

## Final Resource Assessment

### Assault Offences

#### Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

#### Rationale and objectives for new guideline

In June 2011, the Sentencing Council's Assault guidelines came into force, covering most of the assault offences regularly sentenced by courts in England and Wales. In October 2015, the Council published an evaluation of the impact of the Assault guidelines on sentencing outcomes. Following this, the Council has revised the guidelines to address some of the issues raised in the evaluation.

In July 2009, the Council's predecessor body, Sentencing Guidelines Council's (SGC) Attempted murder guideline came into force. The Sentencing Council has produced a new guideline for this offence alongside the revision of the Assault guidelines.

The Assaults on Emergency Workers (Offences) Act 2018 introduced a higher statutory maximum sentence of 12 months' custody for common assaults on those specified as emergency workers, and the Council has now incorporated this offence within the common assault guideline, specifying an extra step in the sentencing process for sentencers to account for the victim being an emergency worker. The existing guideline for assault on a police constable, which includes a lower statutory maximum sentence, has not been included in the revised guideline.

The Council's aim in developing these guidelines is to provide sentencers with a structured and consistent approach to sentencing assault offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences, and to address some of the issues raised in the Assault guidelines evaluation.

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

## Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Common assault;
- Assaults on emergency workers;
- Assault with intent to resist arrest;
- Assault occasioning actual bodily harm;
- Inflicting grievous bodily harm/ unlawful wounding;
- Causing grievous bodily harm with intent to do grievous bodily harm/ wounding with intent to do grievous bodily harm;
- Racially/ religiously aggravated common assault, racially/ religiously aggravated assault occasioning actual bodily harm, racially/ religiously aggravated grievous bodily harm/ unlawful wounding; and
- Attempted murder.

The *Assault Offences* guidelines applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

## Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of it.

The Council intends for the guidelines to encourage consistency of sentencing; however, for some of the offences, the Council also intends to change sentencing practice. This is either to address some issues identified through the evaluation of the existing Assault guidelines, or to increase sentences to more appropriate levels where the Council has determined that sentences are currently too low. In order to develop guidelines which lead to the Council's intended categorisations of culpability and harm, and consequently the intended sentence levels, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks, sentencing data from the Court Proceedings Database,<sup>2,3</sup> data from the

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<sup>2</sup> The Court Proceedings Database (CPD) is an administrative database managed by the Ministry of Justice (MoJ), containing data on defendants proceeded against, convicted and sentenced at court. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used. Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>

<sup>3</sup> The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the

Crown Court Sentencing Survey,<sup>4</sup> data from a bespoke magistrates' court data collection<sup>5</sup> and references to case law and news articles. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Research has also been conducted with sentencers to explore whether the guidelines would be implemented as anticipated. This research has provided some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population and probation resources.

Detailed sentencing statistics for assault offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

## Common assault

Common assault is the highest volume offence covered by the guidelines, with around 29,000 adult offenders sentenced in 2019. The most frequently used sentence outcome was a community order, comprising 43 per cent of offenders sentenced. A further 17 per cent of offenders received a fine, 14 per cent received an immediate custodial sentence, 12 per cent received a discharge, 11 per cent were given a suspended sentence order and 3 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for common assault is six months' custody and in 2019 the average (mean)<sup>6</sup> final<sup>7</sup> custodial sentence length (ACSL) was around three months.

## Assaults on emergency workers

In 2019, around 8,600 adult offenders were sentenced for assaults on emergency workers. Of these, 38 per cent of offenders sentenced received a community order,

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offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:

<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

<sup>4</sup> During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>.

<sup>5</sup> From 4 January to 7 May 2021, the Sentencing Council conducted a bespoke data collection exercise at magistrates' courts. Sentencers were asked to provide details of the case and the factors taken into account by the sentencer when determining the appropriate sentence for the offender, where the principal offence was common assault, assaults on emergency workers, assault occasioning actual bodily harm or criminal damage. An early extract of this data covering 4 January to 25 March 2021 has been used to provide insight on current sentencing practice for common assault and assaults on emergency workers to inform this resource assessment. The data collected for assault occasioning actual bodily harm were too low volume at the point at which the data were extracted for any meaningful analysis to be conducted for this offence.

<sup>6</sup> All averages presented in this paper are calculated as the mean.

<sup>7</sup> All statistics on sentence lengths presented in this section are final sentences, after any reduction for guilty plea.

and 22 per cent received a fine. A further 18 per cent were sentenced to immediate custody, 11 per cent were given a suspended sentence order, 8 per cent received a discharge and 4 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for assaults on emergency workers is 12 months custody and in 2019 the ACSL was around three months.

### **Assault with intent to resist arrest**

In 2019, around 110 offenders were sentenced for assault with intent to resist arrest. Just under a third of offenders received a community order (32 per cent), and 28 per cent received a fine. A further 20 per cent were sentenced to immediate custody, 10 per cent were given a suspended sentence order, 2 per cent received a discharge and 6 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for assault with intent to resist arrest is 2 years custody, and in 2019, the ACSL for this offence was around four months.

### **Assault occasioning actual bodily harm**

Around 5,700 offenders were sentenced for assault occasioning actual bodily harm in 2019, and the majority were sentenced in the Crown Court (65 per cent). Forty two percent of all offenders sentenced for this offence received an immediate custodial sentence and 32 per cent received a suspended sentence order. A further 21 per cent received a community order, 1 per cent received a discharge, 2 per cent received a fine and 3 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for assault occasioning actual bodily harm is 5 years custody and in 2019 the ACSL was 1 year 2 months.

### **Inflicting grievous bodily harm/ unlawful wounding**

In 2019, 2,300 offenders were sentenced for inflicting grievous bodily harm/ unlawful wounding, and the vast majority were sentenced in the Crown Court (97 per cent). Most offenders sentenced in 2019 received either an immediate custodial sentence (53 per cent) or a suspended sentence order (38 per cent). An additional seven per cent of offenders received a community order and three per cent were recorded as otherwise dealt with.

The statutory maximum sentence for inflicting grievous bodily harm/unlawful wounding is 5 years and the ACSL in 2019 was 1 year 11 months.

