Offences against the Person - Charging Standard

Headlines

- This version of the Charging Standard, agreed by NPCC and the CPS, takes account of the Sentencing Council's Definitive Guideline on Assault which was issued on 16 March 2011 and the Sentencing Council Allocation Guideline, effective from 1 March 2016.

- The either way offence of ABH should be tried summarily unless the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea, or where unusual legal, procedural or factual complexity exists.

- When deciding on the appropriate charge in most assault cases, prosecutors and police officers should base their decisions on the degree of harm and culpability, the level of injuries that have resulted and the likely sentence that the court will pass which will depend on the overall degree of harm and culpability, aggravating and mitigating factors.

- An offence committed against a person working in the public sector or providing a service to the public is an aggravating factor that should be highlighted in court to assist in sentence.

Content

This guidance and Charging Standard sets out how to approach charging decisions and prosecutions in cases involving various offences against the person. It is designed to assist prosecutors and police officers in selecting the most appropriate charge, in the light of the facts that can be proved, at the earliest possible opportunity. It should not be used when reaching any investigatory decision, such as the decision to arrest. For offences which potentially overlap, the Charging Standard provides advice on how to decide which charge is most likely to be appropriate. It does not override

- the principles set out in the Code for Crown Prosecutors, and in particular paragraph 6.1, requiring prosecutors to select charges which reflect the seriousness and extent of the offending and provide the Court with adequate sentencing powers;
- the need to consider in every case whether a prosecution is in the public interest;
- the need for each case to be considered on its own facts and its own merits;
- any guidance on the use of out of court disposals such as cautions or conditional cautions.

Prosecutors and police officers need to be aware of the Sentencing Council Assault Definitive Guideline when deciding on or reviewing the charge selected in a particular case. This will help ensure that the selected charge reflects the seriousness and extent of the offending and provide the court with adequate sentencing powers. The Definitive Guideline can help prosecutors and police officers understand how the courts are likely to sentence in response to particular offending.

Charging Assault cases

When deciding on the appropriate charge in most assault cases, prosecutors and police officers should base their decisions on:

- The degree of harm and culpability – see section 143 Criminal Justice Act 2003;

- The level of injuries that have resulted; and
- The likely sentence that the court will pass which will depend on the overall degree of harm and culpability, aggravating and mitigating factors.

The degree of harm, particularly in domestic violence cases, will in many cases be more than just the level of injuries sustained. *R v Moore* [2015] EWCA Crim 1621 highlights the importance of dealing effectively with domestic abuse cases by preferring and prosecuting charges that appropriately reflect harm and culpability and allows the court to impose a sentence appropriate to the circumstances of the case.

In more serious cases where offences of inflicting grievous bodily harm or wounding with intent or attempted murder are being considered, the level of intent will also be a key determining factor.

For all other cases, the degree of harm that takes into account the level of injuries is crucial. In considering the likely sentence Parliament has determined in simple terms that there should be separate offences reflecting three levels of injury and harm – Common Assault, ABH and GBH.

As a starting point, where there is no injury or injuries which are not serious, the offence charged should generally be Common Assault. Where there is serious injury and the likely sentence is clearly more than six months' imprisonment the offence charged should generally be ABH. Where there is really serious injury the offence charged should generally be GBH.

It will occasionally be necessary to depart from this basic approach in cases where the injuries are at the lower end of the scale of seriousness. In such cases the level of injury may not alone accurately reflect the nature and seriousness of the offence as a whole. In this regard, the Sentencing Council Assault Guideline specifies that the vulnerability of the victim, and repeated assault on the same victim, are factors indicating greater harm. Furthermore, although an injury may not of itself turn out to be serious, the manner in which it was caused (such as through strangulation) may indicate that a sentence of more than six months is likely.

