (s20) sentences as the offences share the same statutory maximum sentence of 5 years. So, if an injury just short of GBH represented the highest level of harm in the ABH guideline, the sentence for a similar injury which would fall within the lowest harm category of the GBH (s20) guideline could be significantly lower. Potentially, significant deflation would have occurred in ABH cases or GBH (s20) sentences would need to significantly increase, and the Council also noted that comparing sentences in guidelines could encourage 'guideline shopping' to try to secure a sentence within a particular category of either guideline.

The Council ultimately decided that these issues were unresolvable, and that as ABH and GBH (s20) share the same statutory maximum sentence they must be treated as separate and distinct offences, and the guidelines should not treat them as a continuum of each other or refer to other offences in assessing seriousness. Given the breadth of injuries which may be present in an ABH offence and the consideration required of the extent and impact of injuries, the Council decided that it is not possible or desirable to include descriptions of injuries within the harm assessment. The harm model therefore includes three categories of harm; high, medium and low. Additional wording accompanies the harm assessment to clarify how sentencers should assess the level of harm present within an offence. Views are sought on the proposed harm model, taking into account the limitations and difficulties explained with including injury descriptive factors.

Harm

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

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

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

Question 15: Do you agree with the approach to assessing harm?

Sentences

As already noted the sentences in the existing guideline represented a significant decrease from starting points and category ranges in the preceding SGC ABH guideline. The evaluation highlighted that contrary to expectations ABH sentences increased on the introduction of the current guideline. The Council has since identified through statistical analysis that rather than sentences increasing as a result of the introduction of the guideline, a more accurate assessment of the guideline impact is that sentences did not decrease as anticipated. Statistics illustrated that although the highest starting point in the existing guideline is 1 year 6 months' custody, a high proportion of sentences were imposed in excess of this.

To better understand current sentencing practice the Council considered a number of transcripts covering a range of ABH offences. This analysis identified that the existing guideline is designed to be applied more flexibly than more recent guidelines. Only three starting points are included in the existing guideline, and additional guidance provides for upward adjustment from the starting point in cases where multiple features of culpability are present. Transcript analysis highlighted that in accordance with the guidance included the relevant offence category range is more influential than the sentence starting point in more serious cases, and starting points towards the top of the highest category range of three years custody are imposed, before adjustment for any aggravating features.

As the revised guideline model provides for nine starting points rather than three the Council decided that the category ranges in the existing guideline should be distributed across the revised guideline starting points, although the top of the highest category better reflects the statutory maximum sentence of 5 years custody. The Council intends that the structure of the revised guideline and factors included will provide for a proportionate seriousness assessment and for appropriate sentences to be imposed.

Culpability			
Harm	A	B	C
Category 1	Starting point	Starting point	Starting point
	2 years 6 months' custody	1 year 6 months' custody	36 weeks' custody
	Category range	Category range	Category range
	1 year 6 months' – 4 years' custody	36 weeks' – 2 years 6 months' custody	High level community order – 1 year 6 months' custody
Category 2	Starting point	Starting point	Starting point
	1 year 6 months' custody	36 weeks' custody	High level community order
	Category range	Category range	Category range
	9 months' custody – 2 years 6 months' custody	High level community order – 1 year 6 months' custody	Low level community order – 36 weeks' custody

Category 3	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 1 year 6 months' custody	Category range Low level community order – 36 weeks' custody	Category range Band B fine – 26 weeks' custody

Question 16: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

As well as statutory aggravating factors already in existence, the revised ABH guideline includes the new statutory aggravating factor 'Offence was committed against an emergency worker acting in the exercise of functions as such a worker'. As discussed earlier, the Assaults on Emergency Workers (Offences) Act 2018 makes an assault on an emergency worker a statutory aggravating factor for an ABH offence, but as with other statutory aggravating factors the level of uplift which should be applied to the sentence is discretionary.

Other aggravating factors are as for common assault offences, although some additional factors are included which transcript analysis highlighted are particularly relevant to this offence. An additional aggravating factor 'history of violence or abuse towards victim by offender' is included. An additional mitigating factor 'history of significant violence or abuse towards the offender by the victim', provides for cases where offenders are themselves victims of long term or severe abuse and the offence arises in relevant circumstances.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity.
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

- Spitting or coughing
- Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker
- Offence committed in prison (where not taken into account as a statutory aggravating factor)
- Offence committed in domestic context

- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of power and/or position of trust
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offences taken into consideration (TICs)
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Significant degree of provocation
- History of significant violence or abuse towards the offender by the victim
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 17: Do you agree with the proposed aggravating and mitigating factors?

Question 18: Do you have any other comments on the ABH guideline?

Section Four: Grievous bodily harm (GBH) offences

There are two GBH offences provided for by the Offences Against the Person Act 1861 (OAPA). Section 18 of the OAPA provides for a maximum sentence of life imprisonment for anyone convicted of causing grievous bodily harm with intent to do grievous bodily harm or wounding with intent to do grievous bodily harm. In 2018, around 1,100 adult offenders were sentenced for this offence. Section 20 of the OAPA provides for a maximum sentence of five years' imprisonment for anyone convicted of inflicting grievous bodily harm/unlawful wounding. Around 2,700 adult offenders were sentenced for this offence in 2018. Section 29 of the Crime and Disorder Act 1998 provides for a racially/religiously aggravated version of the Section 20 offence which has a seven year statutory maximum sentence of imprisonment. This offence is very low volume, with around 10 adult offenders sentenced in 2018.

