

290.8 Attempted section 18

Att-Gen's Ref 2017 Re Hamilton 2017 EWCA Crim 2296 D pleaded to attempted wounding with intent and assault by beating (one month concurrent). V was sitting next to his young son at a party after a Christening party. D, a powerfully built man, squeezed past party-goers at speed to reach V. D was holding an empty glass. V didn't see him approach. D, without warning, struck V to the side of his head and neck with the glass, which smashed. D then punched V and V fell to the floor. D stood over him. D then hit V with a glass at least once. Some shattered glass fell on the young son, who was found to have a small cut to his nose. The CCTV appeared to show three blows. People nearby intervened and D was led away. V was bleeding and disorientated. In hospital, grazes and bruises were found. Three cuts on V's neck were 3½, 2½ and 1½ cm long. It was also found the lacerations had not penetrated the full thickness of the skin. D reported himself to the police but there was no record of the incident. Later he was arrested and admitted the offence. He claimed not to remember the offence and to have no ill-feeling towards V. The attack had left V with mental scars. D was aged 25 and he had some convictions before 2012. There was some 'lesser violence' when he was a teenager, a supplying cannabis matter and an attempted burglary. It was agreed that the case was Category 2. The Judge had it as 'higher culpability'. He started at 5 years and discounted it by 50% because it was an attempt. With the plea, the Judge gave 20 months. Held. There were very significant aggravating factors significantly outweighing the mitigating factors. For a substantive offence we would expect 5 years. The 50% discount should have been, if one was generous, 30%. The least sentence we can pass is **3 years**.

290.19 Glassings Cases etc.

R v Banks 2018 EWCA Crim 333 D was convicted of section 18. She was in a short relationship with V. They shared a flat and both were drinkers. In their flat, after a row, D struck V's head with a vodka bottle and the bottle broke. V fled and D pursued him. In the communal lift, D slashed out at V repeatedly with pieces of broken glass. V had a 4 cm cut on the lip, two wounds on the forehead, a wound behind the ear about 5 cm long and a wound to the hand. When cross-examined D said, "I can give as good [as] I get with partners. I was drunk at the time." D was aged 30 and had one previous conviction for battery (community order, which was in still in force on the date of the offence). D had punched her then partner several times on the face and back causing bleeding and bruising. D was not in work and spent most of her benefits on alcohol. A psychologist said she was vulnerable and had had a difficult childhood. The Judge said V had not touched D before the incident and V had no weapon. The injuries were nasty and the one to the neck was near major veins and arteries. He found six aggravating factors: a) V had been attacked in his own home, b) the assault in the lift was in a confined space, c) the ongoing effect on V, d) D had breached her community order, e) D had failed to [address] her drinking problem, and f) D was drunk at the time. Held. It was a Category 1 offence. The injuries could easily have been fatal. Her near learning disability and her sorry history of bad relationships were mitigation. 9 years not 12.

Note: It is inconceivable that a male defendant who attacked his defenceless female partner twice, risking her life, with such a dangerous weapon and who had a relevant previous conviction would have had his sentence reduced to 9 years. Ed.

290.25 Knives, With 8 years or less etc.

Att-Gen's Ref 2017 Re Gawley, 2017 EWCA Crim 1646 D pleaded to wounding with intent. D had been in a volatile relationship with T. D suffered from depression and had problems with alcohol. One night, after D and T had split up, T was at a pub with her new partner, V. D saw them together, shook his head and walked away. T anticipated a confrontation. The next evening, D went to V's house at around 11 pm and started banging on the door. D was intoxicated and armed with a kitchen knife. V

