

Assault guideline: Crown Court road testing Revenge in GBH (s18) and ABH offences

Aims of the research

This research was conducted to assess the impact of the high culpability factors for GBH (s18) on sentencing practice, and specifically whether the inclusion of revenge, in addition to planning/pre-meditation, as a culpability factor, leads to an inflation of sentences. The research also aimed to test whether sentencers take revenge into account as an aggravating factor in ABH cases that are gang/group-related.

Methodology

The research was carried out by online survey, which included two scenarios of GBH (s18) and ABH (see annex), and took participants through the guideline, asking how they would apply each step. We sent the survey to 48 Crown Court judges, all of whom had been previously approached in late 2018 to take part in road testing on assault offences prior to the drafting of the new guideline. The survey was open for three weeks and a reminder was sent a week before closing to all those who had not responded at that point. Participants were not told that the research was focussed on revenge, in order not to influence their responses.

We received responses from 26 judges, half of whom (n=13) received the guidelines with revenge included in culpability factors for GBH and aggravating factors for ABH, and half of whom received the guidelines without any inclusion of revenge.

Due to the small sample size, the findings are not necessarily representative of sentencing practice, and should be taken as indicative rather than conclusive. Furthermore, the scenarios were designed to test one element of the sentencing process only and therefore included only limited details of the cases.

Key findings

The key findings for GBH (s18) and ABH are set out below.

GBH (s18)

- where revenge was included in the guideline as a culpability factor, all sentencers identified both planning/pre-meditation and revenge as high culpability factors, and placed the offence at high culpability
- where revenge was not included in the guideline as a high culpability factor, all but one of the sentencers placed the offence at high culpability
- most sentencers also interpreted poisoning as equivalent to a highly dangerous weapon, and identified this as a high culpability factor
- a few sentencers (3 out of 13) moved above the starting point, where revenge was identified as a high culpability factor, and one sentencer moved above the starting point, where revenge was not included in the guideline as a high culpability factor
- it is not possible to say whether the inclusion of revenge as an additional high culpability factor may lead to inflation of sentences, where planning or pre-meditation is also a factor in the case

ABH

- sentence starting points varied considerably for this scenario
- most sentencers (11 out of 13) identified revenge when it was included in the guideline as an aggravating factor
- a few sentencers (3 out of 13) identified revenge as an additional factor, when it was not included in the guideline
- about half of sentencers who identified revenge as an aggravating factor (across both groups) increased the sentence from its starting point

Detailed findings – GBH (s18)

Participants were given a scenario in which the defendant had poisoned her husband with non-prescribed medication, after discovering he was having an affair. Her internet history indicated she had searched for ways ‘to poison someone but not kill them.’ Half (n=13) of participants (Group A) were sent a version of the guideline which included revenge as a high culpability factor, and half (n=13; Group B) were sent a version of the guideline which did not include revenge as a factor.

It was expected that participants would apply high culpability due to the element of planning. We wanted to understand whether sentencers in Group A would move above the starting point due to the inclusion of an additional factor.

Culpability

Almost all sentencers placed the offender in the high culpability category, regardless of whether revenge had been included as a factor in the guideline.

	Culpability		
	High	Medium	Low
Group A	13		
Group B	12	1	

In both groups, all sentencers identified significant degree of planning or pre-meditation as a factor, and most (18 out of 26) identified use of a highly dangerous weapon or weapon equivalent as a factor. Three sentencers also identified the victim as obviously vulnerable, and four identified prolonged assault as additional high culpability factors.

We asked participants why they had chosen the level of culpability they did. Seven sentencers from Group A stated the presence of three high culpability factors as their reason for placing the offence in high culpability. Their comments included:

Planned, highly dangerous substance and revenge attack over a period of time
(placed in high culpability)

Because it was a well-planned and highly dangerous poisoning of an unsuspecting victim in order to wreak revenge
(placed in high culpability)

One indicated that they would have placed the offence in high culpability, regardless of the presence of a highly dangerous weapon equivalent:

Whilst I accept it may be open to argument whether the particular poison falls under the definition of 'weapon equivalent' the research into the substance amounts to a significant degree of planning and premeditation and there is an obvious motive of revenge
(placed in high culpability)

In Group A, there were three sentencers who did not include use of a highly dangerous weapon equivalent as a factor, and two of them instead identified use of a weapon or weapon equivalent which does not fall into Category A. The comments from these two sentencers indicate that the presence of both planning and revenge led them to place the offence into high culpability. All three had identified revenge as a high culpability factor.

Five sentencers in Group B did not identify use of a highly dangerous weapon or weapon equivalent as a culpability factor, and four out of five still placed the offender in the high culpability category based on one factor: significant degree of planning or pre-meditation. One sentencer placed the offender in the medium culpability category and stated in their comments:

there was significant planning but no weapon as defined (placed in medium culpability)

Harm

In Group A, six sentencers applied category 1 harm, and seven applied category 2 harm. In Group B, five applied category 1 harm, seven applied category 2 and one applied category 3.