The distinction between offences is the intention of the offender in committing the offence. A section 18 offence requires proof of intent to cause GBH, while for a section 20 offence there is no need to demonstrate the offender intended to inflict the harm caused; just that the offender was reckless or intended some harm. An offender can be found guilty of ABH if bodily harm not amounting to GBH is found. The section 18 offence may be charged where an offender nearly kills a victim but intent to kill is not able to be proved to convict of attempted murder.

Grievous bodily harm is defined as 'really serious harm'. A wound is defined as a break in the continuity of the whole skin. For the wounding form of the offence to be charged, the wound will usually be really serious as ABH may otherwise be charged. These are serious offences and the level of harm involved will be of the highest level in the spectrum of assault offences.

The existing GBH guidelines and evaluation findings

As noted in the overarching section of this document for GBH (s20) offences there were minor increases in sentencing severity, but these had been anticipated and were within the bounds of historic fluctuations in sentencing levels; as a result there was no strong statistical evidence that the guideline caused a change in sentencing practice for these offences.

However, the evaluation of the guideline found that for GBH with intent (s18) the guideline resulted in sentences increasing in excess of that estimated in the resource assessment which was published alongside the guideline. The evaluation suggested the increases might be due to the harm factor 'injury which is serious in the context of the offence', which was found to be present in a high proportion of cases:

A regression analysis of CCSS data was undertaken to examine why (the increases) might have occurred. This indicated that the factor in the new guideline which had the greatest effect on sentences was the step 1 factor "injury which is

serious in the context of the offence". The presence of this factor added around 29 per cent (1.7 years) to the average custodial sentence length.

In addition, it was found that there had been an increase in the use of the most serious offence category in the new guideline (from 17 per cent before the guideline to 33 per cent after), when compared to the old guideline. Furthermore, amongst the category 1 cases under the new guideline, the most frequent step 1 factor was "injury which is serious in the context of the offence", which was present in 76 per cent of cases.

Again, this suggests that this factor may be the reason for the increase in sentence levels for GBH with intent (s18) cases. The data from the quantitative analysis was supplemented by the qualitative research which further indicated that application of the step 1 factors "injury which is serious in the context of the offence" and "injury which is less serious in the context of the offence" could be an issue. Some participants felt that for higher end cases the factor relating to greater harm may lead to double counting and an inflation in sentences (because, for GBH with intent (s18), a high level of harm is required in all instances for the defendant to have been charged with this offence in the first place). For others, it may be that the factor relating to lesser injury (within lesser harm) is not applied when it should be for the same reason.

As well as considering the evaluation findings, extensive transcript and statistical analysis was undertaken to understand how factors were being applied, and this analysis identified additional implementation issues. A significant issue not identified by the evaluation was identified through analysis of CCSS data. This found that the factor 'Threatened or actual use of weapon or weapon equivalent' was cited in a high proportion of s18 cases (78 per cent),⁶ and as use of a weapon or weapon equivalent is a higher culpability factor in the existing guideline this would explain why an increase occurred in the proportion of offenders placed in category 1 seriousness, which has a starting point of 12 years' custody. As for ABH and GBH (s20) offences, analysis of cases illustrated that a range of weapons were treated as equivalent for the purposes of assessing offence seriousness.

The existing guideline includes exactly the same culpability and harm factors for both GBH offences, and the same approach to assessing seriousness as in other Assault guidelines. Due to the evaluation findings and issues identified with application of factors, the Council has revised factors in the guideline and its structure. The approach taken to revising the guidelines will be discussed separately, as there are differences between the two in the revised guideline.

The revised guidelines

Culpability – Section 20 offences

As for the other assault offences, the Council has removed or rephrased factors which the evaluation identified had the potential for inconsistent interpretation. Revisions agreed to culpability factors for GBH (s20) offences are as for ABH offences.

⁶ Source: Crown Court Sentencing Survey, 2015 Q1

High Culpability

As for ABH offences 'significant planning and premeditation' was identified in case analysis as a highly relevant factor in some GBH (s20) offences which were regarded as very serious, and the Council considers that a distinction in the seriousness of a planned offence is important. Distinguishing between weapons and including highly dangerous weapons at high culpability is particularly necessary for GBH (s20) offences, as use of a highly dangerous weapon indicates an increased intention on the part of an offender to cause harm. Weapons used in offences in transcripts analysed ranged from knives and firearms to everyday household items such as a broom or a stool, and in the existing guideline these had been assessed at the same level of seriousness. The Council decided that to achieve proportionate sentences the guideline should distinguish between weapons. The factor 'targeting of vulnerable victim' has been substituted for 'victim obviously vulnerable due to age, personal characteristics or circumstances', which has particular relevance in GBH (s20) offences which are often charged in 'baby shaking' cases where a victim could not necessarily be said to be targeted but the victim is particularly vulnerable, which is highly relevant to the seriousness assessment. 'Prolonged assault' replaces the factor 'sustained and repeated assault' in the existing guideline given issues with interpretation and application which were noted in the evaluation.

Medium and lesser culpability

The medium and lesser culpability factors are as for the ABH guideline.

Culpability demonstrated by one or more of the following

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

A - High culpability

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

B - Medium culpability

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

C - Lesser culpability

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

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

Question 19: Do you agree with the approach to assessing culpability for s20 offences and with the factors included?

Culpability – Section 18 offences

All of the factors relevant to section 20 offences are relevant to s18 offences, and are included in the guideline. However, there are some additional factors relevant to culpability in a s18 offence where the intention is to cause really serious harm, which differs from a s20 offence which requires an intention to cause just some harm or recklessness that GBH would be caused.

Analysis of cases identified that where there are multiple high culpability factors or the offence illustrates extreme examples of a factor, the sentence should be higher than the existing category range may provide for, and that very serious cases could merit exceptional sentences. The Council considered adding an additional category of culpability for such offences, but decided that the particular circumstances of such cases would require judicial discretion in determining the appropriate sentence, which may include life sentences. Additional wording is therefore included as part of the culpability assessment to reflect this. This wording reads *'For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range'*.