In assessing the likely sentence that will be passed and the appropriate assault charge, the Definitive Guideline on Assault provides valuable assistance to prosecutors and police officers. By assessing the harm and culpability of the offender with reference to the framework set out in the Definitive Guideline, prosecutors and police officers will be able to determine both the starting points and category ranges for sentence.

Careful consideration of the Definitive Guideline can therefore be a vital part of the review and decision-making process in assault cases.

The Court of Appeal observed in *R v Moore* that the Criminal Justice Act 2003 hearsay provisions were enacted in part to address difficulties where the victim withdraws support for the prosecution and provides a retraction statement. Guidance on how to approach such difficulties is set out in the Hearsay Guidance and in Domestic Abuse Guidelines for Prosecutors particularly within the section "Possibility of proceeding with a prosecution without the complainant's live evidence". Prosecutors should carefully reflect on the guidelines when reviewing a case with difficulties such as that in *R v Moore* and provide detailed reasons to clarify the outcome of that review.

Common Assault, contrary to section 39 Criminal Justice Act 1988

An offence of Common Assault is committed when a person either assaults another person or commits a battery.

An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force. A battery is committed when a person intentionally and

recklessly applies unlawful force to another. Where there is a battery the defendant should be charged with 'assault by beating.' (DPP v Little (1992) 1 All ER 299)

Common assault is a summary offence, which carries a maximum penalty of six months' imprisonment and/or a fine. However, if the requirements of section 40 of the Criminal Justice Act 1988 are met it can be included as a count on an indictment. Refer to Summary offences and the Crown Court (Criminal Justice Act 1988 section 40; Crime and Disorder Act 1998 section 51 and Sch.3 para.6, elsewhere in CPS guidance).

Common Assault is capable of being racially/religiously aggravated under the Crime and Disorder Act 1998. The racially/religiously aggravated version of section 39 is an either way offence. Refer to Prosecuting cases of Racist and Religious Crime, elsewhere in CPS guidance.

Assault occasioning Actual Bodily Harm, contrary to section 47 Offences against the Person Act 1861

The offence is committed when a person assaults another, thereby causing Actual Bodily Harm (ABH). Bodily harm has its ordinary meaning and includes any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling: *(R v Donovan 25 Cr. App. Rep. 1, CCA).*

It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or a fine.

This offence is capable of being racially aggravated under the Crime and Disorder Act 1998. Refer to Prosecuting cases of Racist and Religious Crime, elsewhere in CPS guidance.

Where a charge of ABH has been preferred the acceptance of a plea of guilty to an added count of Common Assault will rarely be justified in the absence of a significant change in circumstances that could not have been foreseen at the time of review.

Decision making on whether Common Assault or ABH

In law, the only factors that distinguish Common Assault from ABH are the degree of harm to the body of the victim and the sentence available to the sentencing court. Although any injury that is more than 'transient or trifling' can be classified as actual bodily harm (*R v Donovan* [1934] 2 K.B. 498), the appropriate charge will generally be one of Common Assault where no injury or injuries which are not serious occur and the degree of harm caused is such that Common Assault is appropriate. It should be borne in mind that Parliament created the offence of Common Assault specifically to cater for those assault cases in which the harm and injuries caused are not serious.

Where battery results in injury, a choice of charge is available. It is important that decisions are made on a consistent basis having regard to the degree of harm and culpability, the level of injuries that have resulted and the likely sentence that the court will pass which will depend on the overall degree of harm and culpability, aggravating and mitigating factors.

The Sentencing Council Assault Guideline provides guidance on how the courts will approach sentence and prosecutors should note that it re-affirms that the vulnerability of the victim and sustained or repeated assault are factors indicating greater harm.

Prosecutors are reminded of the current Mode of Trial guideline, as set out in the Consolidated Criminal Practice Direction (CCPD). (V.51.10) Cases should be tried summarily unless the court considers that one or more of the following features is present in the case and that its sentencing powers are insufficient

- The use of a weapon of a kind likely to cause serious injury;
- A weapon is used and serious injury is caused;
- More than minor injury is caused by kicking or head-butting;
- Serious violence is caused to those whose work has to be done in contact with the public or are likely to face violence in the course of their work;
- Violence to vulnerable people, e.g. the elderly and infirm;
- The offence has clear racial motivation.

