



ROBBERY SENTENCING GUIDELINES

RESPONSE TO CONSULTATION ON BEHALF OF THE CRIMINAL BAR ASSOCIATION

Introduction

The Criminal Bar Association (CBA) represents about 3,600 employed and self-employed members of the Bar who prosecute and defend in the most serious criminal cases across England and Wales. It is the largest Specialist Bar Association. The high international reputation enjoyed by our criminal justice system owes a great deal to the professionalism, commitment and ethical standards of our practitioners. Their technical knowledge, skill and quality of advocacy guarantee the delivery of justice in our courts, ensuring on our part that all persons enjoy a fair trial and that the adversarial system, which is at the heart of criminal justice, is maintained.

STREET ROBBERY

Q1. Do you agree with the proposed approach to the assessment of culpability?

We agree generally with the proposed approach. However we are concerned with the disparity of facts that may lead to a finding of medium culpability due to the

distinction between production and use of a weapon to threaten violence, and the threat of violence by a bladed article or firearm or imitation firearm (but which is not produced). Applying these, someone who produces a hammer to back up a threat will be considered as having the same level of culpability as someone who says “give me your money I have a knife”. We are of the view that there is a different level of culpability between the two scenarios. This should be recognised in the guidelines.

The culpability factors as they stand also mean that offences in which a weapon is used to threaten violence but is not produced would not fall into category A or B. This appears inconsistent with the other determining features of culpability.

In addition we are of the view that when dealing with the use of a weapon other than a bladed article, firearm or imitation firearm the guideline should state that explicitly (i.e. “production and use of a weapon (other than bladed article, firearm or imitation firearm) to threaten violence.”)

Finally, as stated at q.13 below, we are concerned as to the interpretation that might be placed on “production and use of a weapon to inflict violence”. The distinction drawn between medium culpability and high is the use of the weapon. Violence of some type is inherent in the culpability in the medium and high brackets. The higher culpability is best demonstrated by the use of a weapon to inflict injury.

Q2 Is it appropriate to distinguish between cases involving a bladed article or firearm or imitation firearm from those involving other types of weapon?

Whilst we understand the rationale for distinguishing between the two, we are concerned at the results this may produce as outlined at question 1. We are of the view that this needs to be resolved.

Q3 Are there additional factors that should be included at step one?

No.

Q4 Should any of the factors be considered at step two?

No.

Q5 Do you agree with the proposed approach to the assessment of harm in this preferred model (Harm Model A)?

Yes. We agree that this model is better than model B.

Q6 Are the levels of harm simple to interpret?

It is easy to interpret this in some cases (e.g. case study 1). However we consider that there will be cases where it is difficult to assess whether the degree of harm is more than that which is inherent in robberies; this is particularly so when dealing with psychological harm and the fact that some people will react to events in different ways to others (e.g. case study 3). It may assist to have some examples of what type of harm is considered to be inherent to robberies to assist in assessing when the category 2 threshold is crossed.

Q7 Should the value of the goods as expressed in categories 1 and 2 in Harm Model B carry the same amount of weight as the physical and/or psychological harm caused? If not, how should they be weighted?

No. We agree for the reasons set out in the consultation that the value of goods should be considered as an aggravating feature (as with model A) rather than a determination of harm.

Q8 Does Harm Model B reflect the primary factors that should be taken into account?

We prefer model A to model B.

Q9. Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

We are of the view that the location of the offence should be removed. On considering all the different locations that a robbery could be committed, you can find an aggravating factor within each location. It is difficult to imagine any location that does not aggravate the offence for one reason or another. In addition, the reasons why locations may be considered to be aggravating are largely caught by aggravating factors stated elsewhere in the guidelines. We therefore do not consider that the offence of the robbery should be considered to be an aggravating factor.

We do not see any particular need to include offences taken into consideration as an aggravating factor. The admission of such offending often as part of an exercise in dealing with a number of often old, admitted offences, is a matter the sentencing court will be bound to address in any event.