Analysis of cases identified additional features which may be relevant to culpability in a s18 offence and which the Council considers should inform the seriousness assessment.

These additional factors are discussed below.

Additional culpability factors – s18 offence

An additional culpability factor of 'Revenge' is included at high culpability, as this was a feature of a number of offences analysed. The Council considers that this increases the culpability of the offender.

At lesser culpability, the Council considered cases where had the victim died and the offence resulted in a conviction for murder a partial defence to murder may apply. Legislation provides for partial defences only in cases of murder, where the intention required is to cause death or serious injury. In cases where a partial defence to murder applies an offender may instead be convicted of the relevant form of manslaughter.

In particular, the Council considered cases of loss of control manslaughter, and offences where had a death occurred an offender could avail themselves of the partial defence, but where GBH was caused they could not. The Council considered its Manslaughter guideline, and that for a loss of control manslaughter offence sharing similar culpability factors with an analogous s18 offence, the highest starting point is 8 years' custody. Given the high sentences for s18 offences and the potential for a weapon such as a knife to be used in an offence, the Council noted that an offender could potentially receive a high culpability assessment and attract a higher sentence for GBH with intent (s18) than they would had they caused their victim's death. The Council considered that this would be inappropriate and that such circumstances should be provided for by the guideline. The Council considered cases where the factor may apply, such as an abused offender who 'snaps' and attacks their abuser. Wording of such a factor was difficult. The Council did not wish to reference loss of control as this is a very specific partial defence with qualifying features set out in legislation, and applies only to murder. After careful consideration the factor has been worded as 'offender acted in response to prolonged or extreme violence or abuse by the victim'. The Council would make clear that this is not intended to act as a concession to a revenge attack, which is a further reason for the inclusion of 'revenge' as a high culpability factor. However, a number of recent cases have recognised the responsibility of an offender may be affected where they have themselves been a victim of sustained or extreme abuse, and the factor is intended to ensure all relevant factors can be balanced so that proportionate sentences can be imposed in such cases.

The proposed step one culpability assessment for GBH with intent (s18) offences is as follows:

Culpability demonstrated by one or more of the following

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

A - High culpability

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

B - Medium culpability

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

C - Lesser culpability

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

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

Question 20: Do you agree with the approach to assessing culpability for s18 offences and with the factors included?

Harm

Given that all GBH offences involve really serious harm, the Council decided that unlike common assault and ABH offences it would be possible to include descriptive features of harm for GBH offences. In considering how GBH type harm could best be defined, the Council considered other guidelines including its Health and Safety guideline which requires consideration of the impact of any injuries on a victim. While GBH type harm is wide and varied, some injuries have lasting impacts – such as disease transmission and injuries causing permanent disability – while others are very serious injuries which have no lasting impact. Views of Crown Court Judges on the proposed harm model were sought, and it was found that these Judges preferred the more descriptive harm factors to the 'in the context' approach to assessing harm in the existing guideline.

Three harm categories are included:

Category 1 harm provides for the very highest degree of harm. These will be particularly grave or life threatening injuries such as stab wounds which are almost fatal, or injuries requiring extensive medical treatment; harm resulting in lifelong conditions requiring care or medical treatment; and permanent disabilities or severe scarring which has a substantial and long term impact upon a victims' ability to live day to day life.

Category 2 harm provides for injuries that are not life threatening but are still grave, and other conditions or injuries not within category 1.

Category 3 provides for all other cases of really serious harm or wounding. This may include fractures, burns or extensive injuries which are not assessed as grave.

Harm	
All cases of GBH will involve ‘really serious harm’, which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<ul style="list-style-type: none"> • Particularly grave and/or life-threatening injury caused • Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment • Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work
Category 2	<ul style="list-style-type: none"> • Grave injury • Offence results in a permanent, irreversible injury or condition not falling within category 1
Category 3	<ul style="list-style-type: none"> • All other cases of really serious harm • All other cases of wounding

Question 21: Do you agree with the approach to assessing harm for GBH offences and with the factors included?

Sentences – S20 offences

While the evaluation of the guideline noted no unintended impacts of the GBH (s20) guideline, the Council undertook analysis of current sentencing practice and identified that a high proportion of sentences imposed with the existing guideline were in excess of the highest starting point.

As for ABH offences, extensive transcript analysis was undertaken to understand how the existing guideline is applied and the same findings were made; that the existing guideline model is designed and applied more flexibly than more recent Council guidelines. The relevant category range is used to identify the starting point, and in more serious cases or those involving multiple culpability factors starting points towards the top of the highest category range of three years custody are imposed, before adjustment for any aggravating features.

As the revised guideline model provides for nine starting points rather than three the Council decided that the category ranges in the existing guideline should be distributed across the revised guideline starting points, although the range maximum for the most serious offence better reflects the statutory maximum sentence. No category includes a non-custodial starting point as statistics illustrated that the majority of sentences imposed for this offence are custodial (immediate and suspended). However, three category ranges provide for a non-custodial sentence to be imposed in appropriate cases. The Council intends that the structure of the revised guideline and factors included will provide for a proportionate seriousness assessment and for appropriate sentences to be imposed.