These features provide a useful indication of when a charge of ABH may be appropriate.

Where the defence of reasonable punishment (section 58 of the Children Act 2004) falls for consideration, prosecutors must have regard to the case of *A v UK* (1999) 27 EHRR 611. Unless the injury is transient and trifling and amounted to no more than temporary reddening of the skin, a charge of ABH, for which the defence does not apply, should be preferred – see further guidance in the section on Defences below.

Psychological harm that involves more than mere emotions such as fear, distress or panic can amount to ABH. In any case where psychiatric injury is relied upon as the basis for an allegation of ABH, and the matter is not admitted by the defence, expert evidence must be called by the prosecution *(R v Chan-Fook 99 Cr. App. R. 147, CA)*

Controlling or Coercive Behaviour - Section 76 of the Serious Crime Act 2015 created an offence of controlling or coercive behaviour in an intimate or family relationship that received royal assent on 3 March 2015. This is an either way offence with a maximum sentence of five years on indictment. Appropriate ancillary orders can be applied for upon sentence or acquittal e.g. restraining orders and prosecutors should liaise with the police to seek the views of the victim before an application is made.

Prosecutors should charge identified incidents of assault as appropriate. However an additional charge of controlling or coercive behaviour can be charged where the elements of that offence are made out. The offence highlights the importance of recognising the harm caused by coercion or control, the cumulative impact on the victim and that a repeated pattern of abuse can be more injurious and harmful than a single incident of violence.

Prosecutors should refer to the Domestic Abuse Guidelines for Prosecutors in all relevant cases and to the Controlling or Coercive Behaviour in an Intimate or Family Relationship Guidance in prosecutions for this offence.

Assaults on Emergency Workers and Public Servants

Any assault that is committed on public servants and emergency workers must be treated seriously. Note paragraph 4.12c of the Code - a prosecution is more likely if the offence has been committed against a victim who was at the time a person serving the public. Accordingly, there is a strong public interest in prosecuting such cases once the evidential stage of the Full Code Test is met. This is reflected in the Sentencing Council's Definitive Guideline on Assault, in which the fact that an offence was committed against those working in the public sector or providing a service to the public is identified as an aggravating factor. Sentencing practice indicates that custody is the appropriate starting point for a person who assaults a public servant.

Prosecutors are reminded of the current Mode of Trial guideline in this regard, as set out in the Consolidated Criminal Practice Direction (CCPD). Where the injuries are such that a charge is merited under section 47 of the Offences Against the Person Act 1861, the CCPD suggests that a case will not be suitable for summary trial where serious violence is caused to those whose work has to be done in contact with the public or are likely to face violence in the course of their work and the magistrates' court's sentencing powers are insufficient.

Assaults on medical staff and ambulance personnel would frequently merit a custodial term - *R v McDermott (Victor*) [2006] EWCA Crim 1899. In *R v McNally 2000* 1 Cr. App. R (S) 533 the appellant was attending a hospital with his son when he became involved in an argument with a doctor and assaulted him with one punch. He had no previous convictions and was charged with ABH. The Court of Appeal held that 6 months' imprisonment was the appropriate sentence, and reiterated that such circumstances seriously aggravated the offence. In *R v Eastwood [2002]* 2 Cr. App. R. (S) 72 (at 318) the appellant was drunk and in A&E when he assaulted a nurse during the course of an X-ray. The nurse suffered torn ligaments in her hand, and he was charged with ABH. The Court found that in such circumstances, the starting point after trial was between 21 – 24 months' imprisonment with a sentence of 15 months' imprisonment suitable after guilty plea.

