



House of Commons
Justice Committee

Sentencing Council consultation on the assault offences guideline

Eleventh Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The following were also Members of the Committee during this session.

[Ellie Reeves MP](#) (*Labour, Lewisham West and Penge*) and [Ms Marie Rimmer MP](#) (*Labour, St Helens South and Whiston*).

Powers

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Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are, Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Alison Hill (Assistant Counsel), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), Ellen Watson (Second Clerk) and David Weir (Clerk).

Contacts

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You can follow the Committee on Twitter using [@CommonsJustice](https://twitter.com/CommonsJustice)

Contents

Consultation on the assault definitive guideline	3
The Sentencing Council	3
Guideline: background and summary	3
Our response to consultation on the Assault Definitive Guideline	4
Causing fear of disease transmission	4
Offences against those working in the public sector, providing a service to the public, or against a person who coming to the assistance of an emergency worker	5
Annex: Letter from the Chair of the Justice Committee to the Chairman of the Sentencing Council, dated 20 October 2020	7
Offences against those working in the public sector, providing a service to the public, or against a person who coming to the assistance of an emergency worker	8
Appendix: Letter from the Chairman of the Sentencing Council to the Chair of the Justice Committee, dated 20 October 2020	9
Formal minutes	10
List of Reports from the Committee during the current Parliament	11

Consultation on the assault definitive guideline

The Sentencing Council

1. The Sentencing Council for England and Wales is an independent non-departmental body of the Ministry of Justice, set up to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. The Council's primary role is to issue guidelines on sentencing, which the courts must follow unless it is in the interests of justice not to do so. The Council also assesses the effect of its guidelines on sentencing practice and promotes public awareness of sentencing in the magistrates' courts and the Crown Court.
2. Under Section 120 of the Coroners and Justice Act 2009, the Sentencing Council is required to publish new sentencing guidelines in draft before they are finalised. The Justice Committee is listed as a statutory consultee on draft guidelines under section 120(6) of the 2009 Act. The Council must also consult the Lord Chancellor and any person that the Lord Chancellor directs should be consulted, together with other persons considered appropriate by the Council. In setting guidelines, the Council is required to have regard to various factors, including the sentences imposed by courts in England and Wales for particular offences and the need to promote consistency in sentencing.

Guideline: background and summary

3. The Council evaluated the Assault Definitive Guideline and published its assessment in 2015. The assessment identified that overall sentencing severity had decreased, and this was attributed to the downward impact of the guideline on sentences for common assault, which is the highest volume offence covered by the guideline. However, the impact of the guideline, had unanticipated consequences, for sentencing offences under section 18 GBH (Causing Grievous Bodily harm/wounding with intent) and section 47 ABH (assault occasioning actual bodily harm). For GBH with intent, sentences had increased in excess of that estimated; and for ABH, despite it being anticipated that sentences would decrease, they had in fact increased.
4. The Council decided to review the guideline and identify the causes behind these unintended impacts and identify any action which might be required to address these. At the same time the Law Commission published recommendations for legislative reforms to offences against the person. The Council delayed reviewing the guideline until the outcome of the recommendations. When it became apparent no reforms would be implemented in the foreseeable future, work commenced to revise the guideline.
5. In addition, the revised Guideline:
 - includes a revised version of the Attempted Murder Definitive Guideline; as it represents the most serious non-fatal assault offence;
 - reflects the new legislation introduced to increase sentences for assaults on emergency workers; and

- will not include a guideline for assaulting a police constable in the execution of their duty contract to section 89 of the Police Act 1996 (as Crown Prosecution Service charging guidance confirms it is unlikely to be charged).
6. The Guideline, when revised, will cover the following offences:
- Common assault, section 39 Criminal Justice Act 1988; Racially/religiously aggravated Common assault–section 29 Crime and Disorder Act 1998
 - Common assault of an emergency worker–section 1 Assaults on Emergency Workers (Offences) Act 2018
 - Assault with intent to resist arrest–section 38 Offences Against the Person Act 1861
 - Assault occasioning actual bodily harm–section 47 Offences Against the Person Act 1861; Racially/religiously aggravated ABH–section 29 Crime and Disorder Act 1998;
 - Inflicting grievous bodily harm/Unlawful wounding–section 20 Offences Against the Person Act 1861; Racially religiously aggravated GBH/Unlawful wounding–section 29 Crime and Disorder Act 1998
 - Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm–section 18 Offences Against the Person Act 1861;
 - Attempted Murder–s1 (1) Criminal Attempts Act 1981.
7. The Guideline will only apply to offenders aged 18 and older.