Culpability			
Harm	A	B	C
Category 1	Starting point	Starting point	Starting point
	4 years' custody	3 years' custody	2 years' custody
Category 2	Category range	Category range	Category range
	3 years' - 4 year 6 months'	2 – 4 years' custody	1 – 3 years' custody
Category 3	Starting point	Starting point	Starting point
	3 years' custody	2 years' custody	1 years' custody
Category 4	Category range	Category range	Category range
	9 months' - 2 years 6 months' custody	1 – 3 years' custody	High level community order – 2 years' custody
Category 5	Starting point	Starting point	Starting point
	2 years' custody	1 year's custody	26 weeks' custody
Category 6	Category range	Category range	Category range
	1 – 3 years' custody	High level community order – 2 years' custody	Medium level community order – 1 years' custody

Question 22: Do you have any comments on the proposed sentence levels for GBH s20?

Sentences – s18 offences

The existing guideline includes the following sentences:

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

The sentences in the preceding SGC guideline were as follows:

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

As sentences were not markedly different from the SGC guideline, with starting points actually lower, it is highly likely that the impact of factors on seriousness categorisations in the existing guideline were the cause of sentence increases. Revision of culpability and harm factors, and particularly the distinction between weapons in the revised guideline and descriptive harm factors should ensure proportionate seriousness assessments and achieve greater balance in distribution of offence seriousness categorisation.

The Council therefore decided that sentences should not be revised up or down, as increases could be attributed to seriousness categorisation in the existing guideline rather than starting points being too high for this serious offence. Due to the structure of the revised guideline nine starting points are included instead of three. In some of the lower categories, sentences may appear particularly low. As already noted this is due to the key consideration that the sentence for a s18 offence where a lesser culpability factor applies should not result in a higher sentence than an offender may have received had they killed their victim and been sentenced using the loss of control manslaughter guideline. The starting points are therefore the same as, or very close to, the loss of control manslaughter guideline starting points in relevant categories, to achieve relativity. It should also be noted that the revised model redistributes sentences in the existing guideline across a greater number of categories (9 instead of 3), and the lowest sentence in the existing guideline is three years.

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

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

Question 23: Do you have any comments on the proposed sentence levels for GBH s18?

Aggravating and mitigating factors

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity. (*s20 offences only*)
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, race, religion, sexual orientation or transgender identity. (*s18 offences only*)
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

- Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker
- Offence committed in prison (where not taken into account as a statutory aggravating factor)
- Offence committed in domestic context
- History of violence or abuse towards victim by offender
- Presence of children
- Gratuitous degradation of victim
- Abuse of power and/or position of trust
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from supporting the prosecution
- Commission of offence whilst under the influence of alcohol/drugs
- Offences taken into consideration (TICs)
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Significant degree of provocation
- History of violence or abuse towards the offender by the victim
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 24: Do you agree with the proposed aggravating and mitigating factors?

Question 25: Do you have any other comments on the s20 GBH guideline?

Question 26: Do you have any other comments on the s18 GBH guideline?

Section Five: Attempted murder

The existing SGC Attempted Murder guideline was not subject to evaluation as it is not currently incorporated into the Assault guideline. However, the Council decided the guideline should be revised and updated at the same time as the Assault guidelines to ensure relativity of sentences given that it represents the most serious non-fatal assault offence.

The offence of Attempted Murder is provided for by s1(1) Criminal Attempts Act 1981. The maximum sentence is life imprisonment. Schedule 15B Part 1 of the Criminal Justice Act 2003 provides that attempted murder is an offence for which an automatic life sentence must be passed where specified criteria are met, and in other cases a life sentence or an extended sentence may be passed. In 2018, around 80 adult offenders were sentenced for attempted murder.

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

The existing guideline

The existing guideline and sentences are heavily influenced by sentences for murder, which is the offence which would be charged were the attempt successful. The offence of murder carries a mandatory sentence of life imprisonment and guidance on the minimum term to be served before the offender can be considered for release by the Parole Board is provided for by Schedule 21 of the Criminal Justice Act 2003. The starting points set out in Schedule 21 for murder offences range from whole life orders, to minimum terms of 30 years, 25 years, 20 years and 15 years depending on the particular features of the case.

The existing attempted murder guideline provides for an offence which, had the charge have been murder falling within paragraph 4 or 5 of Schedule 21 (the most serious categories), to be assessed as category 1 seriousness. Category 2 then provides for other planned attempts to kill and category 3 other spontaneous attempts to kill. Starting points vary according to the level of harm found. Since the existing guideline was developed an additional minimum term category has been introduced by Parliament; paragraph 5A of Schedule 21 for offences where a knife or other weapon is taken to a scene and used in an offence. For murder this offence carries a starting point of a 25 year minimum term. This addition has rendered the existing guideline outdated and such an offence would currently be assessed as either planned or spontaneous as the existing guideline does not provide for it.

An early version of the revised draft guideline was tested with Crown Court judges prior to being finalised. This sought views on the factors included, and on whether these were appropriate and provided for a proportionate seriousness assessment in these cases. The Council is very grateful to those who participated and shared views and suggestions, a number of which have been taken into account in finalising the draft guideline.

The revised guideline: approach to assessing culpability

The existing guideline is restrictive in that categorisation reflects the criteria of Schedule 21 in sentencing offences at the highest level of seriousness. The Council decided that the revised attempted murder guideline should take into account factors included in Schedule 21, but not be as prescriptive as the existing guideline. This is because an attempted murder will always involve the highest level of intent, even higher than that required for murder. The offender must intend to kill for the offence of attempted murder to be proved, whereas the threshold for intent to murder is lower and it is sufficient to prove the offender intended to cause serious harm or injury, but a death was caused. However, the Council noted a distinction may still be present in attempted murder offences. For example, an attempted murder carried out for financial gain or where the offence involves sexual or sadistic conduct, and an offence which is carried out with the intention to end the suffering of a victim, or the example discussed earlier where an abused individual attempts to kill their abuser. The latter examples do not excuse the commission of the offence and the law would require the offence be punished, but the Council recognises that the distinction in motivation of offenders is an important aspect of assessing their culpability.