### **Causing grievous bodily harm with intent/ wounding with intent to inflict grievous bodily harm**

Around 1,300 offenders were sentenced for this offence in 2019. The vast majority were sentenced to immediate custody (88 per cent), 3 per cent were given a

suspended sentence order, 1 per cent were given a community sentence and a further 8 per cent were recorded as otherwise dealt with.<sup>8</sup>

The statutory maximum sentence for causing grievous bodily harm with intent/ wounding with intent to inflict grievous bodily harm is life imprisonment, and in 2019, the ACSL was 6 years.

**Racially/ religiously aggravated common assault, racially/ religiously aggravated assault occasioning actual bodily harm, racially/ religiously aggravated grievous bodily harm / unlawful wounding**

In 2019, around 730 offenders were sentenced for racially/ religiously aggravated common assault. Of these, 42 per cent of offenders received a community order, 24 per cent were sentenced to immediate custody, 14 per cent received a suspended sentence order and 13 per cent received a fine. A further 4 per cent received a discharge and 3 per cent were recorded as otherwise dealt with. The statutory maximum sentence for this offence is 2 years' custody and the ACSL in 2019 was around four months.

Around 50 offenders were sentenced for racially/ religiously aggravated actual bodily harm in 2019, and over half of offenders received an immediate custodial sentence (55 per cent) and 31 per cent received a suspended sentence order. Fines, discharges and those recorded as otherwise dealt with represented a further four per cent each. The statutory maximum sentence for this offence is 7 years and the ACSL in 2019 was 1 year 5 months.

Racially/ religiously aggravated grievous bodily harm/ unlawful wounding is a particularly low volume offence, with around 10 offenders sentenced in 2019. The most common outcome was immediate custody (56 per cent); a further 33 per cent were given a suspended sentence order and 11 per cent were given a community order. The statutory maximum sentence for this offence is 7 years and in 2019 the ACSL was 2 years 8 months.<sup>9</sup>

**Attempted murder**

In 2019 around 110 offenders were sentenced for attempted murder. The vast majority of offenders were sentenced to immediate custody (86 per cent), 1 per cent were given a suspended sentence and the rest were recorded as otherwise dealt with (13 per cent).

The statutory maximum sentence for attempted murder is life imprisonment and the ACSL in 2019 was 14 years 5 months.

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<sup>8</sup> Due to a data issue currently under investigation, there are a number of causing grievous bodily harm/wounding with intent cases of immediate custody which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Immediate custody' and 'Otherwise dealt with' should therefore be treated with caution.

<sup>9</sup> The proportions and ACSL shown should be treated with caution, due to the low number of offenders sentenced for this offence.

## Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the guideline and draws upon analytical and research work undertaken during guideline development as well as findings from the evaluation of the existing guidelines. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the guideline are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions therefore have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered, alongside findings from the evaluation of the existing guideline, transcripts of judges' sentencing remarks for offenders sentenced at the Crown Court and findings from research interviews undertaken with sentencer. This evidence has helped to understand how the guidelines may be applied in practice and mitigate the risk of the guidelines having an unintended impact

Data from the Crown Court Sentencing Survey (CCSS) were used to understand how offenders sentenced at the Crown Court may be spread across the different levels of culpability and harm under the revised guidelines.<sup>10</sup> However, the data were collected on the factors and levels in the existing guidelines. As the revised guidelines capture some different factors and are structured differently to the existing guidelines, some assumptions have been made about how data from the CCSS may translate to sentencing under the revised guidelines. Additionally, as the CCSS data are only available up to March 2015, and sentencing outcomes have changed slightly since then, some assumptions have been made about how the changes to sentences may affect the estimated impact for each guideline.

An early extract of data from a bespoke magistrates' court data collection exercise was used to understand the types of offences currently seen at magistrates' courts

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<sup>10</sup> Data from the CCSS were used to inform the resource impacts for the offences of assault occasioning actual bodily harm, inflicting grievous bodily harm/ unlawful wounding and causing grievous bodily harm with intent/ wounding with intent to do grievous bodily harm. For the other offences covered by this guideline, the volume of data available was too low to produce meaningful analysis.

and how offenders are currently being sentenced.<sup>11</sup> Analysis was conducted to try to understand how offenders may be sentenced under the revised guidelines, by investigating the different factors taken into account and the starting point sentences imposed, and using this to make assumptions about the offence category they may fall into under the new guidelines. However, the data were collected during the Covid-19 pandemic, which may have influenced the types of offences coming through the courts and the type, length or details of the sentence given. It is also possible that Covid-19 may also have influenced the types of factors deemed important by sentencers (for example, incidents of spitting may be treated more seriously during the pandemic). Therefore, it is not clear if these data are representative of the usual cases and sentencing practice typically seen.

It remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources.

## Resource impacts

This section should be read in conjunction with the guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

### Summary

The expected impact of each guideline is provided in detail below.

For common assault, it remains difficult to estimate the impact of the revised guideline. However, analysis of an early extract of data from a bespoke magistrates' court data collection suggests that for common assaults of the lowest severity, there may be increases in the level of fines imposed and a potential shift from fines to community orders. For cases of average/middling seriousness and the most serious common assault cases, it is anticipated that sentences will remain broadly similar to current sentencing practice but that the introduction of the middle harm category will allow for a wider range of offending to be appropriately captured and therefore increase consistency in sentencing and encourage proportionate harm assessments.

For assaults on emergency workers, limited data are currently available to understand current sentencing practice and how the guideline may impact sentence outcomes, as this is a relatively new offence.<sup>12</sup> Analysis of an early extract of data from a bespoke magistrates' court data collection suggests that there may be some increase in the use of custodial sentences, however, it is not possible to quantify the impact of this shift due to the limited data available.

For assault with intent to resist arrest, there may also be increases in sentence levels. However, this is a low volume offence, and statistics indicate that even if sentences increased more than expected, fewer than 10 additional prison places would be required. Therefore, the actual impact of the guideline is likely to be minimal.

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<sup>11</sup> Data from the bespoke magistrates' data collection exercise was used to inform the resource impact for the offences of common assault, racially/ religiously aggravated common assault and assaults on emergency workers.

<sup>12</sup> The offence of assaults on emergency workers came into force in November 2018.

