



Sentencing Guidelines Council

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**Assault and other offences against the  
person**

**Overarching Principles: Assaults on  
children and Cruelty to a child**

***Response to Consultation***

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**February 2008**



## Foreword

These guidelines have been agreed by the Council after careful consideration of advice from the Sentencing Advisory Panel and of responses to its consultation guidelines, published simultaneously on 27 June 2007.

This document sets out the main issues raised in the responses, the conclusions of the Council and the reasoning behind the conclusions.

The Council is grateful for the comments received which have broadly confirmed the draft guidelines and enabled them to be developed and clarified.

The definitive guidelines can be found at [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk) or can be obtained from the Sentencing Guidelines Secretariat, 4<sup>th</sup> Floor, 8-10 Great George Street, London SW1P 3AE.

Chairman  
Sentencing Guidelines Council  
February 2008



1. The consultation guideline was published on 27 June 2007. Those invited to respond were:
  - Lord Chancellor and Secretary of State for Justice
  - Home Secretary
  - Attorney General
  - Constitutional Affairs Committee
  - Party Leaders and the Convenor of the Crossbench Peers in the House of Lords
2. A response was received from the Constitutional Affairs Committee (the Committee). The Committee confirmed that the Council's approach in the two guidelines was broadly endorsed by the evidence it received. The Council is grateful for the contribution of the Committee in relation to particular offences covered in the guidelines which was informed by evidence taken at a public session.
3. A response was received from Jack Straw MP, Lord Chancellor and Secretary of State for Justice which incorporated the views of the Home Secretary, Attorney General and Secretary of State for Children, Schools and Families (the Ministers' response).
4. The main assaults guideline covered seven offences ranging in seriousness from common assault to attempted murder. The consultation was widened in relation to sentencing for attempted murder and it has been decided to give further consideration to the guideline for that offence. Accordingly, responses to that part of the consultation will be presented alongside a definitive guideline for that offence when it is published.
5. The consultation attracted additional responses concerning the six other offences in the main assaults guideline and/or the guideline in relation to assaults on children and the offence of cruelty to a child from:
  - Crown Prosecution Service
  - HH Judge Lambert
  - National AIDS Trust, Terrence Higgins Trust and Dr Matthew Weait
  - Children are unbeatable! Alliance
  - Family Education Trust
  - NSPCC
  - National Working Group on Child Protection and Disability
  - Children's Rights Alliance for England
  - Ross Johnson
  - Criminal Bar Association
  - London Criminal Courts Solicitors' Association
6. The main points raised by respondents are considered below in the context of the consultation guideline to which they relate using the section heading or offence title in the relevant guideline.

## **Assault and other offences against the person**

### **General principles:**

#### **(i) Aggravating factors**

7. Two respondents suggested that further clarity was required in relation to how the use of a weapon should affect the assessment of seriousness, and how use of the body to assault (for example where the assault involved a head butt or biting) should be taken into account as, it was stated, this is generally considered to make an offence more serious.
8. The Council considered that the guideline should be clear about how the use of a weapon (such as a knife) or a part of the body (such as the head or another body part equipped to inflict greater harm) should be taken into account, as that is a factor that will usually increase the seriousness of an offence.
9. The Council agreed that the description in the general principles section should be developed to include where a part of the body is used. It should also demonstrate how this is relevant to the culpability of the offender and/or to the harm caused or likely. In addition, the Council reviewed the individual offence guidelines to ensure that each was clear about how use of a weapon or part of the body was relevant to determining the appropriate starting point.

#### **(ii) Aggravated assaults**

10. It was suggested in one response that the guideline should contain more guidance in relation to racially aggravated assaults (common assault, assault occasioning actual bodily harm and wounding or inflicting grievous bodily harm) which, it was said, justify recognition as they are separate offences. Attention was drawn to existing authority setting out key principles which, it was suggested, should be included in the guideline.
11. The Council was not persuaded that the guideline needed to be expanded. The Panel's advice (adopted by the Council) was drawn from previous work which resulted in a Court of Appeal guideline judgment, and the key principles from this had been incorporated into the guideline. In addition, those principles were similarly applicable to offences where racial or religious aggravation was a statutory aggravating factor (rather than leading to a separate offence) and the guideline ensured that there would be a proper approach in such circumstances. However, in relation to those offences where there is a separate racially or religiously aggravated offence, specific attention would be drawn to the guidance through an addition to the factors to be taken into consideration.