In addition we are of the view that a robbery being committed by a group should be considered an aggravating factor, rather than being the leading role in that group. This is not considered elsewhere in the guideline.

Q10. Should any of the factors be considered at step one?

No.

Q11 Are there any mitigating factors that should be added?

No

Q12 Do you have any general comments on the sentence ranges and starting points?

We feel that the guideline will produce higher sentences than the old guidelines for those who threaten with a knife but do not produce it and no injury is caused. On the old guidelines the starting point would have been 12 months with a range of up to 3 years. On the current guidelines the starting point will be 2 years. However given the prevalence of the use of knives or threat of the use of knives in committing street robberies we do not consider this to be inappropriate.

COMMERCIAL ROBBERY

Q13. Do you agree with the proposed approach to the assessment of culpability?

Yes. The only concern is the interpretation that might be placed on “production and use of a weapon to inflict violence”. The distinction drawn between medium culpability and high is the use of the weapon. Violence of some type is inherent in the culpability in the medium and high brackets. The higher culpability is best demonstrated by the use of a weapon to inflict injury.

Q14. Is it appropriate to distinguish between the roles of offenders involved in group offending?

Yes.

Q15. Are there additional factors that should be included at step one?

No. The ability of the Court to approach culpability by balancing characteristics that fall under different levels allows a degree of discretion that we consider is necessary.

Q16. Should any of the factors be considered at step two?

No.

Q17. Do you agree with the proposed approach to the assessment of culpability?

Overall, we agree with the identified approach. However, the assessment of “high” value or “very high” value obviously allows for subjective input from the sentencing Court. It would be useful to identify financial brackets that would take the offending into the “very high” category so as to achieve consistency of approach.

Q18. Should the value of the goods be considered at step two?

We do not see any need to move the “value” aspect to step two. The value of the offending or intended offending can play a significant part in the impact on the victim or the potential impact.

Q19. Are there any additional harm factors that should be added?

The only aspect that might have any additional weight in the harm category is the damage caused to property during the commission of the offending. While serious damage caused in the commission of the offending might form part of the “detrimental effect on the business” assessment, substantial damage caused might well separately affect the assessment of harm.

Q20. Do you agree with the additional aggravating factors for this offence? Please state which, if any, should be removed or added.

We do not see any particular need to include offences taken into consideration as an aggravating factor. The admission of such offending often as part of an exercise in dealing with a number of often old, admitted offences, is a matter the sentencing court will be bound to address in any event.

The inclusion of the targeting of large sums of money or valuable goods already appears to have been identified as a specific feature of harm in step one.

Q21. Should any of the factors be considered at step one? If so, why?

We have already indicated our view that the targeting of large sums of money is already incorporated within the category of harm.

Q22. Are there any mitigating factors that should be added?

No.

Q23. Do you have any general comments on the sentence ranges and starting points?

There will be very few cases where sentences in excess of 20 years will be called for. Overall the sentence starting points and ranges are within the accepted brackets for the offending identified, allowing as they do a margin of discretion having regard to the particular facts of the offence and the offender.

ROBBERY IN THE HOME

Q24 Do you agree with the proposed approach to the assessment of culpability?

The CBA agrees with the proposals and the division of culpability into as proposed. We add a note of caution to the addition of the role that an individual plays into the assessment of culpability. Offences of this kind are often lack the clearly defined roles as present in the more sophisticated commercial robberies. It is suggested that being a member of a group or gang be a factor in the medium culpability band. Specific roles ought then be considered an aggravating factor.

Q25 Are there additional factors that should be included at step one?

The CBA proposes that restraint, detention or additional degradation of an individual in that person' home is of such a nature that its inclusion ought to be raised from the general aggravating factors at step two into the assessment of culpability at step one.

Additionally, robbery in a dwelling may or may not include a trespass. It is appropriate in the opinion of the CBA to include trespass as a factor at step one.

Q26 Should any of the factors be considered at step two?

The CBA agree with the factors as listed, save as noted in question 24.