For assault occasioning actual bodily harm (ABH), inflicting grievous bodily harm/unlawful wounding (GBH s20), and causing grievous bodily harm with intent (GBH s18), the revised guidelines have been produced to address some of the issues that had been raised in the evaluation of the existing guideline. The description and placement of some guideline factors which were found to have had an inflationary impact upon offence categorisation have been revised. The Council's analysis suggests that this could lead to decreases in sentence outcomes for these offences (compared to current levels), with reductions in average custodial sentence lengths (for all three offences), and reductions in the use of immediate custody and suspended sentence orders with consequent increases in the use of community orders (for ABH). In total across the three offences, a central estimate<sup>13</sup> suggests that these changes could lead to a need for around 500 fewer prison places<sup>14</sup> per year.

For racially/religiously aggravated common assault, due to the limited amount of data available, it is not possible to estimate the impact of the new guideline on sentencing practice. However, it should encourage consistency of approach and ensure an appropriate uplift is being applied to account for the level of aggravation. For racially/religiously aggravated assault occasioning actual bodily harm, and racially/religiously aggravated grievous bodily harm/unlawful wounding, it is expected that the uplift approach for the racial/religious aggravation may cause increases to sentences, which may partially offset some of the expected decreases for the basic offences of ABH and GBH s20. However, it has not been possible to assess the impact for these offences robustly.

For attempted murder, it is expected that there will be increases in sentence levels, with a requirement for around 300 additional prison places.

### **Common assault**

The existing guideline for common assault, which came into force in June 2011, was expected to cause a decrease in sentences. The guideline evaluation showed that it caused a decrease that was broadly consistent with the impact anticipated – a decrease in the use of community orders, and an increase in the use of fines and discharges. However, while the resource assessment anticipated a decrease in custodial sentences, the evaluation showed that there was no change in the use of custodial sentences when the guideline came into force.

The existing guideline has two levels of culpability and two levels of harm, leading to three offence categories: a combination of higher culpability and greater harm leads the sentencer to placing the offender in category 1, a combination of lower culpability and lesser harm leads to category 3, and a combination of higher culpability and lesser harm, or lower culpability and greater harm, leads to category 2. The revised guideline has two levels of culpability and three levels of harm, leading to six offence categories (a two by three table). The addition of a middle harm category addresses the evaluation finding that some offences were difficult to categorise as greater or lesser harm.

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<sup>13</sup> The central estimate is calculated by taking the half-way point between no impact and the highest estimated impact.

<sup>14</sup> All impacts on prison places presented in this resource assessment are rounded to the nearest 100 prison places.



The Council's intention with the new guideline is not to change sentences significantly. However, it considers the raising of the starting point of the lowest level common assault offences from a Band A fine to a Band C fine to be appropriate. The revised structure and factors have been drafted so that cases should fall within the appropriate categories, but without any substantial changes to sentencing outcomes.

Analysis of an early extract of data from a magistrates' court data collection exercise suggests that for the lowest level common assaults, the starting point sentence may increase.<sup>15</sup> This in part can be attributed to the increase in fine band; offenders previously falling within category 3 (lesser harm and lower culpability) who now fall into category 3B (approximately 56 per cent of these offenders), will have a starting point sentence of a Band C fine, as opposed to a Band A fine.<sup>16</sup> Furthermore, the analysis suggests that for these lowest level common assaults, there may be a shift in sentence from a fine to a community order, due to the introduction of a third, middle, harm category (the existing guideline had only greater or lesser harm categories). It is expected that some cases that previously fell into lesser harm will now more appropriately fall into the middle harm category, increasing the offence classification and subsequently increasing the starting point under the new guideline which in turn may lead to a higher final sentence. This supports findings of research conducted with sentencers during the consultation stage which suggested that the introduction of a medium category of harm may lead to some changes in sentencing outcomes.<sup>17</sup>

For common assaults that are of average/middling seriousness (i.e. not the most or least serious types of common assaults) the analysis suggests that the restructuring of the guideline may lead to some movement in starting points; however, it is expected that most sentences will continue to be community orders, with some shifts in the levels given within this. As seen with the lowest level common assaults, the new guideline will provide sentencers with the scope to distinguish more easily between the wide range of common assault offences they deal with. For example, if an offence was not serious enough to fall into greater harm but was not deemed to be lesser harm, the evidence suggests that sentencers placed the offender in category 2 rather than in category 3. Therefore, it is anticipated that the addition of the middle harm category will increase proportionality by encompassing a wider range of offending and enable sentencers to more precisely assess the offence seriousness.

At the more serious end of offending, the analysis suggests that most starting point sentences will not increase, with most offenders (around three quarters) continuing to receive a starting point sentence of a high-level community order. However, there is some evidence to suggest that there could be a small downward shift for some of these offenders, to a medium level community order. This can be attributed to the restructuring of the harm and culpability factors: the factors of 'targeting a vulnerable

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<sup>15</sup> Using just under two months of data from the data collection exercise that was recently undertaken at magistrates' courts, analysis of approximately 600 records where common assault was recorded as the principal offence was conducted to understand the impact of the guideline on current sentencing practice. Using the new guideline, new starting point sentences were estimated to understand how the new guideline structure might impact sentences.

<sup>16</sup> The starting point for a Band A fine is 50% of the offender's relevant weekly income, and the starting point for a Band C fine is 150% of the offender's relevant weekly income.

<sup>17</sup> Although we conducted interviews with sentencers during the development of the guidelines, we were only able to test three specific scenarios. These are unlikely to be representative of the wide range of offending within this offence and so provide only a narrow indication of the way the guideline may be used in practice.

victim' and a 'prolonged or sustained attack' which were previously categorised as greater harm factors, are now accounted for within culpability (in line with the ABH and GBH guidelines). As these cases are often already deemed to be highest culpability, this decrease in harm categorisation (from high to medium) could reduce the starting point sentence from a high level to a medium or low level community order.

One specific type of assault for which sentences may increase is where the new factor 'Intention to cause fear of serious harm, including disease transmission' is taken into account. This factor has been included in high culpability and will capture situations where an offence causes a victim to fear they will suffer serious harm or contract a disease. It is not known how the seriousness of such offences would be assessed using the existing guideline, although analysis of the early extract of magistrates' court data suggests that the possibility of disease transmission through spitting, coughing or biting is being taken more seriously by sentencers due to the current Covid-19 situation. However, it is not possible to indicate how many sentences will be impacted by this change or what the impact may be; but it does highlight that it is likely to continue to be a relevant factor as the pandemic persists.