#### **(iii) Transmission of HIV and sexually transmitted infections**

12. The consultation guideline contained a single paragraph relating to assaults arising from transmission of HIV or other infections, recognising that complex issues are involved in such cases, but acknowledging that such offences can be extremely serious. The Council accepted the Panel's advice that there was

no justification for considering the issues in detail or for making special provision for sentencing offenders with HIV or other infections.

13. In two responses, concerns were raised that the guidance did not go far enough and was not appropriately informed by knowledge and understanding of how HIV and other infections are transmitted or the implications of being infected. It was asserted that there were particular issues regarding reckless infection where activity was consensual and that inappropriately severe sentences were being imposed for transmission of HIV.
14. The Council noted that it is for the prosecuting authority to decide when to proceed with a prosecution and, if so, what charge to prefer, and that many of the issues would be considered at that point. It considered that the guideline should contain some reference to sentencing for an offence based on the transmission of infection or disease distinguishing the approach where the transmission was deliberate and where it was reckless and emphasising the potential significance of matters of personal mitigation.

#### **(iv) Compensation**

15. One respondent proposed that the guideline should give greater guidance in relation to the level of compensation to be awarded for specific injuries since applications to the Criminal Injuries Compensation Authority are restricted by a £1,000 minimum which precludes application for less serious offences.
16. The paragraph in the guideline outlines the duty of the court to consider making a compensation order and the importance of the victim's views being ascertained and respected. The Council confirmed its view that it would be inappropriate to give further guidance when the type and degree of harm can vary greatly and the financial resources of an offender will usually restrict the level of any order made.

#### **Causing grievous bodily harm/wounding with intent – section 18 OAPA 1861**

17. The Ministers' response drew attention to the situation where an offender habitually carries a weapon which is then used spontaneously to inflict really serious injury and suggested that this should be a separate category of seriousness in the guideline for this offence.
18. The Council considered that the guideline for this offence was sufficiently flexible to cover the situation described without the need for a further category of seriousness. The text about use of weapons in part 1 of the guideline makes clear that, where a weapon is carried to the scene, high culpability is likely to be indicated. For some offences this will cause the offence to be in a higher sentencing category or it will increase the sentence within the appropriate range through an increase in culpability or in harm.
19. Another response referred to the level of injury required for an offence to fall into the highest categories of seriousness. A suggestion was made that the guideline should differentiate between cases where substantial permanent disability results and others where the victim may suffer slight residual disability which might otherwise creep into the highest categories. The Council agreed to

amend the descriptions, adopting 'particularly grave injury' for the highest categories of seriousness in the guideline for this offence and for an offence under section 20.

### **Causing grievous bodily harm/wounding – section 20 OAPA 1861**

20. Representations were made in relation to the second highest category of seriousness that it does not provide for where a weapon is acquired at the time of the assault and used; the description requires the weapon to be carried to the scene.
21. The Council accepted that spontaneous assaults do occur in premises such as public houses where bottles and glasses are seized and used. It considered that such occurrences should be reflected in the guideline and that the description for the relevant category of seriousness should be amended. This would also have the benefit of further distinguishing the two highest categories of seriousness.

### **Assault occasioning actual bodily harm – section 47 OAPA 1861**

22. Several responses referred to the difficulty that sentencers face when dealing with this offence, common assault or causing grievous bodily harm because of the high degree of overlap between them. Guidelines must cater for a wide range of circumstances and overall respondents supported the robust approach taken by the Council.
23. It was submitted in responses from Ministers, the Committee and others that a starting point of 12 weeks custody for a first-time offender who pleaded not guilty to a spontaneous assault inflicting minor or non-permanent injury was limiting given the variety of behaviour that would be captured by this category. Respondents proposed that a starting point of community order (high) should suffice.
24. The Council considered the proposals in the light of current sentencing patterns and the need to achieve a proper distinction between offences in the guidelines. It agreed to amend the starting point as suggested whilst maintaining the range so as to include a custodial sentence for the most serious offences.

