



BIRMINGHAM LAW SOCIETY
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**Response to Sentencing Council Consultation on Assault
Offences**

September 2020

Response of the Criminal Law Committee of the Birmingham Law Society to the Sentencing Council consultation on sentencing of assault offences

Founded in 1818, Birmingham Law Society is the largest regional society of its kind, representing more than 5000 legal professionals across Birmingham and the Greater Midlands.

Through our core values of community, advocacy and excellence, we are dedicated to connecting, championing and supporting all of our members.

The Criminal Law Committee consists of members drawn from Birmingham and its surrounding areas. Its co-opted members include representatives of the Legal Aid Agency, HMCTS, probation officers, prosecutors and others.

The Committee liaises with prisons, police and the courts about issues affecting all of our members. It also responds to consultations, and lobbies on behalf of both members and clients.

Consultation Questions

Common assault

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

Disease transmission is welcomed, but the ‘inference of it’ is not. Defendants often cough when arrested due to the physical effects of being arrested; this should not result in a higher sentence without explicit threat of disease transmission. In our experience, when people want to threaten disease transmission, they do so clearly.

Substantial force is unclear. What is substantial?

The culpability factors need to be addressed so as to state that, for example, if a higher factor is present but the Defendant had a lesser role in a gang, then lesser culpability would apply. At the moment, that is unclear.

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

The removal of the ‘injury serious in the context of offence’ harm factor is to be welcomed. This led to unattractive arguments about how much worse it could have been.

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

These sentences seem proportionate. We question whether a fine is the correct and pragmatic punishment for a long-term alcoholic or drug user who could benefit from intervention.

While there are obvious attractions to the use of financial penalties for minor offences, as they take up comparatively few criminal justice system resources to administer when compared to a community order, fines can have a devastating effect on those on minimal or no income, and lead to existing problems (economic, health, relationships) deteriorating as a result.

Has the Council considered the option of including ‘postponed’ sentences here; to allow an offender to demonstrate change before imposing the blunt tool of a fine?

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

Coughing should not be included. This would lead to higher sentences for the many poor, ill and homeless clients convicted of these offences. Many are in bad health and cough intermittently anyway. It would be regrettable if the new Guidelines were to impose a higher sentence on someone because they are ill, and involuntarily cough. Please see also our comments on the Public Sector Equality Duty below. Spitting is of course an aggravating factor.

Naturally, being drunk is an aggravating factor, but should it be in the case of a diagnosed and long-term alcoholic? Would this be contrary to the Equality Act?

‘Abuse of a position of trust’ needs clarifying in the guidelines to state that it applies only to limited circumstances. Courts all too easily find abuses of positions of trust between, for example taxi drivers, who are in no position of trust. This should be limited to family, friends, and professionals.

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

No.

Assault on emergency workers

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

Yes.

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

These seem too high as the levels discount in many cases a community order, which may be counterproductive. Disproportionately, these offences are committed by those with long-term physical or mental health problems as they will be those in most frequent contact with emergency workers (paramedics, nurses, doctors etc). If the sentences were lower, a positive pre-sentence report could lead to these offenders receiving the targeted support that they need.

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

Naturally being drunk is an aggravating factor, but should it be in the case of a diagnosed and long-term alcoholic? Would this be contrary to the Equality Act?

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

No.

Assault with intent to resist arrest

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

Yes.

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

These seem too high. This offence covers a wide range of circumstances, and the store detective example should rarely merit a custodial sentence.

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

Naturally being drunk is an aggravating factor, but should it be in the case of a diagnosed and long term alcoholic? Would this be contrary to the Equality Act?

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

No.

ABH

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

Generally, yes. But the 'obviously vulnerable' factor raises the question; obvious to whom? This should be to the offender, and be an objective test based on the subjective knowledge of the offender at the time of the offence.

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

The preamble to the three categories is not helpful. It will add to the time of sentencing hearings by submissions from advocates on the range of the harm that can be caused. This is in danger of being 'injury serious in the context of the offence' but another name.

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

No.

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

Coughing should not be included. This would lead to higher sentences for the many poor, ill and homeless clients convicted of these offences. Many are in bad health and cough intermittently anyway. It would be regrettable if the new Guidelines were to impart a higher sentence for someone because they are ill, and involuntarily cough. Please see also our comments on the Public Sector Equality Duty below. Spitting is of course an aggravating factor.

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Abuse of a position of trust needs clarifying in the guidelines to state that it applies only to limited circumstances. Courts all too easily find abuses of positions of trust between, for example taxi drivers, who are in no position of trust. This should be limited to family, friends, and professionals.

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

No.

GBH s18 and s20

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

Yes.

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

Yes.

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

Yes.

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

No.

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

No.

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

We repeat our comments regarding abuse of trust and alcoholism as above.

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

No.

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

No.

Attempted murder

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

The principle that the culpability should reflect the Schedule 21 regime makes sense, but in application it seems to lead to sentences that are too high overall, in the proposed guidelines.

Parliament has set the life term for murder; it has not done so for attempted murder. It would therefore be inflexible to apply the same to attempted murder.

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

Yes.

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

They seem a little too high.

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

Yes, bar alcoholism and breach of trust.

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

No.

Equality and diversity

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

We consider that the guidelines should distinguish between an offender who commits an offence while drunk, and an offender who commits an offence while drunk and an alcoholic. Not to do so may fall foul of the Equality Act.

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

No.

**Inez Brown
President
Birmingham Law Society
9 September 2020**