Q27 Do you agree with the proposed approach to the assessment of harm?

Yes

Q28 Should the value of the goods be considered at step two?

No. When one commits a robbery in a dwelling, there is an increased likelihood that items of a sentimental nature and items of a high value will be taken as opposed to, say, a street robbery. The gravamen of a robbery in a dwelling is not just the threat or use of violence, it is the fact that what is taken has been taken from inside that dwelling. It is entirely appropriate therefore to include the value of goods at step one.

Q29 Are there any additional harm factors that should be added?

No

Q30 Do you agree with the aggravating factors? Please state which, in any, should be removed or added.

We agree with the aggravating factors. We propose that the presence of other, not simply the presence of a child, ought to be added as an aggravating factor. The CBA would not propose any additional amendments, save as noted at question 24.

Q31 Should any of the factors be considered at step one?

The CBA proposes that the restraint, detention or additional degradation of the victim ought to be considered at step one – such an act in an individual’s home is of such significance that it would be appropriate to reflect the seriousness of such an act in step one.

Qu32 Are there any mitigating factors that should be added?

No

Qu33 Do you have any general comments on the sentence ranges and starting points?

The sentence ranges appear to be appropriate.

CASE STUDY 1

Q34 Which guideline would you use to sentence this case?

Street robbery

Q35 What level of culpability applies to this offender? Please give reasons.

Lesser culpability on the basis of the threat or use of minimal force and very little or no planning.

Q36 What level of harm applies? Please give reasons.

Category 3: there is no suggestion of harm caused to victim above and beyond that which is inherent in robbery.

Q37 What difference, if any, would it make if the phone had not been recovered?

We do not think it would make any difference as to where this would be placed on the guidelines as the phone was only returned due to the defendant being caught, not voluntarily.

Q38 What difference, if any, would it make if the victim had been shoved to the ground and suffered a broken wrist?

We would have placed this in category 2 harm on the basis of some physical harm being caused above the level of harm inherent in the offence of robbery.

Q39 On the facts as given in the scenario, what would be your starting point for the robbery offence?

A starting point of 1 year.

Q40 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery offence only? (Before and after guilty plea discount)

The aggravating factors are that he has previous convictions for dishonesty, was subject to a community order at the time and was on bail at the time.

The mitigating factor is that he had made good progress on the DRR until recently.

Taking account of these factors, we would take a starting point of 15 months'. We would give full credit for a guilty plea resulting in a sentence of 10 months' imprisonment.

Q41 Do you have any views on this final sentence that you have come to?

This appears to be appropriate and consistent with practice

Q42 How easy did you find the guideline to use in sentencing this scenario?

The guidelines were easy to apply.

CASE STUDY 2

Q43 Which guideline would you use to sentence this case?

Street robbery

Q44 What level of culpability applies to this offender? Please give reasons.

High Culpability: Production of a weapon to inflict violence as he produced a knife and threatened the victim with it resulting in a cut.

Q45 What level of harm applies? Please give reasons.

Category 2, there being some physical harm caused above the level of harm inherent in the offence of robbery.

Q46 On the facts as given in the scenario, what would be your starting point for the robbery offence?

5 years.

Q47 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery offence only? (Before and after guilty plea discount)

The aggravating factors are that he was on bail at the time, the victim is vulnerable due to the nature of his work and it was committed at night/early in the morning.

The mitigating factors are that he has no previous convictions and his personal mitigation.

Assuming the personal mitigation to be significant, we would make a slight adjustment downwards from the starting point. Therefore before the guilty plea discount is applied we take the view that a sentence of 4 ½ years (54 months) would be appropriate on the guidelines. With full credit this would be reduced to 3 years (36 months).

Q48 Do you have any views on this final sentence that you have come to?

The starting point of five years feels quite high compared to current practice and the current sentencing guidelines (which would lead to a starting point of 4 years). This may be because of the placement into category 2 harm (due to some injury being caused, as opposed to just being shaken). Placing it in category 3 harm would provide a starting point and range which is more consistent with current practice (i.e. 4 year starting point, range of 2-5 years).