The Council has therefore included four levels of culpability in the revised guideline, which are discussed below. The guideline requires the sentencer to weigh the factors included, to ensure a fair overall assessment of culpability. This is to ensure that where an offence is planned but a lesser culpability factor is also demonstrated, the Court can achieve an appropriate assessment of seriousness and impose a proportionate sentence.

The wording is as follows:

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

Culpability factors

Very high culpability

Very high culpability factors include factors which reflect features of offences included in paragraphs 4 and 5 of Schedule 21, and which attract the highest sentences for murder offences. Such offences may involve firearms or explosives and attempted murder of police or prison officers. However, the factors in this category are not identical to those in the Schedule, and includes other factors or features the Council considers would demonstrate the highest level of culpability, such as use of fire in attempting to murder.

High culpability

The high culpability category includes a factor which reflects the minimum term that would apply for knives and other weapons taken to a scene in a murder offence, and this category also provides for offences involving planning.

Medium culpability

Medium culpability includes offences involving weapons not included in the very high and high culpability categories, and offences where there is a lack of premeditation. In revising the other assault guidelines lack of premeditation was not included as a lesser culpability factor, as it was thought a spontaneous offence could be as serious as a planned assault. However, in attempted murder it is thought planning, or a lack of, is highly relevant to the culpability of the offender given the intent to kill present in the offence.

Lesser culpability

As the guideline reflects Schedule 21 factors for attempted murder offences, the Council considered whether the guideline should reflect the partial defences applicable to murder, given that in an attempt, death of the victim was the intended outcome. This was also considered in developing the s18 GBH guideline, and it was agreed the lesser culpability category should provide for culpability to be balanced against other factors in appropriate cases. Lesser culpability therefore includes the same factors proposed for the s18 GBH guideline, with the exception of 'no weapon used'. This has not been included in the attempted murder guideline to avoid offences involving strangulation or suffocation being captured when this may not be appropriate. In the other assault guidelines, strangulation is specifically provided for in the high culpability factors because it gives rise to an inference that the offender intended to cause a high level of harm.

A further slight difference in this guideline is in the wording of the mental disability factor, which has been taken from the manslaughter guideline. However, this does not include maturity as a factor reducing responsibility at step one as this is provided for at step two; the factor is intended to capture cases analogous to diminished responsibility in murder.

An additional factor has been included which is provided for as a mitigating factor in the diminished responsibility manslaughter guideline; 'genuine belief by the offender that the offence was an act of mercy'. The motivation in these offences are very different, but these cases are likely to involve planning which would be assessed as involving high culpability. The existing attempted murder guideline states that it 'is not intended to provide for an offence found to be based on a genuine belief that the murder would have been an act of mercy.' The Council decided that rather than exclude these offences from the scope of the guideline, a lesser culpability factor should be included to ensure appropriate sentences can be imposed in these rare types of case.

Culpability demonstrated by one or more of the following

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

A – Very High culpability

- Abduction of the victim with intent to murder
- Attempted murder of a child
- Offence motivated by or involves sexual or sadistic conduct
- Offence involves the use of a firearm or explosive or fire
- Offence committed for financial gain
- Attempted murder of a police officer or prison officer in the course of their duty
- Offence committed for the purpose of advancing a political, religious, racial or ideological cause
- Offence intended to obstruct or interfere with the course of justice
- Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity

B - High culpability

- Offender took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used that knife or other weapon in committing the offence.
- Planning or premeditation of murder

C – Medium Culpability

- Use of weapon not in category A or B
- Lack of premeditation/spontaneous attempt to kill

D - Lesser culpability

- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Genuine belief by the offender that the offence was an act of mercy

Question 27: Do you agree with the approach to assessing culpability for Attempted murder and with the factors included?

Harm

Harm in attempted murder offences is broad, and may result in life changing and devastating injuries, or very little or no physical injury. The existing guideline includes three categories of harm; serious and long term physical or psychological harm, some physical or psychological harm and little or no physical or psychological harm.

Analysis of transcripts identified that level 3 harm in the existing guideline which provides for cases involving little or no physical or psychological harm was rarely applicable, as even where an offence did not result in physical injury a victim would be highly likely to suffer some psychological harm from an offence. It was also identified that there was potential for inconsistent application of serious harm in the existing guideline, with some cases involving serious injuries being assessed as category 1 harm if there were no long

term effects, indicating that harm does not necessarily have to have a long term impact to be assessed as the most serious level.

The revised guideline includes three categories of harm, but the threshold of each category differs. Category 1 provides for similar injury types as in the GBH harm model, with life changing and permanent injuries attracting the highest categorisation. Category 2 provides for serious injuries which will include those without a lasting impact. Category 3 provides for all other harm, which will be of a less serious and non-permanent nature.

The Council particularly considered the appropriate harm categorisation for offences where an injury would most certainly have resulted in death but for timely and skilled medical intervention. A regular feature of cases where knives are used is that pure luck can result in an offence not being fatal, and a wound a small fraction in another direction would certainly have caused death. In such cases it is often noted that had the victim died an offender would be likely to be subject to a life sentence with a minimum term of 25 years. The Council carefully considered whether almost fatal injuries should result in the highest harm categorisation. However, it decided that the very highest category of harm should be reserved for cases where life changing injuries such as permanent disability are caused. To assess injuries which are serious but a full recovery is made in the same category would be to conflate culpability and harm. As death of the victim will always be the intended consequence of attempted murder, the Council considers that the harm assessment should specifically assess the level and lasting impact of any injury.

