

## **ABH – section 47**

D is with a group of friends is on a night out with three friends in a snooker hall. One of his friends gets involved in a verbal altercation with a male, B, at the next snooker table who is also with friends.

A fight breaks out and D punches B to the face three times before he is pulled away. B suffers a cut under his left eye which requires two stitches and two of his front teeth are broken.

D pleads guilty at the first magistrates' court appearance. He has one previous conviction from 2006 for an offence of driving with excess alcohol.

In using the guideline the court will use these facts to assess the culpability of the offender and harm of the offence.

**Step 1** – the factors listed here are the only ones the court can take into account when fixing the category and the starting point. The starting point applies to all those sentenced for the offence, irrespective of previous convictions or plea. This is different to the current guideline where the starting point applies to a first time offender convicted following trial.

It is likely that the court will decide that there are factors indicating greater harm namely that:

1. the injury is serious in the context of an ABH; and
2. there is a repeated assault on the same victim.

The court is likely to conclude that there is no factor indicating lesser harm.

The court is likely to find that there are no factors indicating higher culpability.

The court is likely to decide that there is a lack of premeditation as the assault is instantaneous which is a factor indicating lower culpability.

A finding of greater harm and lower culpability will place the offender in category 2. This has a starting point of 26 weeks' custody with a range of low level community order – 51 weeks' custody.

## **Step 2**

The court will then proceed to consider any factors which could result in an upward or downward adjustment from the starting point.

Factors which could increase seriousness in this case include:

- His previous conviction although the court are likely to give it little weight bearing in mind the nature of the conviction and the length of time since it occurred;
- Ongoing effect upon the victim – damage to his teeth which will require three – six months' treatment.

There are no facts given which could reduce seriousness or which reflect his personal mitigation but where there are, they are considered at this stage.

The court is therefore unlikely to move from the starting point of 26 weeks' custody.

The court will then move on to consider the remaining steps in the decision making process.

## **Step 3**

There are no other factors indicating a reduction.

**Step 4**

The court will make an adjustment to the sentence length because of the guilty plea by reference to section 144 Criminal Justice Act 2003 and the guilty plea guideline.

**Step 5**

Dangerousness is not relevant on these facts.

**Step 6**

Totality is not relevant as he is being sentenced for a single offence.

**Step 7**

The court is directed to consider making a compensation order and/or other ancillary orders.

**Step 8**

The court will need to set out reasons for passing the sentence it has including whether it has followed the guidelines; if they have departed from them, they should explain why.

**Step 9**

If D has been remanded in custody or remanded on electronic tag the court should take into account the length of time he has served in custody or the effect of the tag.