It is important to note that the magistrates' court data on which this analysis is based were collected during the Covid-19 pandemic, which may have influenced the types of offences coming through the courts and the types of sentences given. Within this data collection, sentencers were asked if there were any aspects of the Covid-19 situation that may have affected the sentencing of the case. The analysis suggests that Covid-19 had a range of different effects: for example, delays to the criminal justice process may have encouraged decreases in sentences, custodial sentences may have been avoided because of the increased impact of custody on prisoners during the pandemic, or for cases in which aspects of the Covid-19 virus were relevant to the offending itself, such as the potential to transmit disease, this may have encouraged increases in sentences. As such, given that the effect of Covid-19 appears to be different for different cases, it is not possible to apply a single approach and it is not clear if these data are representative of the usual types of cases and sentencing practice typically seen, therefore, the data should be treated with caution.

Overall, it is possible that under the new guideline, some sentences may increase, some may decrease, and some will stay the same. Analysis suggests that there may be some small changes in sentences, with shifts from Band A to Band C fines, decreases in the use of fines and increases in the use of community orders, and decreases in the levels of some community orders (from high to medium). However, it is anticipated that overall sentencing practice will remain broadly similar to current sentencing practice and the revisions to the guideline will encourage a more proportionate approach to sentencing.

### **Assaults on emergency workers**

The Assaults on Emergency Workers (Offences) Act 2018 introduced a higher statutory maximum sentence of 12 months' custody for common assaults on those specified as emergency workers. It is expected that those who previously would have been convicted of assault on a police officer (with a statutory maximum of six

months) will now instead be convicted of the aggravated offence.<sup>18</sup> It is also expected that offenders sentenced for assault on other emergency workers, who previously might have been charged with common assault (with a statutory maximum of six months) will also now be convicted of the aggravated form of the offence.

The new provisions for increased sentences for assaults on emergency workers came into force on 13 November 2018 which means there is limited data available for this offence. However, the statistics on sentencing outcomes available suggest that the sentences imposed for assaults on emergency workers have been considerably lower than the statutory maximum, with a large proportion of offenders sentenced in 2019 receiving either a community order (38 per cent), fine (22 per cent) or discharge (8 per cent). Of the 18 per cent who received an immediate custodial sentence, no offenders received a sentence of over six months.

Currently there is no guideline in place and analysis of an early extract of data from the magistrates' court data collection<sup>19</sup> exercise suggests that the type of emergency worker most commonly assaulted was a police officer (accounting for 86 per cent).<sup>20</sup> It also highlights that in the absence of guidance, sentencers are currently using a range of published guidelines to sentence these cases; 45 per cent of sentencers highlighted that they used the assault on a police constable guideline and a further 30 per cent used the current common assault guideline.<sup>21</sup>

These two main guidelines have differing starting point sentences for the most serious offences. For category 1 offences (greater harm and higher culpability), the guideline starting point for assault of a police constable is 12 weeks' custody, whereas for common assault it is a high-level community order. Accordingly, the analysis suggests that a higher proportion of offenders received custody (30 per cent) where the sentencer had used the assault on a police constable guideline than for those where the sentencer had used the common assault guideline (22 per cent). Generally, most offenders sentenced using the assault of a police constable guideline assaulted a police officer (89 per cent) and assaults on other emergency workers are sentenced using the common assault guideline (or other alternative guidance). This suggests that the most serious assaults (falling into category 1) on police officers are currently receiving a more severe sentence than similar assaults on other emergency workers.

The approach the Council is using for this offence has changed since the draft resource assessment was published. Previously, the Council had consulted on a separate guideline for the offence of assaults on emergency workers. However, it has now decided to use an uplift approach similar to racially and religiously aggravated common assault to sentence these offences.

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<sup>18</sup> The existing guideline for assault on a PC which includes a lower statutory maximum sentence has not been included in the revised guideline.

<sup>19</sup> Using just under two months of data from the data collection exercise that was recently undertaken at magistrates' courts, analysis of approximately 500 records where assaults on emergency workers was recorded as the principal offence was conducted to understand the impact of the guideline on current sentencing practice.

<sup>20</sup> The remaining 14 per cent of offenders assaulted NHS staff (both medical (5 per cent) and support (2 per cent)), prison officers (4 per cent), prison custody/custody officers (2 per cent), fire and rescue service workers (less than 1 per cent) and other emergency workers (less than 1 per cent).

<sup>21</sup> The remaining cases were sentenced using no guideline or another guideline, including but not limited to, assault with intent to resist arrest and the general guideline: overarching principles.

The new uplift approach invites sentencers to apply an aggravation for the type of victim at step 3 of the guideline, after the offence category has been decided and aggravating and mitigating factors have been applied. For the most serious offences (offence category A1), sentencers are instructed to consider a custodial sentence if not already considered or to increase the length of sentence given if a custodial sentence is already imposed. It is therefore likely that for some of these offences, a custodial sentence (either suspended or immediate), or a longer custodial sentence will be now imposed increasing the severity of sentences given and potentially requiring more prison and probation resources.

However, analysis of data from the data collection and current MoJ sentencing trends, suggests that these cases are already being treated more seriously than the basic common assault offence. Although the degree of the current uplift is difficult to quantify, the analysis found that 33 per cent of offenders sentenced for assaults on emergency workers received a custodial sentence (either a suspended sentence order or an immediate custodial sentence)<sup>22</sup> compared to 17 per cent of those sentenced for common assault. The analysis also suggests that under the new guideline, for those cases that would now fall within A1, around two thirds of offenders already received a custodial sentence (either suspended or immediate).<sup>23,24</sup> This means that it is possible that not as many sentences will increase under the new guideline, as it seems that often these offenders are already being dealt with more severely.

Further to this, as stated previously, the analysis suggests that while there were some differences in sentencing outcomes depending on the existing guideline that was used, both approaches (using the existing guideline for assault of a police constable or basic common assault) led to a higher proportion of offenders receiving custody for this offence than those sentenced for basic common assault, suggesting that generally, a degree of uplift is already being applied. Therefore, it is expected that the new guideline will reinforce how to appropriately apply this uplift and may lead to higher sentences for non-police emergency workers to produce consistent sentencing.