Q49 How easy did you find the guideline to use in sentencing this scenario?

It was slightly difficult to determine whether this should fall into category 2 harm or category 3 harm. Other than that, the guidelines were easy to use.

CASE STUDY 3

Q50 Which guideline would you use to sentence this case?

Street robbery.

Q51 What level of culpability applies to this offender? Please give reasons.

High culpability on the basis of the use of a bladed article to threaten and the deliberate targeting of a vulnerable victim. (We have assumed for this case study that it has been determined that the complainant had been deliberately targeted due to his disability).

Q52 What level of harm applies? Please give reasons.

We have had some difficulty in deciding whether this is category 2 or 3. We have placed it into category 3 due to there being no evidence of psychological harm above and beyond fear at the time and in the future. The psychological harm on the victim is closely linked to his particular vulnerabilities and this is taken into account under culpability; therefore there is a risk of double counting if it was placed in category 2.

Q53 What difference, if any, would it make if T had not produced the knife but had said 'give me your phone or I'll shank you'?

We would have placed it in medium culpability but adjusted the starting point upwards on account of the targeting of the vulnerable victim.

Q54 What difference, if any, would it make if the victim did not have a disability?

We would still place it in high culpability due to the knife being produced. It would have been easier to determine it to be category 3 harm.

Q55 On the facts as given in the scenario, what would be your starting point for the robbery offence?

We would adjust the starting point of 4 years to one of 4 ½ years due to the fact that more than one feature of higher culpability is present.

Q56 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery?

The aggravating factors would be his previous convictions and the fact that he was wearing a hood and the fact that he was drunk. The mitigating factors would be his young age and personal mitigation.

Balancing these we would impose a sentence of around 4 ½ years.

Q57 Do you have any views on this final sentence that you have come to?

No.

Q58 How easy did you find the guideline to use in sentencing this scenario?

Other than the difficulty in determining the level of harm, it was easy to use.

CASE STUDY 4

Q59. Which guideline would you use to sentence this case?

Commercial Robbery.

Q60. What level of Culpability applied to this offender? Please give reasons.

Medium culpability. This is plainly a nasty offence and one in which the shopkeeper would have been frightened and suffered some injury, albeit not serious, as a result of repeated punching to the face. The absence of a weapon is an important feature. There are features of High Culpability (use of very significant force). There are other cases where characteristics for categories A and C are not present (targeting an individual by two people, in the course of his work) which places the offending in the B range. Standing back and balancing the features of the criminality, the culpability sits more comfortably within the medium range B.

Q61. What level of harm applied? Please give reasons.

Category 2. Some physical injury would likely have been caused by the repeated punching to the face (even beyond blurred vision), which was above the level of harm inherent in the offence. There would have been some detrimental effect on the business (loss of stock, time taken away from work by the shopkeeper while receiving medical attention).

Q62. On the facts as given in the scenario, what would be your starting point for the robbery offence?

5 years imprisonment.

Q63. Taking into account any known aggravating or mitigating factors, what would be your final sentence for the robbery? Before and after guilty plea discount.

6 years imprisonment before the plea discount (4 years after the plea giving full credit of one third for the earliest plea indication). Although there are no statutory aggravating features, there are other aggravating features present: The defendant was attempting to conceal his identity wearing a hood. He was with another. There is an established evidence of community/wider impact in such offending. There is the additional feature of vulnerability due to the shop-keeper's position (targeted while at work). Factors reducing seriousness include an absence of relevant convictions. The inability to control his temper is not a specific feature of aggravation or mitigation but would give the sentence cause for concern.

Q64. Do you have any final views on this sentence that you have come to?

These sorts of offences strike at the heart of communities. There is no information to indicate the effect on the shop-keeper beyond the temporary nature of his injuries. However, offending of this sort is bound to make the individual shop-keeper concerned for their future safety. The public would necessarily expect a custodial sentence and the defendant's only real mitigation is his guilty plea.