### **Assault with intent to resist arrest – section 38 OAPA 1861**

25. One respondent suggested that this offence is limited and that the proposed starting points seemed high for the behaviour described.
26. The Council considered that the starting points were appropriate to reflect the comparative seriousness of this offence which includes an additional element of intent and an inherent aggravating factor of the victim performing a public service when assaulted. However, to reflect consequential changes to other offence guidelines (particularly assault occasioning actual bodily harm) the Council amended the starting point for the middle category of seriousness to community order (high).

## **Assault on a police constable – section 89 Police Act 1996**

27. A suggestion was made in one response that, where the motivation for the assault was to prevent others from being arrested or the assault was by a large organised group rendering officers vulnerable, the starting point should be custody.
28. With the intention of promoting consistency in the approach to sentencing for offences of assault, the Council has developed categories of seriousness which describe behaviour and degrees of injury that are then used for several of the offence guidelines. The motivation or purpose of the assault would be relevant to the culpability of the offender (and so affect movement from the starting point) but does not need to be specified in the categories of seriousness.
29. The fact that an offence is perpetrated by a group would invoke the general aggravating factor 'offenders operating in groups or gangs' and would increase the seriousness of the offence and the level of sentence within the appropriate range.

## **Common assault – section 39 CJA 1988**

30. The Committee's response indicated that those organisations from which it received evidence supported the approach proposed by the Council of defining thresholds for fines, community orders and custodial sentences. However, it considered that some uncertainty exists about how to apply the listed aggravating factors to reach the different thresholds.
31. The Council aimed to give flexibility to sentencers by requiring that a certain number of aggravating factors relating to culpability be present in order to cross a particular threshold, without specifying which factors, nor attributing particular weight to any individual factor. Although it may take a little time to become familiar with this approach, the Council considered that no change was needed.

## **Assaults on children and Cruelty to a child**

### **Part 1 General principles:**

#### **(i) Aggravation**

32. A submission was received in relation to sentencing offenders convicted of assaults on disabled children. The response noted that, where a child victim is disabled, several of the general aggravating factors from the *Seriousness* guideline (such as abuse of power and especially serious effect on the victim) are likely to be present. However, there are likely to be additional aspects of the context of the offence; for example, disabled children can be more reliant on others than other children; additionally, they can be targeted because the chances of discovery are significantly reduced.
33. It was also stated that carers of disabled children are more likely to rely on additional stresses as mitigation (personal); the view was expressed that this is not challenged as robustly as would happen if the victim was not disabled.

34. A proposal was made that sentencers be advised in the guideline to seek further information in order to understand how to assess such aggravating or mitigating factors. The Council was grateful for the submission but did not consider it appropriate to add information without a fuller investigation of the issues relating to disabled victims. Issues of diversity are addressed in all consultations conducted by the Panel and a forthcoming review of the Seriousness guideline will further consider such matters.

## **(ii) Mitigation**

35. A number of respondents, including Ministers, expressed concern in relation to the proposal in the guideline that an offender convicted of assault occasioning actual bodily harm who only intended to administer lawful chastisement might, in specified circumstances, be able to rely on that intention in mitigation. Some suggested that the guideline appeared to widen the impact of the 'reasonable punishment' defence (available only in relation to a charge of common assault) in direct contradiction of the purpose of statute. Others accepted the proposal in principle but did not agree that such mitigation should lead to significantly less severe punishment.

36. The guideline succinctly summarises the legal position as regards the defence of lawful chastisement and sets out the limited circumstances in which a court might properly have regard to such conduct in relation to an offence for which the defence is not available. The Council determined that no change should be made to the guideline.

## **(iii) Other factors relevant to sentencing**

37. One respondent welcomed the inclusion in Part 2 of the guideline of guidance relating to the *adverse effect of the sentence on the victim and offenders who have primary care responsibilities* and asked why similar principles were not included in Part 1. The Council agreed that they were equally relevant to assaults on children and should also be included in Part 1, General principles.

## **Part 2 Cruelty to a child**

### **Aggravating and mitigating factors**

38. In the Ministers' response it was noted that the guideline did not contain reference to lawful chastisement as potential mitigation for child cruelty offences. In light of the Court of Appeal's view that the motive behind ill-treatment is likely to be relevant, it was suggested that guidance should be given one way or the other on this issue.

39. The Council's view was that child cruelty is generally about a course of conduct where it involves acts of violence. In those circumstances, motive appears to be less significant and therefore does not require inclusion in the same way as for a single assault.