Analysis of the data collected from magistrates' courts and data from the CPD suggests that on average, offenders sentenced for assaults on emergency workers receive similar custodial sentence lengths to those sentenced for common assault. The uplift approach for A1 offences in the guideline invites sentencers to increase the sentence length if already considering a custodial sentence. Therefore, although there is limited evidence available, it is possible that sentence lengths may increase. However, it is likely there may not be a need for many additional prison places as these custodial sentences may be suspended.

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<sup>22</sup> This proportion relates to all those sentenced for assaults on emergency workers.

<sup>23</sup> Using the harm and culpability factors present in the data collection, an approximate estimation of the new offence categorisation under the new guideline has been calculated. Figures shown should be treated with caution as they are based on the limited information of a relatively small sample of cases.

<sup>24</sup> While it was possible to roughly estimate the types of cases that would fall within the A1 offence category under the new guideline, it was more difficult to identify harm and culpability factors relating to offences of middle or lesser seriousness. We have therefore been unable to determine the offence categorisation for lower seriousness offences and as such are not able to provide evidence of the impact the new guideline may have on sentences.

The statutory maximum sentence for this offence is 12 months, which means that all custodial sentences are eligible to be suspended if deemed appropriate by the sentencer. Analysis suggests that there is a fairly even split between those currently receiving a suspended sentence order and those receiving immediate custody, so any impact on the prison service may be limited further as a large proportion of these sentences may ultimately be suspended.

For offences of middle or lesser seriousness, the guideline asks sentencers to consider a significantly more onerous penalty of the same kind or to consider a more severe type of sentence than for the basic offence of common assault. It is not possible to estimate the impact of the guideline on sentences for these cases<sup>24</sup> but based on the uplifts suggested in the guideline, it is possible that the use of custody (both suspended and immediate custody) may increase, some levels of community orders may increase and the level of fine given may become more onerous.

It should also be noted that there is a possibility that sentences may increase for this offence as a result of the new factor 'Intention to cause fear of serious harm, including disease transmission'. This factor has been included in high culpability and will capture situations where an offence causes a victim to fear they will suffer serious harm or contract a disease. Analysis of the early extract of magistrates' court data suggests that there is evidence that the Covid-19 pandemic is having a larger impact on sentencing decisions for assaults on emergency workers than for basic common assault: around 33 per cent of sentencers highlighted that Covid-19 affected the sentencing of the case, compared to around 15 per cent for common assault, and where sentencers indicated that there was spitting or biting involved and that Covid-19 had an influence on the sentencing outcome, a higher proportion of offenders received a custodial sentence (59 per cent) than the overall proportion for this offence (33 per cent). There may be other factors that contributed to the sentencers' decision to impose a custodial sentence but this analysis indicates that these cases may be taken more seriously by sentencers due to the current Covid-19 situation. However, it is not possible to indicate how many sentences will be impacted by this change or what the impact may be; but this does highlight that it is likely to continue to be a relevant factor as the pandemic persists.

Overall, it is not possible to estimate the exact resource impact of the guideline, however, the analysis of magistrates' court data has provided evidence of the types of offences currently sentenced and has provided some indication of the impact on sentences:

- As sentencing currently varies considerably for this offence, it is anticipated that the guideline will provide clarity and increase consistency and proportionality.
- It is possible that the uplift approach applied in the guideline may lead to an increase in the use of custodial sentences.
- Currently, as a higher proportion of offenders sentenced for assaults on emergency workers receive a custodial sentence than those sentenced for common assault, it may be that in some cases an uplift is already being applied. Therefore, the effect of the guideline may be more muted than may otherwise be expected.
- For those offenders who now receive custodial sentences where they didn't previously, based on current sentencing trends, it is possible that their

sentences may be suspended, although this decision will be based on the individual factors of the case.

- The average custodial sentence length for offenders sentenced for assaults on emergency workers is currently very similar to the average length for common assault. It not possible to assess from the evidence available what impact the guideline may have on the lengths of custodial sentences given, but the uplift approach in the new guideline may lead to longer sentences.

As a result of the uncertainty around the lengths of custodial sentences and the likelihood of the suspension of these sentences, it is unclear what impact the guideline will have on prison and probation resources.

### **Assault with intent to resist arrest**

The existing guideline for this offence was expected to decrease sentences slightly. However, it was not possible to evaluate the guideline's impact, as the number of offenders sentenced per year was too low to produce any meaningful analysis.

When developing the revised guideline, the Council was alert to the relationship between this offence (with a statutory maximum of two years' custody) and the offence of assaults on emergency workers (with a statutory maximum of 12 months' custody) in that an assault with intent to resist arrest will usually be an assault on a particular category of emergency worker, with the added element of resisting arrest, and so sentences were revised to ensure relativity with sentences for assaults on emergency workers.

The existing guideline has two levels of culpability and two levels of harm, leading to three offence categories. The new guideline has two levels of culpability and three levels of harm, leading to six offence categories.

Under the existing guideline, the starting point in the lowest category of seriousness is a Band B fine, whereas in the revised guideline the starting point in B3, the lowest category, is a medium level community order. As a result of this, there may be an increase in the use of community orders and a subsequent decrease in the use of fines and discharges.

In the existing guideline, the starting point in the medium category of seriousness is a medium level community order, whereas in the new guideline, the medium categories have starting points of a high level community order (B2) and 26 weeks' custody (A2). There could therefore be a slight shift towards an increased use of custody (both immediate and suspended) and a decreased use of community orders.

For the highest category of seriousness in the existing guideline the starting point is 26 weeks' custody, whereas in the new guideline the starting point in A1, the highest category, is 36 weeks' custody. As a result of this, there may be a slight increase in the ACSL. However, statistics show that some offenders already receive sentences above the existing starting point: in 2019, 10 per cent of adult offenders sentenced to immediate custody for this offence received a final sentence of over 6 months, suggesting there was already a substantial proportion of offenders in this higher category. This suggests that any increase in the ACSL may be minimal.

Overall, this means that there may be an increased use of custody (both immediate and suspended), a decreased use of fines and discharges, and a possible small increase in the ACSL. It is not clear what the impact on community orders might be, and it might be that the increases and decreases balance out, but it is not possible to determine this from the evidence available.

It is also possible that the introduction of the medium category of harm may also lead to some changes in sentencing outcomes as it allows for a broader range of offences to be captured. However, it has not been possible to estimate the impact of this due to a lack of available evidence.