In *R v Colin Dickson* [2005] EWCA Crim 1826 - having regard to the case of McNally and the judgement of Rose LJ on aggravating and mitigating factors for length of sentence, the Court of Appeal considered that the same factors will come into play when determining the appropriate sentence for assaults on police officers. Such attacks are particularly grave and any attack on a police officer who is carrying out his duty has to be treated very seriously.

On 1 November 2006, the CPS signed a Memorandum of Understanding with the NHS Security Management Service (MOU). A revised version of the MOU, published in 2011 - NHS CPS Memorandum of Understanding (Joint Working Agreement between ACPO, the CPS and NHS Protect) -, continues to emphasise the CPS' commitment to working with the NHS to tackle physical assault or abuse of NHS staff, and provides mechanisms to that effect. It is also a public statement of the seriousness with which any offence committed against NHS staff while on duty will be treated by prosecutors. Reference should be made to this MOU and any local Service Level Agreements that have been agreed when a member of NHS staff has been obstructed or otherwise hindered in an emergency circumstance.

There is no separate offence for assaulting a public servant or emergency worker, although there are offences of obstructing or hindering emergency workers under the Emergency Workers (Obstruction) Act 2006.

Assault on a Constable in the execution of his/her duty, contrary to section 89(1) of the Police Act 1996

The offence is committed when a person assaults either a constable acting in the execution of his or her duty or a person assisting a constable in the execution of his or her duty. It is a summary only offence, which carries a maximum penalty of six months' imprisonment and/or a fine.

A prosecution under section 89(1) of the Police Act 1996 will be appropriate where an assault on a constable would otherwise fall to be charged as common assault, provided that the officer is acting in the execution of his or her duty. Where evidence that the officer was acting in the execution of his or her duty is insufficient, but proceedings for an assault are nevertheless warranted, the appropriate charge will be under section 39. In such circumstances, the evidence will need to be carefully assessed so as to ensure that it can clearly be established that the suspect was not acting in self-defence. The fact that the victim is a police officer is not, in itself, a reason for charging ABH.

Assault on a Prison Officer

Prison officers, while acting as such, have all the powers, authority, protection and privileges of a constable by virtue of section 8 of the Prison Act 1952.

The Code makes it clear that police officers and prosecutors must select charges which reflect the seriousness and extent of the offending. Where the available evidence affords the police officer or prosecutor a choice between Common Assault and a charge under section 89 of the Police Act 1996, the latter will normally be the more appropriate charge. As well as being the charge that

Parliament intended should be brought, the bringing of such a charge will ensure that, if convicted, the offender's record of antecedents properly reflects the nature of their conduct.

Where there is evidence of racist or religious aggravation, offences contrary to the provisions of the Crime and Disorder Act 1998 may be appropriate, and police officers and prosecutors should consider the 'Guidance on Prosecuting Cases of Racist and Religious Crime'.

Assault on an Immigration Officer

Section 22 of the UK Borders Act 2007 makes it an offence to assault an immigration officer. An immigration officer is defined within section 1 of the Act as someone "designated" by the Secretary of State. The offence is summary only and carries a maximum of 6 months' imprisonment.

Police officers and prosecutors should apply the same principles to offences under section 22 as they would apply to offences of assaulting a police officer. However, it should be noted that section 22 does not require the immigration officer to be assaulted "in the execution of his duty" as with the corresponding police officer offence.

Assault with intent to resist arrest, contrary to section 38 of the Offences against the Person Act 1861

The offence is committed when a person assaults another person with intent to resist arrest or prevent the lawful apprehension/detention of himself/ herself or another for any offence. It is an either way offence, which carries a maximum penalty on indictment of two years' imprisonment and/or a fine.