Q65. How easy did you find the guideline to use in sentencing this scenario?

Overall, the guideline was useful and easy to use. Although the facts of the case study do not sit perfectly within the parameters of the guideline, there is sufficient discretion built into the culpability and harm sections to allow the sentence to do justice to the facts of the individual offence. The starting points and ranges give additional flexibility to meet the particular facts, making adjustments for aggravating and mitigating features.

CASE STUDY 5

Q66 Which guideline would you use to sentence this case?

Robbery in a dwelling

Q67 What level of culpability applies to the offenders? (Assume they are sentenced on the basis that they are equally culpable). Please give reasons.

This offence falls within the 'High culpability' category, with a total of three weapons used during the course of the robbery (the dog chain, the air pistol and the knife). It is also the opinion of the CBA that very significant force was used in the commission of the offence.

Q68 What level of harm applies? Please give reasons.

This is a category 1 level of harm. One individual felt compelled to jump out of a window to escape, suffering two fractured ankles. The victim thought he was to be killed and has had medical complications following the robbery.

Q69 On the facts as given in the scenario, what would be your starting point for the robbery offence?

The starting point is 11 years custody, with a category range 9 – 13 years.

Q70 Taking into account any known aggravating or mitigation factors (and assuming here there were no separate charges for weapons offences) what would be your final sentence for the robbery? (Before and after guilty plea discount)

There are no apparent statutory aggravating factors. Other aggravating factors include: restraint, detention or additional degradation of the victim; prolonged nature of attack; and the victim was compelled to leave his home.

Mitigating factors include: apparent remorse and relative youth. It is unclear as to the extent of the previous offending as to whether they are of such an age and nature that an offender could be treated as being of effective good character.

Accordingly, the final sentence ought to increase from the starting point, to 12 years, or 8 years after a full discount for the timely guilty pleas.

Q71 Do you have any views on this final sentence that you have come to?

The sentence is long but reflects properly the offenders' culpability and the harm they caused.

Q72 How easy did you find the guideline to use in sentencing this scenario?

The guideline fitted well in the scenario, save that the serious injury was caused to someone in the home, rather than the direct victim.

CASE STUDY 6

Q73 Which guideline would you use to sentence this case?

Robbery in a dwelling

Q74 What level of culpability applies to the offenders? (Assume they are sentenced on the basis that they are equally culpable). Please give reasons.

Medium culpability: While there is the potential that the offender deliberately targeted the victim on basis of vulnerability (her age, living alone), there is no evidence that the offender was aware of this fact prior to entering the home.

The production and use of a weapon to threaten violence means this is a medium culpability offence.

Q75 What level of harm applies? Please give reasons.

There is no evidence of any of the factors in category 1 or 2 being present. As such, this case falls into category 3.

Q76 On the facts as given in the scenario, what would be your starting point for the robbery offence?

The starting point is 3 years, with a category range 2 to 6 years.

Q77 Taking into account any known aggravating or mitigation factors (and assuming here there were no separate charges for weapons offences) what would be your final sentence for the robbery? (Before and after guilty plea discount)

Statutory aggravating factors – previous convictions.

Other aggravating factors – steps taken to prevent the victim reporting the offence; victim is particularly vulnerable and there was an attempt to conceal identity.

Mitigating factors – apparent remorse, good progress in prison, difficult personal circumstances at the time of the offence.

The final sentence would be approximately 4 years. A sentence of 32 months would therefore be appropriate after the credit for the early plea.

Q78 Do you have any views on this final sentence that you have come to?

If this offence was sentenced under the aggravated burglary guideline, it would be a category 1 offence (greater harm being that the victim at home and violence threatened against victim, and higher culpability in that a weapon was present on entry). This would result in a starting point of 10 years.

The disparity has arisen here because an item has been used as a weapon, on the face of it planned as such and brought into the home, yet no violence was in fact inflicted.

Q79 How easy did you find the guideline to use in sentencing this scenario?

The guideline was well set out and was sufficient for the scenario.