Views are sought on whether the factors within each category are appropriate.

Harm	
Category 1	<p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	Serious physical or psychological harm not in category 1
Category 3	All other cases

Question 28: Do you agree with the approach to assessing harm for attempted murder offences and with the factors included?

Sentences

The existing guideline includes 3 seriousness categorisations, levels 1, 2 and 3, and three harm categories within each level providing for one of 9 potential starting points and category ranges. The existing sentences are as follows:

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

For some time, and particularly since the inclusion of paragraph 5A into Schedule 21, there have been concerns that some sentences in the existing guideline for attempted murder are too low, and are in some cases very much lower than a same facts murder offence would have been even though the intention was to cause death. The Council decided that sentences should be revised to ensure the gravity of the offence is properly reflected. It is important to note in considering starting points that sentences do not directly read across between categories in the existing guideline, due to the differing harm model included in the revised guideline. While the existing guideline has serious and long term/some and little or no harm, the revised guideline has very serious life changing injuries/serious and other harm. This effectively means a proportion of cases which would fall within level 1 harm of the existing guideline will fall within category 2 of the revised, and some cases currently falling within category 2 (some harm) of the existing guideline will now fall within the revised category 3. This naturally impacts upon the sentence starting point. Very careful consideration was given to the types of offences which should attract the highest sentences. Extensive testing of sentences against cases has been undertaken, and the Council is satisfied that the descriptions and placement of factors relevant to the seriousness assessment will ensure appropriate sentences are imposed for this very serious offence.

Life and extended sentences are available for this offence, and a number of legislative provisions require a judge to consider whether such a sentence must be imposed. The Council decided that life sentences should not be included in the sentencing table, as such sentences require careful consideration of very particular circumstances. The guideline instead includes guidance for when a life or extended sentence may be appropriate, and highlights that these are considered at a later step of the guideline. Where a life sentence is imposed, the notional determinate sentence arrived at by application of the guideline will be used as the basis for setting the minimum term.

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

The Council would highlight that a steep drop in sentence starting points occurs between offences in category C and category D, which is unusual in its guidelines. This is because category D provides for very particular categories of cases involving lesser culpability, and in order for sentences to be proportionate and not exceed sentences which may be imposed for a similar facts manslaughter offence. Views are sought on the proposed sentences, taking into account the points set out and how the different factors included within the guideline will influence the starting point of the sentence.

Culpability				
Harm	A	B	C	D
Category 1	Starting point	Starting point	Starting point	Starting point
	35 years' custody	30 years' custody	25 years' custody	14 years' custody
	Category Range	Category Range	Category Range	Category Range
	30 - 40 years' custody	25 - 35 years' custody	20 - 30 years' custody	10 - 20 years' custody
Category 2	Starting point	Starting point	Starting point	Starting point
	30 years' custody	25 years' custody	20 years' custody	8 years' custody
	Category Range	Category Range	Category Range	Category Range
	25 - 35 years' custody	20 - 30 years' custody	15 - 25 years' custody	5 - 12 years' custody
Category 3	Starting point	Starting point	Starting point	Starting point
	25 years' custody	20 years' custody	10 years' custody	5 years' custody
	Category Range	Category Range	Category Range	Category Range
	20 - 30 years' custody	15 - 25 years' custody	7 - 15 years' custody	3 - 6 years' custody

Question 29: Do you have any comments on the proposed sentence levels?

Aggravating and mitigating factors

The proposed aggravating and mitigating factors reflect factors included in other assault guidelines, as well as a number which are included in the Manslaughter guideline and which are provided for by Schedule 21 in offences of murder.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Offence committed against those working in the public sector or providing a service to the public
- Offence committed in prison
- Offence committed in domestic context
- History of violence or abuse towards victim by offender (where not taken into account at step one)
- Abuse of position of trust
- Gratuitous degradation of victim
- Others put at risk of harm by the offence
- Use of duress or threats against another person to facilitate the commission of the offence
- Actions after the event (including but not limited to attempts to cover up/conceal evidence)
- Steps taken to prevent the victim from seeking or receiving medical assistance
- Commission of offence whilst under the influence of alcohol/drugs
- Offence committed on licence or post sentence supervision
- Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant or recent convictions
- Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)
- History of violence or abuse towards the offender by the victim (where not taken into account at step one)
- Attempt by offender to give assistance/summon help when the attempted murder failed
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity
- Mental disorder or learning disability where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Serious medical conditions requiring urgent, intensive or long-term treatment

Question 30: Do you agree with the proposed aggravating and mitigating factors?

Question 31: Do you have any other comments on the Attempted murder guideline?

Section Six: Public sector equality duty

The Public Sector Equality Duty is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not.

The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has considered data available in relation to offenders sentenced for assault offences. This data includes volumes of offenders sentenced grouped by gender, ethnicity and age and is available at **Annex A**.

There are many and varied reasons for the distribution of offender types and prevalence towards a particular type of offending, including wider social issues. The revised assault offences guidelines are intended to apply equally to all demographics of offenders, and in drafting the guidelines the Council has taken care to guard against any unintended impact.

The Council recognises, however, that the draft guidelines could be interpreted in different ways. We are therefore seeking views on whether any of the factors in the draft guidelines, or the ways in which they are expressed, could risk being interpreted in ways which could lead to discrimination against particular groups.

We are also seeking views as to whether there are any other equality or diversity issues the guideline has not considered, so that we may consider these post-consultation.

Question 32: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

Question 33: Are there any other equality and diversity issues the guidelines should consider?

Annex A

For further details on these statistics please see the accompanying statistical bulletin published at <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics.