A charge contrary to section 38 may properly be used for assaults on persons other than police officers, for example store detectives, who may be trying to apprehend or detain an offender. When a police officer is assaulted, a charge under section 89(1) of the Police Act 1996 will usually be more appropriate unless there is clear evidence of an intent to resist apprehension or prevent detention and the sentencing powers available under section 89(1) or for Common Assault are inadequate. This will rarely be the case when injuries are minor and inflicted in the context of a struggle.

It is not bad for duplicity to charge, "resist or prevent the lawful apprehension or detainer" etc. in a count: Rule 7 of the Indictments Rules 1971.

Unlawful wounding/inflicting grievous bodily harm, contrary to section 20 of the Offences against the Person Act 1861

This offence is committed when a person unlawfully and maliciously either wounds another person or inflicts grievous bodily harm upon another person. It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment and/or a fine.

Wounding means the breaking of the continuity of the whole of the outer skin, or the inner skin within the cheek or lip. It does not include the rupturing of internal blood vessels. The definition of wounding may encompass injuries that are relatively minor in nature, for example a small cut or laceration. An assault resulting in such minor injuries should more appropriately be charged as Common Assault or, where a sentence of more than 6 months' imprisonment is likely, ABH. An offence contrary to section 20 should be reserved for those wounds considered to be really serious (thus equating the offence with the infliction of grievous, or serious, bodily harm under the other part of the section).

Grievous bodily harm means really serious bodily harm. It is for the jury to decide whether the harm is really serious. However, examples of what would usually amount to really serious harm include:

- injury resulting in permanent disability, loss of sensory function or visible disfigurement
- broken or displaced limbs or bones, including fractured skull, compound fractures, broken cheek bone, jaw, ribs, etc.
- injuries which cause substantial loss of blood, usually necessitating a transfusion or result in lengthy treatment or incapacity
- serious psychiatric injury. As with assault occasioning actual bodily harm, appropriate expert evidence is essential to prove the injury

In accordance with the recommendation in *R v McCready (1978) 1 WLR 1376*, if there is any reliable evidence that a sufficiently serious wound has been inflicted the charge under section 20 should be of unlawful wounding, rather than of inflicting grievous bodily harm. Where both a wound and grievous bodily harm have been inflicted, discretion should be used in choosing which part of section 20 more appropriately reflects the true nature of the offence.

The prosecution must prove under section 20 that either the defendant intended, or actually foresaw, that the act might cause some harm. It is not necessary to prove that the defendant either intended or foresaw that the unlawful act might cause physical harm of the gravity described in section 20. It is enough that the defendant foresaw some physical harm to some person, albeit of a minor character might result: (*R v Savage; DPP v Parmenter [1992] 1 A.C 699*).

This offence is capable of being racially/religiously aggravated under the Crime and Disorder Act 1998. (Refer to Prosecuting cases of Racist and Religious Crime, elsewhere in CPS guidance).

Cases involving the reckless transmission of sexual infection will usually be charged under section 20 of the OAPA. These are particularly complex cases, and careful regard must be had to the separate legal guidance chapter on Sexual Transmission of Infection.

Attempted Wounding and Attempted Grievous Bodily Harm

It is not possible to attempt to commit a section 20 GBH offence. An attempt to cause grievous bodily harm should be charged as an attempt section 18 because, as a matter of law if a suspect attempts to cause really serious harm he must necessarily intend to do so. Similarly if a suspect attempts to cause a serious wound of a kind that would clearly amount to grievous bodily harm the offence would be attempted section 18.

Where the evidence demonstrates that the suspect intended to cause an injury that is substantially more serious than that (if any) which was in fact caused, prosecutors should consider the circumstances of the case as a whole as well as the relevant sentencing guideline to determine the appropriate charge.

Because of the distinction between the definition of a wound and that of grievous bodily harm there is an argument for saying that it is possible to attempt a section 20 wounding - for example where an offender intends to cause an injury that would break the continuity of the whole of the outer skin but would not cause really serious bodily harm. It is unnecessary to consider this possibility in any further detail because in such circumstances it is likely that either an attempted section 47 or an offence of common assault would be the appropriate charge in accordance with this Charging Standard.