	Harm		
	Cat 1	Cat 2	Cat 3
Group A	6	7	
Group B	5	7	1

The comments from both groups in response to why they chose the level of harm indicated that it depended on how the sentencer viewed the impact on the victim of no longer being able to drink alcohol.

It seems to me that drinking alcohol would be seen objectively as a normal day to day activity which has been substantially affected on a long-term basis (placed in category 1)

I cannot quite describe an inability to drink alcohol as a "grave injury" ... it rather depends on the part that alcohol played in the victim's life (placed in category 3)

Starting points

Sentencing starting points varied, largely due to the variation in categories of harm. There was also some variation as a result of sentencers deviating from the guideline starting point. In Group A, three sentencers started above the guideline starting point, and two started below it. In Group B, one sentencer started above the guideline starting point, and two started below it.¹

It is not possible to say whether the inclusion of revenge has led to an inflation of sentences, because sentencers placed the offence at high culpability regardless of whether revenge was present as a factor.

Group A sentencers	Culp factors identified	Culpability	Harm	Starting point	Used guideline SP?
1	4	High	Category 1	12 years	Yes
2	4	High	Category 1	12 years	Yes
3	3	High	Category 1	12 years	Yes
4	3	High	Category 1	12 years	Yes
5	2	High	Category 1	12 years	Yes
6	5	High	Category 1	10 years	Below SP
7	4	High	Category 2	8 years	Above SP
8	3	High	Category 2	8 years	Above SP
9	3	High	Category 2	7.5 years	Above SP
10	3	High	Category 2	7 years	Yes
11	3	High	Category 2	7 years	Yes
12	3	High	Category 2	7 years	Yes
13	3	High	Category 2	5 years	Below SP
Group B sentencers					
1	2	High	Category 1	12 years	Yes
2	2	High	Category 1	12 years	Yes
3	2	High	Category 1	10 years	Below SP
4	1	High	Category 1	10 years	Below SP
5	3	Medium	Category 1	7 years	Yes
6	3	High	Category 2	8.5 years	Above SP
7	3	High	Category 2	7 years	Yes
8	2	High	Category 2	7 years	Yes
9	2	High	Category 2	7 years	Yes
10	2	High	Category 2	7 years	Yes
11	2	High	Category 2	7 years	Yes
12	2	High	Category 2	7 years	Yes
13	2	High	Category 3	5 years	Yes

¹ Starting points in the GBH guideline are as follows:

A1 – 12 years; A2 – 7 years; A3 – 5 years; B1 – 7 years

Detailed findings – ABH

Participants were given a scenario in which the defendant had seen a member of a rival gang over the road, run and pushed him over, and then kicked and punched him. The defendant was carrying a knife which he used to threaten the victim but did not use to physically attack him. Half (n=13) of participants (Group A) were sent a version of the guideline which included revenge as an aggravating factor, and half (n=13; Group B) were sent a version of the guideline which did not include revenge as a factor.

Culpability, harm and starting points

There was considerable variation in sentence starting points, ranging from 36 weeks to 2 years and 6 months. This is in part due to the variation in harm and culpability levels applied. In Group A, ten sentencers applied high culpability and three applied medium culpability, and all in this group applied Category 2 for harm. In Group B, all sentencers applied high culpability, and four applied Category 1 for harm, seven applied Category 2 and two applied Category 3.²

Group A	Culpability		
Harm	High	Med	Low
Category 1			
Category 2	10	3	
Category 3			

Group B	Culpability		
Harm	High	Med	Low
Category 1	4		
Category 2	7		
Category 3	2		

Group A sentencers	Culpability	Harm	Starting point	Followed guideline?
1	High	Category 2	30 months	Above SP
2	High	Category 2	24 months	Above SP
3	High	Category 2	18 months	Yes
4	High	Category 2	18 months	Yes
5	High	Category 2	18 months	Yes
6	High	Category 2	18 months	Yes
7	High	Category 2	18 months	Yes
8	High	Category 2	18 months	Yes
9	High	Category 2	18 months	Yes
10	High	Category 2	18 months	Yes
11	Medium	Category 2	15 months	Above SP
12	Medium	Category 2	48 weeks	Above SP
13	Medium	Category 2	36 weeks	Yes
Group B sentencers				
1	High	Category 1	42 months	Above SP
2	High	Category 1	30 months	Yes
3	High	Category 1	30 months	Yes
4	High	Category 1	18 months	Below SP
5	High	Category 2	18 months	Yes
6	High	Category 2	18 months	Yes

² The associated comment and sentence starting point (36 months) from one of the sentencers who applied Category 3 suggests they intended to apply Category 1.