and T were inside. When V answered the door, D asked “Are you Gary?” V said, “Yes”, and then D charged at him, wounding him in the left-hand side. V managed to push D back and D raised the knife and said, “I’m going to kill you.” V wrestled D to the ground and pinned his knife hand against the floor and had a hand around D’s throat. Several neighbours came to help and one stamped on D’s wrist causing him to release the knife. During the commotion, D was heard to say, “She’s my bird.” V sustained various superficial cuts and slashes to his arms and ten small puncture wounds to his side. V’s GP saw him a few days later and said that V was traumatised, shocked and concerned about infection. D was now aged 53 and was of previous good character. His employer of 23 years said he was one of the most reliable employees the company had ever had. Other positive references were given. A psychiatric report noted D’s history of anxiety and depression. He had received anti-depressant medication and therapy sessions offered by a local mental health team. Episodes of depression had been precipitated by stressful life events, in particular relationship break ups. The Judge started at 6 years and gave full credit for the guilty plea. She said that she had regard to the mitigating features, in particular his good character. Held. This offence was very serious. It involved the premeditated use of a knife to attack a stranger on his own doorstep, at night whilst the offender was under the influence of alcohol. Had D been able to carry out his attack as he had intended to, he might have been serving the better part of the rest of his life in prison for murder. This case is at the top end of Category 2 with a starting point of 9 years. We move to 7 years for the mitigation and so with the plea discount, **4 years 8 months**, not 3 years.

290.26 Knives, With 8+ years

R v Ake 2018 EWCA Crim 392 D was convicted of three offences of wounding with intent. D was eating a takeaway with 12 others outside a pub in the evening. He had two knives in his bag. At about 9 pm, another group arrived and an argument broke out. D was punched in the face so he ran off and was pursued by V1, V2 and V3. D turned around and challenged his pursuers. He removed the two knives from his bag and ran at V1. D stabbed V1 beneath his left armpit and V1 collapsed. D then stabbed V2 in the groin and the back causing him to fall to his knees. V3 tried to swing on a tree and kick D but D managed to stab him in the thigh. D then ran to a friend’s house and washed the blood off his body. The knives were not recovered although witnesses described them as large kitchen knives or small samurai swords. V1 and V2 both received life-threatening injuries. Each suffered a punctured lung. V2 was so convinced that he was dying, he called his girlfriend to say goodbye and asked her to give their son a kiss. V1 and V2 were in hospital for several days. The victim personal statements describe the very considerable impact on all three victims. They all suffered significant loss of confidence, isolation and other psychological and physical effects of the attacks. At trial, D’s defence was that he was robbed of his rucksack and that he was not responsible for the attacks. D was aged 18 and had six previous convictions including for the supply of cocaine and heroin, and possession of an 8-inch kitchen knife (YHO). The pre-sentence report made clear that D was in breach of the terms of the order having failed to reside as directed and having missed several appointments. The Judge noted that D had caused terror and very serious injuries to two of the three young men who he stabbed deliberately. He said the previous conviction of possession of a knife was an aggravating factor and that he took into account D’s age. The Judge started at 12 years. Held. These offences clearly fall within Category 1 of the guideline. There was greater harm in the cases of two of the three victims and there were repeated attacks. There was high culpability due to the fact that D deliberately armed himself with two knives, both of which he used to stab three separate victims. There was nothing wrong with a starting point at 16 years. However, the Judge gave insufficient weight to D’s age and immaturity. So, 16 years’ extended sentence (**13 years**’ custody 3 years’ extended licence) not 18 years’ extended sentence (15 years’ custody 3 years’ extended licence).

290.29a Racially or religiously aggravated offences

‘Offence racially or religiously aggravated’ is one of the factors in Step One of the guideline when the reader is determining the level of culpability, see **209.3**.

Att-Gen’s Ref 2018 *Re Wenham and Siksnys* 2018 EWCA Crim 1926 W pleaded guilty to section 18 and S was convicted of the same offence. At about 1.30 am, V, a Romanian, left a public house. Shortly