Wounding/causing grievous bodily harm with intent, contrary to section 18 of the Offences against the Person Act 1861

This offence is committed when a person unlawfully and maliciously, with intent to do some grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detainer of any other person, either wounds another person or causes grievous bodily harm to another person. It is an indictable only offence, which carries a maximum penalty of imprisonment for life.

The distinction between charges under section 18 and section 20 is one of intent. The gravity of the injury resulting is not the determining factor, although it may provide some evidence of intent.

Factors that may indicate the specific intent include a repeated or planned attack, deliberate selection of a weapon or adaptation of an article to cause injury, such as breaking a glass before an attack, making prior threats or using an offensive weapon against, or kicking the victim's head.

The evidence of intent required is different if the offence alleged is a wounding or the causing of grievous bodily harm with intent to resist or prevent the lawful apprehension or detainer of any person. This part of section 18 is of assistance in more serious assaults upon police officers where the evidence of an intention to prevent arrest is clear but the evidence of an intent to cause grievous bodily harm is in doubt.

It is not bad for duplicity to indict for wounding with intent to cause grievous bodily harm or to resist lawful apprehension in one count, although it is best practice to include the allegations in separate counts. This will enable a jury to consider the different intents and the court to sentence on a clear basis of the jury's finding.

Attempted murder, contrary to section 1(1) of the Criminal Attempts Act 1981

Where the substantive criminal offence specifically requires the consequence of an act, an attempt to commit that offence ordinarily requires proof of intent as to that consequence. The required intent for murder is either intent to kill or intent to cause really serious injury. The required consequence of the act is death. Accordingly, for a charge of attempted murder to be made out the intent which must be proved is intent to kill: see *Whybrow* (1951) 35 CAR 141.

This offence is committed when a person does an act that is more than merely preparatory to the commission of an offence of murder, and at the time the person has the intention to kill. It is an indictable only offence, which carries a maximum penalty of imprisonment for life.

Unlike murder, which requires an intention to kill or cause grievous bodily harm, attempted murder requires evidence of an intention to kill alone. This makes it a difficult allegation to sustain and careful consideration must be given to whether on the facts a more appropriate charge would be one under section 18 of the Offences against the Person Act 1861. Another possible charge may be Making Threats to Kill. Courts will pay particular attention to counts of attempted murder and justifiably will be highly critical of any such count unless there is clear evidence of an intention to kill.

When considering the choice of charge, prosecutors should consider what alternative verdicts may be open to a jury on an allegation of attempted murder. Section 6(3) of the Criminal Law Act 1967 applies. Prosecutors should note the judgement in *R v Morrison [2003] 1 W.L.R.1859*, in which, on a single count of attempted murder, the Court of Appeal held that the trial judge had been right to leave to the jury an alternative count of attempting to cause grievous bodily harm with intent, because a defendant could not intend to kill without also intending to cause grievous bodily harm. If an alternative count can be left to the jury, prosecutors should not normally add it to the indictment, but should draw to the attention of counsel that the alternative count may be available.

It should be borne in mind that the actions of the defendant must be more than merely preparatory and although words and threats may provide prima facie evidence of an intention to kill, there may be doubt as to whether they were uttered seriously or were mere bravado.

Evidence of the following factors may assist in proving the intention to kill:

- calculated planning;
- selection and use of a deadly weapon;

- threats;
- severity or duration of attack;
- relevant admissions in interview

Defences to Assaults

The following potential defences may commonly arise in assault cases, and it is important that these are properly considered in any decision to prosecute.

Consent

On a charge of Common Assault, it is necessary for the prosecution to prove absence of consent: see *R v Brown (A.)* [1994] 1 A.C. 212, HL. It is possible for a lack of consent to be inferred from evidence other than direct evidence from the victim: see *CPS v Shabbir [2009] EWHC 2754* (Admin). Where actual or grievous bodily harm or a wound is caused however consent will be no defence in the absence of good reason.