Our response to consultation on the Assault Definitive Guideline

8. Our observations on the consultation relate to the following issues:
- causing fear of disease transmission; and
 - offences against those working in the public sector, providing a service to the public, or against a person who coming to the assistance of an emergency worker.

Causing fear of disease transmission

9. The first guideline in the consultation to deal with the concept of disease transmissions is common assault.
10. The guideline for common assault and related offences involves the following steps:
- Step one: determine culpability and harm categories
 - Step two: identify starting point of sentence
 - Step three: court to consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

11. At step one, the Consultation proposes an additional high culpability factor of “Intention to cause fear of serious harm, including disease transmission” (see further p. 14). The Council considers that cases which involve an offender intending to cause a victim to fear they will suffer serious harm or contract a disease, represents a high level of culpability which should be assessed at the upper end of seriousness. They continue that this would include (but is not limited to) situations where common assault offences have been committed by offenders coughing and spitting at victims with a direct or implied threat of Covid-19 or other disease transmission.

12. At step three, regarding aggravating and mitigating factors, the consultation refers to the Sentencing Council’s evaluation finding that ‘spitting’ should be explicitly referenced as a factor increasing the seriousness of an offence.

13. The consultation goes on to propose the additional aggravating factor of “spitting or coughing”, to take into account recent offending trends.

14. It is not clear whether this additional aggravating factor is intended to (A) specifically capture spitting or coughing in the context of disease transmission only, or (B) whether it is also intended to capture spitting as a stand-alone aggravating factor, without fear of disease transmission. If it is the latter, the Council might feel that it is more appropriate that this factor is split into two separate aggravating factors.

15. In respect of disease transmission element only, it might be beneficial for the factor to be unambiguous that it is intended to capture actions that cause fear of disease transmission. Further it might be useful if the factor captured other actions that might have such an effect, i.e breathing over someone in an aggressive manner. The factor could be re-drafted as follows:

“spitting, coughing or otherwise acting in a manner, that would cause fear of disease transmission”.

16. It would be useful for further guidance to be provided in relation to both the culpability factor and aggravating factor relating to disease transmission. It would appear that there is a risk of double counting and elevating the offence to one that requires intention (causing fear of disease transmission and actually intending to transmit disease are distinct). The observations above also apply to the following individual guidelines considered in the consultation:

Offences against those working in the public sector, providing a service to the public, or against a person who coming to the assistance of an emergency worker

- Assault with intent to resist arrest
- Assault occasioning ABH

17. At step three, the existing common assault guideline included an aggravating factor of “Offence committed against those working in the public sector or providing a service to the public”.

18. The individual guideline for assaults on emergency workers covers offences under the Assaults on Emergency Workers (Offences) Act 2018.

19. The revised guideline has expanded the factor to read as follows: “Offence committed against those working in the public sector or providing a service to the public or against a person who coming to the assistance of an emergency worker”.

20. Assaults against those working in public facing roles is a matter of increasing public concern, especially during the Covid-19 pandemic.

21. Our response to the consultation was made by way of a letter from the Chair to the Chairman of the Sentencing Council, Lord Justice Holroyde, dated 20 October 2002. We received the Council’s response the same day. We have decided to publish this short Report to draw the attention of both the House and other interested parties to proposed changes in the sentencing guidelines and to our own response to them. The letters from the Chair to the Council and its response may be found in the Annex and the Appendix to this Report.

Annex: Letter from the Chair of the Justice Committee to the Chairman of the Sentencing Council, dated 20 October 2020

The Justice Committee thanks the Sentencing Council for giving it the opportunity of responding to the consultation on the revised version of the Assault Offences Guideline (the Guideline).

We should start by saying that overall we agreed with suggested changes to the Guidelines detailed in the consultation and only have a few minor comments and observations which are listed below.

We pay tribute to the work of the Sentencing Council in updating this Guideline, which highlights the value of reviewing and updating individual guidelines.

Q1. Do you have any comments on the proposed culpability factors? Q.4 Do you have any comments on the proposed aggravating and mitigating factors?

At step one, the Consultation proposes an additional high culpability factor of “Intention to cause fear of serious harm, including disease transmission” (see further p. 14). The Council considers that cases which involve an offender intending to cause a victim to fear they will suffer serious harm or contract a disease, represents a high level of culpability which should be assessed at the upper end of seriousness. This would include (but is not limited to) situations where common assault offences have been committed by offenders coughing and spitting at victims with a direct or implied threat of Covid-19 or other disease transmission.