after, W and an unknown man, U, approached him outside his home. W, a well-built man, and U held V by his collar and rifled through his pockets. Some of the possessions fell to the ground and W kicked them into the road. S joined them. None of the three knew V. They had not met V earlier in the evening. V ran to his front door but W caught him. V was repeatedly kicked to the face and genitals whilst he lay defenceless on the ground. V was then dragged along the ground from his driveway to the middle of the road outside his home and all three repeated the attack, kicking and punching him until he was rendered unconscious. Once unconscious the attack continued despite the attempted intervention of an onlooker who shouted at them to stop. While V was being attacked he was called “a fucking immigrant” and “fucking Polak cunt” by W. The attack lasted at least 10 minutes. U fled. Police arrived and asked W about whose blood was on his hand. W replied, “That cunt’s, not mine. The thieving robbing cunt. He took my dead mother’s key ring.” He also said, “He got a kicking for being a thieving Polak cunt.” When interviewed, W said he assaulted V because he had taken his jacket at the pub with the key ring that had belonged to his mother. CCTV at the pub showed this claim to be false. S claimed to be a mere witness to the event. W appeared drunk. He later said he had 4-5 pints of lager. V had fractures to the jaw, cheek, eyes and nose which required reconstructive surgery. Three metal bars were inserted. W was aged 36 and had cautions for common assault, criminal damage and battery. S was aged 23 and had no convictions or cautions. W was S’s supervisor at work. The Judge found S was involved in the kicking and a kick to the head, before he tried to pull W away from V. Held. It was a brutal and vicious attack. There was greater harm. For higher culpability there were the shod feet and the racial element, which was incidental to the drunk-fuelled rage. A lack of premeditation and a degree of provocation indicated lower culpability. The degree of provocation was because both thought V had stolen W’s jacket. W and S had the ‘highest’ character references. We don’t dissent from the Judge’s finding that the case was at the upper end of Category 2. The timing and location aggravate the offence. For W, we give the greatest discount for the mitigation, and move to 7½ years. With a 20%, not 25%, discount for the plea we reach **6 years**, not 3 years 9 months. For S, **5½ years**, not 4.

290.31 Relationship attacks Men attacking wives etc.

R v Bourke 2017 EWCA Crim 2150, 2018 1 Cr App R (S) 42 (p 298) D pleaded to wounding with intent. D had known V for about 7 years and was in a relationship with her for most of that period. They frequently drank to excess and often had violent arguments. Police were called on many occasions. Sometimes it was because V was verbally or physically aggressive to D. During the time V was on bail for assaulting D and after both had drunk heavily, D stabbed V up to 20 times. D called the police and the ambulance service. Police found V naked on the bathroom floor surrounded by a ‘large volume’ of blood. There was blood all over the flat. V had multiple stab wounds to the neck, belly and back. The stab wounds penetrated her lung, kidney, liver and stomach area. V was in hospital for three weeks. The knife was found, which was bent by the force of a blow. V and D could recall little of what had happened. D said amongst other explanations, V was attempting to assault him with a hammer. V was no longer capable of work and did not feel safe in her home. D was aged 46. His previous convictions were ABH in 1995, battery in 2011 (suspended sentence, which was breached) and two criminal damage offences in 2015. The Judge found the following aggravating factors: a) previous convictions for violence, b) D was intoxicated, c) the long-term impact on D, and d) the ferocity of the attack with the [large] number of stab wounds. He found the following mitigation: a) the absence of recent convictions for violence, b) D had called the police, c) the letters of support, and d) D’s alcohol dependency syndrome and other psychiatric problems. Held. The harm, which was serious, was sustained. V was never in danger of her life, but this was through pure chance. The offence was mitigated to some degree by the provocation and D’s mental condition of alcohol dependency syndrome. This would have contributed to the offence. It was Category 1 (starting point 12 years). Each of the aggravating factors had a counterbalance. Some modest increase in the starting point was appropriate but 3 years was too much. The Judge was entitled to find D satisfied the dangerousness test but we consider the risk can be addressed so [an extended sentence was not appropriate]. We start at 13½ years, so with the full plea discount, **9 years**, not 15 years’ extended sentence (10 years’ custody 5 years’ extended licence).