Table 1: Demographics of adult offenders sentenced for common assault, by gender, age and perceived ethnicity, 2018

Common assault			Racially/religiously aggravated common assault		
Gender	Number of adults sentenced	Percentage of all adults sentenced ¹	Gender	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	31,332	86%	Male	611	77%
Female	5,204	14%	Female	181	23%
Not recorded/not known	354		Not recorded/not known	12	
Total	36,890	100%	Total	804	100%

Age Group ²	Number of adults sentenced	Percentage of all adults sentenced ³	Age Group ²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	3,640	10%	18 to 21 years	89	11%
22 to 29 years	10,734	29%	22 to 29 years	208	26%
30 to 39 years	11,681	32%	30 to 39 years	225	28%
40 to 49 years	6,610	18%	40 to 49 years	155	19%
50 to 59 years	3,256	9%	50 to 59 years	93	12%
60 years or older	966	3%	60 years or older	34	4%
Not recorded/not known	3		Not recorded/not known	0	
Total	36,890	100%	Total	804	100%

Perceived Ethnicity ^{4,5}	Number of adults sentenced	Percentage of all adults sentenced ⁶
White	27,564	85%
Black	2,796	9%
Asian	1,730	5%
Other	382	1%
Not recorded/not known	4,418	
Total	36,890	100%

Perceived Ethnicity ^{4,5}	Number of adults sentenced	Percentage of all adults sentenced ⁶
White	554	81%
Black	69	10%
Asian	41	6%
Other	16	2%
Not recorded/not known	124	
Total	804	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the gender was unknown.
- 2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.
- 3) Percentage calculations do not include cases where the age was unknown.
- 4) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 5) For a proportion of adults sentenced (12% for common assault, 15% for racially/religiously aggravated common assault), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 6) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 2: Demographics of adult offenders sentenced for assaults on emergency workers, by gender, age and perceived ethnicity, 2018-2019 Q3¹

Gender	Number of adults sentenced	Percentage of all adults sentenced²
Male	4,645	70%
Female	1,960	30%
Not recorded/not known	89	
Total	6,694	100%

Age Group³	Number of adults sentenced	Percentage of all adults sentenced⁴
18 to 21 years	852	13%
22 to 29 years	2,072	31%
30 to 39 years	2,071	31%
40 to 49 years	1,111	17%
50 to 59 years	495	7%
60 years or older	90	1%
Not recorded/not known	3	
Total	6,694	100%

Perceived Ethnicity^{5,6}	Number of adults sentenced	Percentage of all adults sentenced⁷
White	5,350	87%
Black	526	9%
Asian	200	3%
Other	47	1%
Not recorded/not known	571	
Total	6,694	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) This offence came into force on 13 November 2018. As less than two months of data were available for this offence for 2018, these tables have been extended to include data up until the end of September 2019 (the latest data currently available).

2) Percentage calculations do not include cases where the gender was unknown.

3) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.

4) Percentage calculations do not include cases where the age was unknown.

5) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

6) For a small proportion of adults sentenced (9%), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

7) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 3: Demographics of adult offenders sentenced for assault with intent to resist arrest, by gender, age and perceived ethnicity, 2018

Gender	Number of adults sentenced	Percentage of all adults sentenced¹
Male	126	87%
Female	19	13%
Not recorded/not known	1	
Total	146	100%

Age Group²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	20	14%
22 to 29 years	55	38%
30 to 39 years	49	34%
40 to 49 years	15	10%
50 to 59 years	7	5%
60 years or older	0	0%
Total	146	100%

Perceived Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
White	103	76%
Black	24	18%
Asian	7	5%
Other	2	1%
Not recorded/not known	10	
Total	146	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the gender was unknown.
- 2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 4) For a small proportion of adults sentenced (7%), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 4: Demographics of adult offenders sentenced for assault occasioning actual bodily harm, by gender, age and perceived ethnicity, 2018

Assault occasioning actual bodily harm			Racially/religiously aggravated actual bodily harm		
Gender	Number of adults sentenced	Percentage of all adults sentenced ¹	Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	4,986	90%	Male	38	88%
Female	566	10%	Female	5	12%
Not recorded/not known	20		Not recorded/not known	0	
Total	5,572	100%	Total	43	100%

Age Group ²	Number of adults sentenced	Percentage of all adults sentenced	Age Group ²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	772	14%	18 to 21 years	15	35%
22 to 29 years	1,894	34%	22 to 29 years	10	23%
30 to 39 years	1,646	30%	30 to 39 years	9	21%
40 to 49 years	830	15%	40 to 49 years	6	14%
50 to 59 years	345	6%	50 to 59 years	2	5%
60 years or older	85	2%	60 years or older	1	2%
Total	5,572	100%	Total	43	100%

Perceived Ethnicity ^{3,4}	Number of adults sentenced	Percentage of all adults sentenced ⁵	Perceived Ethnicity ^{3,4}	Number of adults sentenced	Percentage of all adults sentenced ⁵
White	3,787	84%	White	22	73%
Black	431	10%	Black	3	10%
Asian	211	5%	Asian	3	10%
Other	100	2%	Other	2	7%
Not recorded/not known	1,043		Not recorded/not known	13	
Total	5,572	100%	Total	43	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the gender was unknown.
- 2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 4) For a large proportion of adults sentenced (19% for assault occasioning actual bodily harm, 30% for racially/religiously aggravated actual bodily harm), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 5: Demographics of adult offenders sentenced for inflicting grievous bodily harm/unlawful wounding, by gender, age and perceived ethnicity, various years

Inflicting grievous bodily harm/unlawful wounding, 2018

Gender	Number of adults sentenced	Percentage of all adults sentenced¹
Male	2,447	91%
Female	229	9%
Not recorded/not known	2	
Total	2,678	100%