At step three, regarding aggravating and mitigating factors, the consultation refers to the Sentencing Council’s evaluation finding that “spitting” should be explicitly referenced as a factor increasing the seriousness of an offence.

The consultation goes on to propose the additional aggravating factor of “spitting or coughing”, to take into account recent offending trends (see further p. 17).

The Committee suggests that it is not clear whether this additional aggravating factor is intended to (A) specifically capture spitting or coughing in the context of disease transmission only, or (B) whether it is also intended to capture spitting as a stand-alone aggravating factor, without fear of disease transmission. If it is the latter, the Council might feel that it is more appropriate that this factor is split into two separate aggravating factors.

In respect of disease transmission element only, it might be beneficial for the factor to be unambiguous that it is intended to capture actions that cause fear of disease transmission. Further it might be useful if the factor captured other actions that might have such an effect, i.e breathing over someone in an aggressive manner. The factor could be re-drafted as follows:

“spitting, coughing or otherwise acting in a manner, that would cause fear of disease transmission”.

It would be useful for further guidance to be provided in relation to both the culpability factor and aggravating factor relating to disease transmission. It would appear that there is a risk of double counting and elevating the offence to one that requires intention (causing fear of disease transmission and actually intending to transmit disease are distinct).

The observations above also apply to the following individual guidelines considered in the consultation:

- Assaults on emergency workers (p.20, p. 22)
- Assault with intent to resist arrest (p.25, p.27)
- Assault occasioning ABH (aggravating factor only, p.34)

Offences against those working in the public sector, providing a service to the public, or against a person who coming to the assistance of an emergency worker

**Q.4 Do you have any comments on the proposed aggravating and mitigating factors?
Q.5 Do you have any other comments on the Common assault guideline?**

The revised guideline has expanded the factor to read as follows: “Offence committed against those working in the public sector or providing a service to the public or against a person who coming to the assistance of an emergency worker”.

Assaults against those working in public facing roles is a matter of increasing public concern, especially during the Covid-19 pandemic.

The Committee recognises that this is a pressing issue and support this aggravating factor. The Committee also wishes to note that the Sentencing Council may need to revise this guideline if and when the Assaults on Retail Workers (Offences) Bill has been enacted. An individual guideline dealing with offences under the relevant Act will be valuable to sentencers.

Appendix: Letter from the Chairman of the Sentencing Council to the Chair of the Justice Committee, dated 20 October 2020

Assault Offences Guideline

Thank you for your letter responding to the recent consultation on revised sentencing guidelines for assault offences. As always, we welcome the Justice Committee's observations. The points raised will be taken into account by the Council together with other consultation responses.

Formal minutes

Tuesday 3 November 2020

Members present:

Sir Robert Neill in the Chair

Paula Barker	Maria Eagle
Richard Burgon	Kenny MacAskill
Rob Butler	Dr Kieran Mullin
James Daly	Andy Slaughter

Draft Report (*Sentencing Council consultation on the Assault Offences guideline*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 21 read and agreed to.

Annexe agreed to.

A paper was appended to the Report

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 10 November at 1.45 pm]

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

First Report	Appointment of Chair of the Office for Legal Complaints	HC 224
Second Report	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
Third Report	Coronavirus (COVID-19): The impact on probation services	HC 461
Fourth Report	Coronavirus (COVID-19): The impact on prisons	HC 299
Fifth Report	Ageing prison population	HC 304
Sixth Report	Coronavirus (COVID-19): The impact on courts	HC 519
Seventh Report	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
Eighth Report	Appointment of HM Chief Inspector of Prisons	HC 750
Ninth Report	Private prosecutions: safeguards	HC 497
Tenth Report	Sentencing Council consultation on sentencing guidelines for firearms offences	HC 827
First Special Report	Prison Governance: Government Response to the Committee's First Report of Session 2019	HC 150
Second Special Report	Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019	HC 151
Third Special Report	Transforming Rehabilitation: Follow-up: Government Response to the Committee's Nineteenth Report of Session 2017–19	HC 152
Fourth Special Report	Coronavirus (COVID-19): The impact on probation systems: Government Response to the Committee's Third Report of Session 2019–21	HC 826
Fifth Special Report	Coronavirus (Covid 19): The impact on the legal professions in England and Wales: Government Response to the Committee's Seventh Report	HC 898