Att-Gen's Ref 2018 Re Llewellyn 2018 EWCA Crim 1766 D pleaded to section 18 and assault by beating. D lived with his two sons, aged 5 and 3, and in August 2017 they were joined by V1 and her 7-year-old daughter, V2. In December 2017, D returned from a bar at about 9 pm. Both V1 and D had been drinking. D asked the children whether V1 had had other men at her flat and one child said, "Yes". V1 denied it and believed the answer was given in fear. D seized V1's hair and punched her head several times. D also hit V1's face with his knee about 10 times. She screamed and told him to "Get off", but D continued. V1 retreated to a bedroom imploring her children to say she had not had a man at her house. D followed her and he continued to punch and knee her in the face. Next, D told V2 to collect her things and then seized her hair and threw her into the bedroom. V2 managed to get down the stairs. As V1 tried to leave, D seized her hair and threw her down the stairs. D followed her. Once outside, D pushed V1 to the ground. D's sons had watched the events from their bedroom door. V1 and V2 managed to seek help from a nearby shopkeeper. V2 had a fractured jaw and was at risk of further fractures. She needed permanent metal plates near her jaw. The bruising to V2's face was extensive. At the sentencing hearing her injuries were painful and visible. When questioned by the police, D lied. V1 had nightmares and flashbacks and believed D was going to kill her. D had convictions from when he was aged 16 in 2007 [making him aged about 26]. The convictions included burglary, public order offences, battery and criminal damage. In 2015, he received 9 months for ABH, after he had attacked 'another man who had attacked a former partner'. The pre-sentence report said D's anxieties and lack of self-confidence were at the root of his violence against women. The report also said that after drinking, his underlying tensions erupted catastrophically. He understood this when he was sober. D thought V2 was a troublesome child who came between him and V1. His previous reports referred to erratic drinking with associated violence, depression, stress and anxiety. It recommended a community order. Held. The use of a knee was the equivalent of a weapon. The use of the knee ten times made the offence 'higher culpability'. The offence was somewhere between Categories 1 and 2. The aggravating factors were: a) the presence of the children, b) V1 and V2 were forced to leave their home, c) alcohol had been taken, and d) the battery was against a child. The later factor reduces the weight given to the fact that D was the primary carer for his sons. These factors raise the 9-year starting point to not less than 10. With 25% plea credit, not full credit, **7½ years** not 5 years 4 months.

290.38 Vehicles, After etc.

Att-Gen's Ref 2017 Re Crawford 2017 EWCA 1892 D pleaded to attempted GBH with intent, criminal damage, having an offensive weapon and ABH. D went out for the evening with his girlfriend, V1, and two of their friends. At 2 am D said he was tired and went back to V1's flat alone. V1 stayed out with her friends. By 5.30 am V1 had still not returned home. V2, an ex-boyfriend of V1, happened to be driving past her flat at that time. He stopped and entered the flat through the unlocked front door, wanting to talk to V1 about their past relationship. V2 found D lying on the bed, which angered him. V1 returned home with two friends and asked V2 to leave. She agreed to go with him in his van, so they could talk. V2 drove the van around the corner. D decided to go after them despite being warned not to by V1's friends. D drove off at speed and stopped next to V2's employer's van, revving his engine. He then drove off. V1 and V2 returned to the flat and stood outside smoking with V1's friends and two neighbours, who had been woken by D driving off. D's car reappeared and he drove it up onto the pavement and into the group of people, hitting V1 and V2 (the attempted GBH with intent), then V2's van (the criminal damage). V1 was trapped under D's car. D got out of the car brandishing a wheel brace (the offensive weapon) and struck V2 in the face (the ABH). V2 ran off but was followed by D. V2 pretended to arm himself with a brick, which caused D to turn and run. The police then arrived and arrested D. On arrest D said repeatedly, "I don't know what I've done. I'm shitting myself." V1 sustained a cut to her right eyebrow, which had to be glued, and a 3 cm laceration to her foot, which revealed an open fracture. V2 suffered damage to his finger, which required surgery, and cuts and bruising from the wheel brace. D had 52 µg of alcohol in his blood (legal maximum 35 µg). The cost of repairing V2's van was around £3,000. D was aged 26 at the time of appeal and had two previous convictions (ABH and battery) when he was aged 17. In the pre-sentence report, D maintained that he did not drive directly at the victims but had lost control of his car and that the wheel brace was for defence against V2, who was coming towards him. These were lies. However, he also spoke of his