Age Group²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	438	16%
22 to 29 years	983	37%
30 to 39 years	739	28%
40 to 49 years	313	12%
50 to 59 years	171	6%
60 years or older	34	1%
Total	2,678	100%

Perceived Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
White	1,782	84%
Black	188	9%
Asian	87	4%
Other	57	3%
Not recorded/not known	564	
Total	2,678	100%

Racially/religiously aggravated grievous bodily harm/unlawful wounding, 2014-2018⁶

Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	50	94%
Female	3	6%
Not recorded/not known	0	
Total	53	100%

Age Group²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	10	19%
22 to 29 years	26	49%
30 to 39 years	12	23%
40 to 49 years	3	6%
50 to 59 years	2	4%
60 years or older	0	0%
Total	53	100%

Perceived Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
White	39	91%
Black	1	2%
Asian	3	7%
Other	0	0%
Not recorded/not known	10	
Total	53	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the gender was unknown.
- 2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 4) For a proportion of adults sentenced (21% for inflicting grievous bodily harm/unlawful wounding, 19% for racially/religiously aggravated grievous bodily harm/unlawful wounding), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5) Percentage calculations do not include cases where the perceived ethnicity was unknown.
- 6) These statistics are provided for the period 2014-2018, rather than for a single year, due to the small number of offenders sentenced each year.

Table 6: Demographics of adult offenders sentenced for causing grievous bodily harm/wounding with intent, by gender, age and perceived ethnicity, 2018¹

Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	1,077	94%
Female	64	6%
Total	1,141	100%

Age Group²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	236	21%
22 to 29 years	373	33%
30 to 39 years	279	24%
40 to 49 years	155	14%
50 to 59 years	80	7%
60 years or older	18	2%
Total	1,141	100%

Perceived Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
White	652	70%
Black	156	17%
Asian	82	9%
Other	35	4%
Not recorded/not known	216	
Total	1,141	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures shown here differ from those published by the MoJ, as there are a number of causing grievous bodily harm/wounding with intent cases in the CPD which indicate that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.
- 4) For a proportion of adults sentenced (19%), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.
- 5) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Table 7: Demographics of adult offenders sentenced for attempted murder, by gender, age and perceived ethnicity, 2018¹

Gender	Number of adults sentenced	Percentage of all adults sentenced
Male	67	89%
Female	8	11%
Total	75	100%

Age Group²	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	11	15%
22 to 29 years	24	32%
30 to 39 years	13	17%
40 to 49 years	14	19%
50 to 59 years	7	9%
60 years or older	6	8%
Total	75	100%

Perceived Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
White	46	69%
Black	15	22%
Asian	4	6%
Other	2	3%
Not recorded/not known	8	
Total	75	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures shown here differ from those published by the MoJ, as there is one attempted murder case in the CPD which indicates that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court. In addition, there are a small number of attempted murder cases in the CPD where either the disposal or sentence length appear to have been recorded incorrectly by the courts. These cases have also been excluded from the above table.

2) In some cases where the age of the adult was unknown, the age has been set to 25 in the source data for this table.

3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

4) For a proportion of adults sentenced (11%), their perceived ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

5) Percentage calculations do not include cases where the perceived ethnicity was unknown.

Annex B

Consultation Questions

Common assault

Question 1: Do you have any comments on the proposed culpability factors?

Question 2: Do you agree with the revised approach to assessing harm, and with the factors included?

Question 3: Do you have any comments on the proposed sentence levels?

Question 4: Do you have any comments on the proposed aggravating and mitigating factors?

Question 5: Do you have any other comments on the Common assault guideline?

Assault on emergency workers

Question 6: Do you agree with the approach to assessing culpability and harm, and with the factors included?

Question 7: Do you have any comments on proposed sentence levels?

Question 8: Do you agree with the proposed aggravating and mitigating factors?

Question 9: Do you have any other comments on the Assault on emergency workers guideline?

Assault with intent to resist arrest

Question 10: Do you agree with the approach to assessing culpability and harm, and with the factors included?

Question 11: Do you have any comments on the proposed sentence levels?

Question 12: Do you agree with the proposed aggravating and mitigating factors?

Question 13: Do you have any other comments on the Assault with intent to resist arrest guideline?

ABH

Question 14: Do you agree with the approach to assessing culpability and with the factors included?

Question 15: Do you agree with the approach to assessing harm?

Question 16: Do you have any comments on the proposed sentence levels?

Question 17: Do you agree with the proposed aggravating and mitigating factors?

Question 18: Do you have any other comments on the ABH guideline?

GBH s18 and s20

Question 19: Do you agree with the approach to assessing culpability for s20 offences and with the factors included?

Question 20: Do you agree with the approach to assessing culpability for s18 offences and with the factors included?

Question 21: Do you agree with the approach to assessing harm for GBH offences and with the factors included?

Question 22: Do you have any comments on the proposed sentence levels for GBH s20?

Question 23: Do you have any comments on the proposed sentence levels for GBH s18?

Question 24: Do you agree with the proposed aggravating and mitigating factors?

Question 25: Do you have any other comments on the s20 GBH guideline?

Question 26: Do you have any other comments on the s18 GBH guideline?

Attempted murder

Question 27: Do you agree with the approach to assessing culpability for Attempted murder and with the factors included?

Question 28: Do you agree with the approach to assessing harm for attempted murder offences and with the factors included?

Question 29: Do you have any comments on the proposed sentence levels?

Question 30: Do you agree with the proposed aggravating and mitigating factors?

Question 31: Do you have any other comments on the Attempted murder guideline?

Equality and diversity

Question 32: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

Question 33: Are there any other equality and diversity issues the guidelines should consider?