As the number of offenders sentenced for this offence is fairly low (around 110 in 2019), and sentencing outcomes fluctuate slightly from year to year, it is not possible to estimate with any precision the likely impact of the guideline. However, it has been estimated that even if the proportion of offenders sentenced to immediate custody doubled under the revised guideline (from 20 per cent in 2019 to 40 per cent under the revised guideline), and the ACSL increased by around 2 months (from around 4 months in 2019 to around 6 months under the revised guideline), fewer than 10 additional prison places would be required. As it is unlikely that the proportion sentenced to immediate custody would increase to the point of being doubled under the revised guideline, the actual impact of the guideline is likely to be smaller than this. It is therefore expected that only minimal additional prison places will be required.

**Assault occasioning actual bodily harm (ABH), Inflicting grievous bodily harm/unlawful wounding (GBH 20), Causing grievous bodily harm with intent/wounding with intent to inflict grievous bodily harm (GBH s18)**

The existing guideline for ABH was expected to cause a decrease in sentences. However, the evaluation of the impact of the guideline showed that the expected decrease did not occur. There was some evidence of a small increase in sentence severity, but this increase could not be directly attributed to the guideline. Sentences then continued to increase steadily and by 2018, the proportion of offenders receiving an immediate custodial sentence was at its highest level in the past decade (44 per cent), dropping slightly to 42 per cent in 2019. In 2019, the ACSL was at its joint highest level over the same period (1 year 2 months, the same as the level in 2017).

For GBH s20, the evaluation found that, following the introduction of the existing guideline, there were small increases in sentencing severity, but these were within the bounds of what would be expected.

The existing guideline for GBH s18 was expected to cause increases to sentences, but the evaluation of the impact of the guideline showed that it caused increases in excess of those anticipated. Work undertaken in revising the guideline identified that the structure of the guideline and the phrasing and placement of factors had contributed to this. Since the guideline came into force, sentences continued to increase almost year-on-year, and by 2018, the ACSL for this offence was at its highest level in the previous decade (7 years 2 months). In 2019, the ACSL decreased notably, to 6 years, the lowest level since 2012. The Council has looked into possible reasons for this sharp decrease but has not yet been able to determine a cause. Without a clearer understanding of what may have caused this change, and without knowing if this is a short-term variation, the Council has decided to use 2018

figures for this offence for the rest of this resource assessment as its baseline for sentencing outcomes.

The Council's intention when developing the revised guidelines has been to revise the structure of, and factors within culpability and harm to ensure that offenders are categorised appropriately and proportionate sentences are imposed. This includes:

- adding medium levels of culpability and harm (the existing guideline includes only two levels of each: higher/lower culpability and greater/lesser harm),
- revising the harm factors so that harm is based only on the level of physical and psychological harm caused and not on any other factors such as the whether the victim was vulnerable or whether the attack was sustained, and,
- revising other factors, for example, splitting the weapons factor within culpability, so that highly dangerous weapons are captured at the highest culpability level (culpability A), and other weapons are captured at medium culpability (culpability B), compared with the previous guideline where all weapons were captured by higher culpability.

Analysis of transcripts of judges' sentencing remarks, research with sentencers and data from the CCSS for these offences suggest that categorisations, and consequently sentences, are likely to decrease under the revised guidelines for these offences. This should then have the effect of bringing sentences down for GBH s18, for which sentences increased beyond the level expected under the existing guideline, and also for ABH, where decreases were not observed as intended by the existing guideline. The GBH s20 existing guideline was not found to have had an unintended impact on sentencing outcomes; however, as the Council's intention is to address the issues found with the existing guidelines for GBH s18 and ABH, and to maintain the relationship between the guideline structures and sentences across the three guidelines, it is likely that sentences for GBH s20 will also decrease.

These decreases are primarily expected to affect cases of medium seriousness. Sentences are not expected to change notably for the most or least serious types of cases. The main reasons for the decreases found through the analysis were:

- the addition of medium levels of harm and culpability – previously cases were more likely to be placed in greater harm/higher culpability than in lesser harm/lower culpability, largely because there were more factors in the guidelines at the higher levels than the lower levels. The addition of medium levels for each of these is therefore more likely to lead to decreases in categorisation than increases, therefore ensuring that cases of medium seriousness are placed towards the middle of the sentencing table and are not unintentionally pushed up, as it seems has been occurring for some cases under the existing guideline;
- the removal of the factors of 'Sustained or repeated attack' and 'Victim is particularly vulnerable because of personal circumstances' from the categorisation of harm. Under the existing guideline, there are often cases where these two factors are present and therefore sentencers categorise these offenders at the 'greater harm' level within the guideline where these appear. However, in many of these cases, the analysis suggests that the injuries were not serious. Therefore, under the revised guideline, where harm is determined based only on the physical or psychological harm caused, sentencers may place these offenders at a lower level of harm; and,



- the splitting of the weapons factor, so that only highly dangerous weapons are captured by the highest level of culpability, and all other weapons are captured by medium culpability. Under the existing guideline, weapons are frequently taken into account by sentencers, and offenders are often therefore placed in higher culpability, regardless of whether the weapon is, for example, a knife (which is now categorised as a highly dangerous weapon at culpability A), or a shod foot (which would now be categorised at culpability B). This change, coupled with the addition of the medium culpability category, may therefore lead to sentencers placing some offenders with non-highly dangerous weapons or weapon equivalents at a lower level of culpability.

Based on this analysis alone, it is estimated that the guidelines could lead to the impacts provided below.<sup>25</sup> However, there are several key reasons why the actual impact of the guidelines is likely to be lower than estimated (i.e. that sentences will decrease, but not to the extent that the analysis has suggested), and these are given below the impacts.

For ABH, the analysis suggests that the revised guideline could lead to:

- Decreases in the use of immediate custody and suspended sentence orders and an increase in the use of community orders, equating to (each year) up to around 600 more offenders sentenced to community orders, up to around 200 fewer offenders given suspended sentence orders and up to around 300 fewer offenders sentenced to immediate custody<sup>26</sup>;
- A decrease of up to around 3 months to the average final<sup>27</sup> custodial sentence length (from 14 months to 11 months);
- A requirement for up to around 400 fewer prison places per year.