Reasonable punishment of a child

Section 58 of the Children Act 2004 has removed the availability of the reasonable punishment defence for parents or adults acting in loco parentis where the accused is charged with wounding, causing grievous bodily harm, assault occasioning actual bodily harm or cruelty to persons less than 16 years of age. However the reasonable punishment defence remains available for parents or adults acting in loco parentis against charges of common assault.

In considering the vulnerability of the victim and the nature of the assault in a case where the defence of reasonable punishment (section 58 of the Children Act 2004) falls for consideration, prosecutors must have regard to the case of *A v UK* (1999) 27 EHRR 611 before deciding on the appropriate charge. Unless the injury is transient and trifling and amounted to no more than temporary reddening of the skin, a charge of ABH, for which the defence does not apply, should be preferred. Following the decision in *A v UK* and the enactment of Section 58 of the Children Act, the level of severity of the assault in *A v UK* will merit a charge of ABH. The Court of Appeal in the case of *R v H*, The Times 17 May 2001 adopted the guidance set out in the case of *A v UK* and accordingly extended the factors to be taken into consideration when considering a defence of reasonable punishment. Therefore, in such a case, limited to common assault by section 58, the following factors will assist in determining whether the punishment in question was reasonable and moderate:

- the nature and context of the defendant's behaviour;
- the duration of that behaviour;
- the physical and mental consequences in respect of the child;
- the age and personal characteristics of the child;
- the reasons given by the defendant for administering the punishment.

Self-defence, defence of property and the prevention of crime

Such potential defences need careful consideration. Full guidance is set out in the separate legal guidance chapter: self-defence and prevention of crime.

Other Relevant Offences

Whilst the Charging Standard provides guidance on a range of frequently experienced offences against the person, there are also other offences that may be relevant, including the following:

- Attempting to choke, suffocate or strangle with intent to enable the commission of an indictable offence, contrary to section 21 Offences against the Person Act 1861

- Causing to be taken or administering a drug with intent to enable the commission of an indictable offence, contrary to section 22 Offences against the Person Act 1861

- Administering poison or noxious thing thereby endangering life or inflicting grievous bodily harm, contrary to section 23 Offences against the Person Act 1861

- Administering poison or noxious thing with intent to injure, aggrieve or annoy, contrary to section 24 Offences against the Person Act 1861

- Causing bodily injury by explosives, contrary to section 28 Offences against the Person Act 1861

Unlike offences under the Explosive Substances Act 1883, causing bodily injury contrary to section 28 Offences against the Person Act 1861 does not require the consent of the Attorney General. However, prosecutors should not charge the section 28 offence simply to avoid obtaining the Attorney General's consent. Prosecutors should consider whether on the facts of the case there is an appropriate alternative offence before seeking the Attorney General's fiat. For guidance as to the Explosive Substances Act, refer to Explosives, elsewhere in this guidance.

- Sending, throwing or using explosive or corrosive substance or noxious thing with intent to do grievous bodily harm, contrary to section 29 Offences Against the Person Act 1861

- Threats to kill, contrary to section 16 Offences against the Person Act 1861

Threats can be calculated and premeditated, or said in the heat of the moment. The defendant does not have to have the intention to kill but there has to be an intent that the person to whom the threat has been issued would fear it would be carried out. This can be a difficult offence to prove, and it should be reserved for the more serious cases. Where it is doubtful whether the threat carried the necessary intent a charge under Section 4 Public Order Act 1986 may be appropriate. Refer also to Public Order Offences incorporating the Charging Standard, elsewhere in this guidance.

If the threat accompanies an assault, adding a charge of Threats to Kill will normally be unnecessary. There may be exceptional cases where the severity of the threat is not matched by the physical injury sustained in the assault. The offence will be particularly appropriate if there has been no assault or if an assault has been prevented, yet the person to whom the threat was made was given real cause to believe it would be carried out.