7	High	Category 2	18 months	Yes
8	High	Category 2	18 months	Yes
9	High	Category 2	18 months	Yes
10	High	Category 2	18 months	Yes
11	High	Category 2	9 months	Below SP
12	High	Category 3	12 months	Above SP
13	High	Category 3	36 months	Above SP

Aggravating factors

In Group A, 11 out of 13 sentencers identified revenge as an aggravating factor, and five of these went on to increase the sentence from its starting point. Three of these sentencers also noted the gang-related element as an aggravating factor, and of these one increased the sentence from its starting point, while two remained the same. One sentencer who identified revenge as a factor also noted in their comments that they *“must be careful not to double count re revenge.”* One sentencer did not identify revenge as an aggravating factor but included under ‘other’ factors: *“the gang context leading to tit-for-tat attacks.”*

In Group B, three sentencers identified “revenge” under ‘other’ aggravating factors; two of these also identified “gang-related” in their comments. Two out of three sentencers who identified revenge under ‘other’ factors went on to increase the sentence from the starting point.

In both groups, four sentencers out of 13 identified the gang-related context under ‘other’ factors.

Mitigating factors

Very few sentencers applied mitigating factors. In Group A, four sentencers identified no previous convictions as a mitigating factor, and in Group B, one sentencer identified this. No other mitigating factors were identified, though a number of sentencers commented that they would need more information to complete this step.

Final sentences

Sentencers in Group A were slightly more likely to increase the sentence from the starting point, than those in Group B (six out of 11 in Group A, compared with four out of ten in Group B). The difference is very small, so it is difficult to draw inferences about the impact of the inclusion of revenge as an aggravating factor. The identification of revenge as an aggravating factor did not necessarily lead to the sentence being increased from its starting point.

Change from starting point	Group A	Group B
Reduced	1	0
Stayed the same	5	7
Increased	6	4
Did not answer ³	1	2

³ Some participants did not feel able to apply a final sentence without additional information. The information provided had been limited because the research set out to test a specific element of the case (revenge) and we were most interested in how this would affect the final sentence.

This table shows starting points and final sentences for each sentencer. The sentences in which revenge was identified as an aggravating factor have been highlighted green.

Group A sentencers	Starting point	Final sentence	Change in sentence
1	30 months	n/a	n/a
2	24 months	24 months	Stayed the same
3	18 months	24 months	Increased
4	18 months	24 months	Increased
5	18 months	21 months	Increased
6	18 months	21 months	Increased
7	18 months	20 months	Increased
8	18 months	18 months	Stayed the same
9	18 months	18 months	Stayed the same
10	18 months	18 months	Stayed the same
11	15 months	12 months	Decreased
12	48 weeks	48 weeks	Stayed the same
13	36 weeks	12 months	Increased
Group B sentencers			
1	42 months	42 months	Stayed the same
2	30 months	30 months	Stayed the same
3	30 months	30 months	Stayed the same
4	18 months	24 months	Increased
5	18 months	24 months	Increased
6	18 months	18 months	Stayed the same
7	18 months	18 months	Stayed the same
8	18 months	18 months	Stayed the same
9	18 months	n/a	n/a
10	18 months	n/a	n/a
11	9 months	9 months	Stayed the same
12	12 months	15 months	Increased
13	36 months	48 months	Increased

Overall, seven out of 14 sentencers who had identified revenge as an aggravating factor went on to increase the sentence from its starting point. However, it is not possible to say whether identifying revenge as an aggravating factor had increased the sentence in each case, because other aggravating factors may also have influenced decisions to increase the sentence. For example, one participant commented:

The context of gang violence caused me to raise the sentence above the starting point. The Defendant's (presumed) good character to a limited extent operates to cancel out the revenge nature of the attack.

Scenarios

GBH (s18)

The defendant (D) had discovered her husband (V) was having an affair. D was enraged and confided in a friend that she wasn't going to confront him but would make sure he paid for humiliating and cheating on her. A few weeks later V was admitted to hospital with severe stomach pains and vomiting, and was put into a medically induced coma. Toxicology reports confirmed the presence of an unprescribed medication in his system which was known to cause liver failure and other serious health issues.

The hospital asked D if he was taking medication and she denied all knowledge but seemed nervous so the hospital contacted the police. Examination of D's internet history found search history for 'medication with painful side effects' and 'how to poison someone but not kill them'. V recovered but his liver suffered irreparable damage, and he was advised he would not be able to drink alcohol again without risk of liver failure.

D pleaded not guilty to GBH and was found guilty after trial.

ABH

The defendant (D) was out at night when he saw a member of a rival gang member (V) across the road. In a recent fight V had attacked D's friend and injured him very badly. D knew this was an opportunity to get V on his own and make sure he paid and ran towards him taking a knife out of jacket pocket, telling him "let's see how you like getting shanked". V managed to kick the knife out of D's hand, so D overpowered him and punched and kicked V multiple times while he was on the floor.

A passing dog walker witnessed the event and called out to D to stop and that he was calling the police. D ran off leaving V on the floor. V suffered extensive bruising and a number of small cuts requiring stitches.

D pleaded not guilty to ABH and was found guilty after trial.