For GBH s20, the analysis suggests that the revised guideline could lead to:

- A decrease of up to around 3 months to the average final custodial sentence length (from 1 year 11 months to 1 year 8 months);
- A requirement for up to around 200 fewer prison places per year.

For this offence, there may also be a small shift from immediate custodial sentences to suspended sentence orders, for offenders who now receive a custodial sentence of two years or less where previously the sentence may have been above two years,

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<sup>25</sup> For these estimates, it has been assumed that those serving a determinate sentence of less than 7 years would be released half-way through their sentence, that those serving a determinate sentence of 7 years or more would be released two-thirds of the way through their sentence, and that those serving an extended determinate sentence (EDS) would be released after serving 90 per cent of their sentence (based on analysis of MoJ data). For GBH s18, life sentences have been excluded from the estimates, as no reliable information on minimum terms were available on which to base any estimates of sentence length or time served in prison. However, as only 10 offenders received a life sentence for this offence in 2018 (around 1 per cent of all adult offenders sentenced for this offence), and offenders who have committed the most serious types of this offence are expected to continue to receive similar sentences under the new guideline, it is not expected that there will be any impact on these offenders under the revised guideline.

<sup>26</sup> These estimates have been rounded to the nearest 100, and so the increases and decreases may appear not to cancel each other out.

<sup>27</sup> Final sentences are provided here instead of pre-guilty plea sentences, because final sentences relate more directly to the length of time an offender would serve and therefore to the resource impact.

and therefore these offenders may now be eligible to have their sentence suspended.<sup>28</sup>

There may also be a small decrease in the use of community orders, with some offenders now receiving custodial sentences or suspended sentence orders instead. However, as only around 150 offenders were given community sentences in 2019, and it is expected that some offenders will continue to receive community sentences under the revised guideline, it is expected that if this change occurs, the impact will be small.

For GBH s18, the analysis suggests that the revised guideline could lead to:

- A decrease of up to around 9 months to the average final custodial sentence length (from around 7 years and 2 months to around 6 years and 5 months);
- A requirement for around 400 fewer prison places per year.

However, **these figures are very likely to be overestimates** of the decreases to sentence severity, and as such, **the actual impact is expected to be smaller**. It is not possible to tell how much smaller the actual impact might be, but it is expected that there would still be at least some decrease in sentence severity overall. Assuming that the impact on prison places is likely to be greater than zero, but less than the estimated levels, it may be sensible to assume a central estimate, by halving the estimated levels given above, leading to:

- Around 200 fewer prison places required per year for ABH;
- Around 100 fewer prison places required per year for GBH s20;
- Around 200 fewer prison places required per year for GBH s18; and therefore,
- A total reduction of around 500 prison places per year for these offences.

Reasons why the initial estimates produced through the analysis are likely to be overestimates include the following:

- The types of cases coming before the courts are likely to have changed since 2014 (the period on which the estimates are partly based). The average custodial sentence length has increased for each of these three offences since 2014, suggesting that the cases coming before the courts now may be more serious than they were during the period of CCSS data used in this analysis. For example, police recorded crime data suggest that there has been an increase in offences involving the use of knives and sharp objects.<sup>29</sup> If cases are more serious, and are serious enough to be appropriately categorised at the higher ends of both culpability and harm (both under the existing and revised guidelines) then the proportion of cases categorised at the higher levels of culpability and harm are likely to be greater than estimated through the analysis. This would mean that the analysis has underestimated the proportion of high sentences, and sentences are therefore likely to decrease to a lesser degree overall.

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<sup>28</sup> A custodial sentence can be suspended if it is between 14 days and 2 years in length.

<sup>29</sup> See the Office for National Statistics 'Crime in England and Wales' statistics bulletin for the year ending June 2019, section 7:  
<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2019#rise-in-offences-involving-knives-or-sharp-instruments-and-firearms-offences>

- The Crown Prosecution Service charging guidance for assault offences changed since the period on which the estimates are partly based, and it is expected that some offenders who might have been charged with common assault during the period for which most of the data and other evidence have been available, would now be charged with ABH. This means that the revised ABH guideline would apply to a larger proportion of cases that are likely to be categorised at the lowest levels of culpability and harm, both under the existing and revised guidelines, and consequently that our analysis has underestimated the proportion of low sentences and that the decrease caused by the revised guideline would be likely to be smaller than estimated.
- The analysis has predominantly been based on sentencing remarks and CCSS data, both of which cover only Crown Court sentencing practice. Offenders sentenced at magistrates' courts for ABH (around one third in 2019) are likely to have committed offences that are less serious overall than those sentenced at the Crown Court, and therefore will be more likely to be placed at the lower levels of culpability and harm and be less affected by the causes of the decreases (which are expected to affect the medium seriousness cases more than those at the top and bottom ends of seriousness). Therefore, for ABH, the decreases in sentences are likely to be smaller than estimated.
- In April 2018, the previous Chairman of the Council issued communications to all members of the judiciary to emphasise the need for sentencers to follow the *Imposition of Community and Custodial Sentences* guideline, as there was evidence that the guideline had not had the intended impact to date. Previously, evidence suggested that suspended sentence orders were sometimes being imposed as a more severe version of a community order, where cases had not necessarily crossed the custody threshold and therefore a custodial sentence was not fully intended. The *Imposition* guideline came into force in February 2016, but early evidence of its impact suggested that the expected decreased use of SSOs and increased use of COs had not been observed. Since the letter was distributed, published figures<sup>30</sup> suggest that the imposition of COs has increased and the imposition of SSOs has decreased, providing some early evidence that the *Imposition* guideline may now be having the intended effect. Therefore, as more offenders are receiving COs now than during the period that the data analysis is based on, some offenders may already be receiving the sentence that the new ABH guideline should lead to, and so the impact of the guideline in decreasing sentences may be smaller than estimated. Findings from an evaluation of the impact of the *Imposition* guideline, determining whether this impact has occurred, will be available in due course.
- The estimates of sentences under the revised guidelines do not take into account any adjustment for aggravating and mitigating factors, as this would be difficult to measure robustly, and so it has been assumed that the impact of these balance each other out. However, there is evidence that aggravating

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<sup>30</sup> Published figures show that for adult offenders, the use of suspended sentence orders decreased slightly from 2017 to 2019, and for indictable offences, the use of community orders increased. See the MoJ Criminal Justice Statistics publication, and click on the 'Outcomes by offence tool' for detailed breakdowns: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>

factors tend to outweigh mitigating factors,<sup>31</sup> and so there is a possibility that estimated sentences could be slightly higher, and therefore that the decrease is likely to be lower than estimated.