Kidnapping

There are four elements to this common law offence:

- the taking or carrying away of one person by another;
- by force or fraud;
- without the consent of the person so taken or carried away; and
- without lawful excuse.

Often the kidnapping will be followed by the commission of further offences of sexual or aggravated assault. There is a specific offence of Child Abduction. Regardless of the severity of any act that follows (with the possible exception of murder), kidnapping is such a grave offence that it will be usual to reflect it with a count in the indictment.

False imprisonment

False imprisonment is a common law offence involving the unlawful and intentional or reckless detention of the victim. An act of false imprisonment may amount in itself to an assault. If a separate assault accompanies the detention this should be reflected in the particulars of the indictment.

If the detention was for the purpose of committing another indictable offence, and such an offence was committed, a count for the substantive offence will usually be enough. Where the detention was for a period of several hours, or days, then it will be proper to reflect the unlawful detention with a count for false imprisonment.

Ill-treatment or neglect, contrary to section 44 of the Mental Capacity Act 2005 (MCA)

It is an offence for a person to ill-treat or neglect a person who lacks mental capacity. The offence is either way, and carries a maximum penalty on indictment of 5 years' imprisonment and/or a fine.

A person lacks mental capacity if at the material time, he/she is unable to make a decision for himself/herself because of an impairment of, or a disturbance in the functioning of, the mind or brain (section 2(1) MCA).

It is immaterial if the impairment or disturbance is permanent or temporary (section 2(2) MCA).

A lack of capacity cannot be established merely by reference by a person's age or appearance, or by a condition, or an aspect of behaviour, which might lead others to make unjustified assumptions about capacity (section 2(3) MCA).

The question of whether a person lacks capacity within the meaning of the Act is to be decided on the balance of probabilities (section 2(4)). Accordingly, there must be evidence to support the fact that the person lacked mental capacity at the time the offence was committed. This may take the form of a report by a doctor or another expert.

If the defence challenge such evidence, prosecutors should have a conference with the expert and ensure that he/she has sight of all relevant material, including the defence's statements or reports. He/she should comment upon the defence contentions.

Prior to trial, the prosecution and defence expert should discuss the issues and agree common ground, which can then be presented to the court. It is also important that when the defence expert is giving evidence, the prosecution expert is in court thereby allowing him/her to provide information to the prosecutor on any contentious issues.

The offence is committed when a person ill-treats or wilfully neglects another who lacks, or whom he/she reasonably believes to lack, mental capacity and that person:

- has the care of that other person; or
- is the donee of a lasting power of attorney, or an enduring power of attorney (for definition, see Schedule 4 of the Act) created by the person who lacks capacity; or
- is a deputy appointed by the court for the person who lacks capacity.

Even if the victim has capacity, it will still be an offence if the person who had the care of him/her reasonably believed he/she lacked capacity and ill-treated or neglected him/her. 'Reasonable belief' means that in all the circumstances, a reasonable person would believe that the victim lacked capacity.

The Act applies to everyone who looks after or cares for someone who lacks mental capacity. This includes both those who have the day to day care of that person as well as those who only have the

very short term care, whether they are family carers, professional carers or other carers.

The Act does not define 'ill-treatment' and 'wilful neglect', therefore these concepts should be given their ordinary meaning. Offences of ill-treatment and wilful neglect are continuing offences (*R v Hayles [1969] 1 Q.B. 364, 53 Cr.App.R. 36, CA*).

For the indictment, 'ill treatment' and 'wilful neglect' should feature in separate counts. Also see the Ill-treatment or Wilful Neglect Offences- Sections 20 to 25 of the Criminal Justice and Courts Act 2015 legal guidance.

For offences against "older people", please refer to CPS guidance for Prosecuting Crimes against the Older Person elsewhere in the Legal Guidance.