disgust at his own behaviour. In a *Goodyear* indication, the Judge said the sentence would be not more than 3 years. The Judge concluded that the event was an aberration on D's part and took into account his remorse. The Judge also noted D's young age and that he appeared to be a hard worker and said that D had learned a valuable lesson. He gave a 25% plea discount. Held. The driving was a deliberate act. The car was a weapon. The fact that there was no really serious injury was purely a matter of chance. There were three victims, V1, V2 and the owner of V2's van. This was a Category 2 case with a starting point of 6 years' imprisonment. The seriousness was aggravated by: a) the location, outside V's flat, b) the time of the offence, the early hours in darkness, c) the presence of others, d) the failure of D to heed the warnings not to go after the victims, and e) committing the offences whilst under the influence of alcohol. The offences taken together call for a sentence of not less than 5 years before the plea discount and making allowance for totality. D may have been fortunate in the Judge's plea discount, but we do not alter it. **3 years 5 months** for the GBH, 4 months consecutive as before for the ABH, making 3 years 9 months not 2 years 4 months in total.

290.47 Defendant then aged 16-17

Att-Gen's Ref 2017 Re Cartwright 2017 EWCA Crim 2062 D pleaded (full credit) to wounding with intent, threatening another with a bladed article and assault by beating. The first offence involved V and the other two involved his friend, G. [A news report says V and G were teenagers.] D was standing outside a shop with his friends at night. D was intoxicated, having consumed two pints of lager, a large number of alcopops and a quantity of cocaine. D had a 30 cm knife in a sheath strapped to his chest. V and G passed by the shop. D shouted something to V about "messing with his sister". V told D to "chill out" and D invited V to join him on a nearby grassed area. D then punched V in the eye, causing him to step back. V shouted and D pulled out the knife and started swinging it. V and G ran off. D followed, brandishing the knife threateningly. V stopped to face D and D swung the knife a number of times at V. It struck V on the upper arm and cut down to the muscle. Police went to D's house and he came to the door holding the knife. He dropped it when police threatened to use a Taser on him. The wound on V's arm left a 7 cm scar and he has suffered a reduction in strength in his arm which is expected to be permanent. In his victim impact statement, V says that the attack caused him to suffer a loss of confidence and a feeling of anxiety about going out in public. D was aged 17 and had no previous convictions. A doctor said that from a mental health perspective D required intervention in psychosis as D was young and was at risk of developing a psychotic illness. The pre-sentence report noted that D was genuinely remorseful. For the three months leading up to the offence, D was sleeping on friends' sofas and using alcohol and cocaine on a daily basis. According to the report, D said that the cocaine had made him feel invincible but also very paranoid. Before this, D had been living at home and abiding by his parents' rules. The Judge considered that an adult offender after a plea discount could expect 5 years, made no finding of dangerousness and noted the unusual features of the case, namely, the lack of previous convictions and the fact that the attack did not stem from inherent mental instability but drug-fuelled temporary psychosis. The Judge then referred to plans for D to leave the area and stay with his grandmother and subsequently imposed a Youth Rehabilitation Order. After the sentence, D stopped contact with his family and those appointed to supervise him. (The judgment also says that D had to a significant extent complied with his sentence requirements.) Held. The Judge did not give sufficient weight to the seriousness of this offending. The following features were important. D was out at dusk with a fearsome weapon strapped to his chest and was very quick to draw the weapon when the occasion arose. D started the violence with the punch to V and pursued him when he tried to escape, still brandishing the knife. These facts starkly illustrate how quickly circumstances can alter when knives are carried and those who carry them involve themselves in some sort of dispute. Had the blow that caused the injury been a few inches higher, it would have struck the neck. The aggravating factors were: a) the offence was committed at night, b) the continuing effect on V, c) the presence of others, and d) D was under the influence of drink and drugs. The mitigation was limited and was just his good character and a degree of remorse. For an adult, 10 years would be difficult to appeal and less than 9 years could not have been justified. We reduce the sentence because D has been remanded, been released and will now return for a significant period of custody. **3 years.**