Overall, as explained above, this suggests that the estimated impacts based on the analysis are likely to be over-estimates, and so by halving the estimates to create a more sensible estimate of the impact, a total reduction of around 500 prison places per year is expected for these offences.

**Racially/ religiously aggravated common assault, racially religiously aggravated assault occasioning actual bodily harm, racially/ religiously aggravated grievous bodily harm/ unlawful wounding**

For the racially/ religiously aggravated offences of common assault, ABH and GBH s20, the Council has adopted the same model as used for some of its other recent guidelines, including racially/ religiously aggravated harassment (fear of violence) racially/ religiously aggravated criminal damage, and several public order offences such as racially/ religiously aggravated disorderly behaviour with intent to cause harassment, alarm or distress. Sentencers are first asked to reach a starting point sentence for the base offence and adjust for any aggravating or mitigating factors, then apply an uplift for the racial/ religious aggravation. The uplift depends on whether the level of racial/ religious aggravation was high, medium or low.

Research conducted for this model previously (for other offences) suggested that it may lead to a slight increase in sentences compared with current sentencing practice.

For common assault, the lack of data on current sentencing practice and the uncertainties around the possible impact of the guideline make it difficult to estimate with any certainty the impact of the guideline on sentencing for the racially/ religiously aggravated offence. However, analysis of a small number of records from an early extract of the magistrates' court data collection indicates that an uplift approach is already being applied by sentencers and adjustments include: a percentage increase in sentence length (for example, an increase in the length of a custodial sentence), more requirements on a community order or a raised threshold (for example, from a fine to a community order). So, although the impact of the new guideline on sentencing practice cannot be fully estimated, it is expected that sentences may increase for only a small proportion of cases, because a similar approach to the one presented in the revised guideline is already being implemented in some cases. Overall, the new approach should encourage consistency of approach and ensure an appropriate uplift is being applied.

For ABH and GBH s20, the guidelines for the base offence are expected to cause decreases in sentences, as outlined earlier. For the racially/ religiously aggravated offences, it may be that any small increases observed as a result of the uplift approach somewhat offset the expected decreases for the base offences. Therefore, any decreases might be to a lesser extent than for the base offences, or the increases and decreases may balance out, with no subsequent impact on sentence outcomes. Data from the CPD suggests that an uplift is already being applied, as

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<sup>31</sup> See the Crown Court Sentencing Survey Annual Report 2014: <https://www.sentencingcouncil.org.uk/publications/item/crown-court-sentencing-survey-annual-publication-2014-full-report-2/>

sentences for the racially/ religiously aggravated offence are higher than for the base offence. However, without information on the levels of aggravation seen by the courts, and with the uncertainties about the impacts for the base offences, it is not possible to estimate the impact of these guidelines in more detail.

### **Attempted murder**

The existing guideline for attempted murder, produced by the Sentencing Guidelines Council (SGC), contains three categories of seriousness reflecting the nature of the offence. There are three levels of harm within each category: serious and long term physical or psychological harm, some physical or psychological harm and little or no physical or psychological harm. Starting points and sentence ranges within each category vary according to the level of harm found.

The new revised guideline for attempted murder adopts the Sentencing Council's standard approach, based on four levels of culpability and three levels of harm, with a sentencing range from 3 to 40 years' custody.

Revisions to provisions for murder offences increasing minimum sentences in particular circumstances have led to some concerns that sentences in the existing guideline for attempted murder are too low. The Council therefore decided that sentences in this guideline should be revised to ensure the gravity of this offence is properly reflected. Research with sentencers was conducted with an earlier draft of the guideline to assess whether the guideline would be used as expected and sentences in the new guideline have been tested against a sample of transcripts of judges' sentencing remarks, to ensure that appropriate sentences are imposed for this very serious offence.

This analysis of transcripts of Crown Court judges' sentencing remarks for attempted murder cases found that the majority of sentences would be likely to increase under the revised guideline. Sentences are expected to increase by different amounts depending on the exact details of the case, but it is anticipated that on average there will be a similar impact across most offence categories (e.g. A1, A2, B1, etc). This is expected to lead to an overall increase of around 5 years to the average final custodial sentence length (from around 15 years 1 months to around 20 years 5 months).<sup>32</sup> Based on this analysis, it is expected that the guideline will result in a requirement for around 300 additional prison places.<sup>33, 34</sup>

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<sup>32</sup> The ACSL calculations for attempted murder have been based on the transcript analysis undertaken. This differs from the ACSL calculations for other offences shown in this document, which are based on CPD data.

<sup>33</sup> To calculate the expected resource impact, volumes of sentences have been adjusted in line with 2019 volumes. It should be noted that the number of offenders sentenced for attempted murder in 2019 was high in comparison with previous years (108 compared with 75 in 2018). Therefore, if volumes decrease in future then so will the estimated impact on prison resources. It has also been assumed that those serving a determinate sentence of less than 7 years would be released half-way through their sentence, that those serving a determinate sentence of 7 years or more would be released two-thirds of the way through their sentence, that those serving an extended determinate sentence (EDS) would be released after serving 90 per cent of their sentence (based on analysis of MoJ data), and those serving a life sentence would serve the minimum term given (no data are available on the actual length of time served by offenders on life sentences).

<sup>34</sup> Estimates have been rounded to the nearest 100.

## Risks

In attempting to estimate the likely resource impacts of this guideline, there are two main risks to consider:

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline's development. This includes research interviews that have been undertaken with sentencers, where case scenarios were used to test whether the guideline has the intended effect. However, there were limitations on the number of scenarios which could be explored, so the risk could not be fully eliminated. This also includes data collected in magistrates' courts on current sentencing practice for some of the offences covered by the revised guidelines. The Council also sought views on the draft revised sentences during the consultation in order to decide whether further revisions were necessary.

### **Risk 2: Sentencers do not interpret the new guideline as intended**

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for assault cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research carried out with sentencers has also enabled issues with implementation to be identified and addressed prior to the publication of the guidelines.

Consultees have also fed back their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.