

**201.15 Punish, Motive is to**

*R v I 2014 EWCA Crim 314* D was convicted of assault. In a park at about 8.30pm, V, aged 16, with his friends, were with some girls by a lake. D had with him cans of alcohol and walked past V and his friends and said something whilst looking at one of the young girls. D then walked off and sat on a bench near the lake drinking the alcohol. He began to call the young girls over to him. One of the young girls said that D had ‘dirty talked’ to her and had been bothering her earlier in the day. As this was not the first time that this had happened, V and his friends decided to approach D. They said to keep clear of the girls, who were only aged 14 or 15, that D had been ‘perving’ on them and that he should leave them alone. D confronted them and he then punched V in the side of the face. A scuffle took place and in the mêlée one of V’s friends punched D in the face. D managed to drag V into the lake about 3 metres out. V tried to get out but D was holding him under the water. One of V’s friends threw a rock at D, hitting him on the side of the head. D let go of V and he swam to the side and got out. D got out of the lake, smashed a glass bottle and chased the group. The police were called and D was found hiding in a bush. V suffered bruising to his ribs and to the right side of his face, a swelling to his right cheek, pain to his fingers, a laceration inside his mouth and bruises around his right eye socket. V said he believed he was going to die and there were obvious psychological effects of the assault. D was aged 28 at appeal and had five convictions for seven offences including ABH, common assault, possession of a bladed article, being drunk and disorderly and battery. D was sentenced for the initial assault and not the subsequent activity in lake, of which he was acquitted. Held. Plainly the psychological effect did not all result from the first ABH of which, alone, D was convicted. Taking into account the plea and the previous convictions, 18 months was too long. But there must be a significant measure of contribution to the psychological effect from the first ABH which must be recognised in the sentence, which therefore should be at the very top of Category 1. **12 months** not 18.

See also: *R v Halane 2014 EWCA Crim 1842, 2 Cr App R (S) 46 (p 375)* (Plea to ABH. D and V heavily intoxicated. V punched D first. D and a friend pushed V into the gutter. D then kicked V repeatedly and stamped on V’s head twice. The friend tried to hold D back but V punched again. D, 27, no violent or custodial antecedents with caring responsibilities. V was vulnerable as intoxicated, therefore Judge entitled to place this sustained assault into Category 1. **16 months** stiff, but not excessive.)

**201.18 Relationship offences**

*R v Bullough 2014 EWCA Crim 1170* D pleaded to ABH. V, D’s father, who was small and frail, left the house to go for a walk. He received a call from D’s girlfriend and took the call in the street. D had been in a bad mood all day after arguing with his girlfriend and had been drinking. D ran outside accusing V of laughing at him and bundled him into the house, threatening to kill him. D began attacking V, punching him repeatedly about the head, causing a laceration. When V fell, D kicked him, ignoring pleas to stop. Then he stopped and hugged his father and asked to be forgiven. D, aged 27 and with 19 convictions for 28 offences, was subject to a community order with an alcohol treatment requirement at the time of the offence. The PSR highlighted D’s mental health problems. Held. The attack was very nasty and a number of aggravating factors were prevalent. However, D’s mental health problems indicated lower culpability. With full credit, **12 months** not 20.

*R v Thomas 2014 EWCA Crim 1715* D pleaded to ABH. He pleaded guilty at a mention just before his trial. D had lost his temper and dragged V, his partner, by the hair a short distance across a road with a significant degree of force. He then kicked her twice in the back as she lay on the floor. V suffered chipped teeth, bruising to her chin and back and cuts and grazes however she made no complaint. The

incident was captured on CCTV and her injuries seen by her sister and the police. D was aged 29 and had 18 convictions (five as a juvenile) for violence. His last was in 2011 for affray and possessing a firearm with intent (12 months) but he had been out of trouble for 18 months since his release. D's longest custodial sentence was a 2-year DTO and he had received six immediate custodial sentences in all. Despite having regular arguments and threatening V, D indicated remorse and a need to change his outlook. The Judge placed this in Category 1 as V was vulnerable as she knew D was capable of anger and violence, therefore greater harm. It was higher culpability as D had used his shod foot as a weapon and the offence occurred in a public place, leading to V's humiliation. Held. The expression 'serious injury' must be interpreted within the context of ABH and not a more serious offence, such as GBH. 'Serious injury' differentiates between an injury on the margin of being an actual injury and injury which is more substantial, and in the context of ABH, is serious. Chipped teeth and facial damage are not trivial matters to a young woman. In this case, V's injuries were serious and the Judge was entitled to place this in Category 1. He was also entitled to rely on D's antecedents and go outside the range. That said, regard was to be had to: a) the full extent of V's injuries, b) D's genuine remorse, c) D's pre-trial plea and d) D's previous attacks not warranting a term of over 12 months. **3 years**, not a 5-year extended sentence.

See also: *R v Whitelock 2014 EWCA Crim 204* (Convicted of two ABHs. Repeated punches to the face of a female neighbour and her male partner. Both victims on the floor. Defendant delivered kicks to the face and ribs. Extensive bruising and cuts. Substantial and serious attack. Aged 53. No material convictions. 9 months consecutive for the assaults, making **18 months** not 24.)

*R v Somerset 2014 EWCA Crim 1516* (Plea to four counts, (very little credit). D, the son of a duke, subjected V, his wife, to repeated domestic violence for over 22 years. D and V both drank excessively. Violence included hair pulling and V sustaining bruises and scratches. On two occasions D kicked V. Once was V's ankle with "an incredibly hard blow" the other was to V's body, leaving her with bruising, swelling and soreness. D was 56. Held. Persistent, deliberate violence treated extremely seriously. Overall sentence of **24 months** not excessive.)

### **201.19 Street fighting**

*R v Wright 2013 EWCA Crim 2672* D pleaded to ABH and affray. Whilst waiting for a taxi, D was approached by V1 who wrongly accused him of using racist words. D struck V1 causing bleeding and a fractured nose. Five days later, D and a friend had an altercation with V2 and V3 who were pushed and punched. V2 sustained bruising and swelling to the eye sockets with some concussion. V3 required no medical treatment. D was aged 20 and had no relevant convictions. Held. V1's injury, in part provoked by V1, was caused by a single blow and was not particularly serious. V2's injuries, while more serious, if dealt with as ABH would likely have been Category 3. The Judge was incorrect in passing deterrent sentences owing to a local problem with violence. There was no evidence that the problem was greater locally than nationally. 1 month, not 5 for the ABH. 4 months, not 10 for the affray. Total concurrent sentence of **4 months**.

### **201.22 Unprovoked/No reason                      Weapon used**

*R v Port 2013 EWCA Crim 2668, 2014 2 Cr App R (S) 26 (p 203)* D pleaded (at his PCMH) to ABH and possession of an offensive weapon. V was a licensed mini-cab driver. He collected D from his home. D had been drinking alcohol and taking drugs, in particular, cocaine. D offered payment for the journey at the outset. D asked V to stop en route so he could buy some cigarettes. V asked for some payment before he got out and D refused, saying he would pay for the journey at the end. He told V to "fuck off" and got out of the car. V followed him and told him that he could not just walk off without providing some form of payment. D said "If you don't fuck off, I am going to punch you in the face." V said "Are you really going to punch me in the face?" Thereon D punched V in the face causing swelling and bruising. A fight

ensued and V got the upper hand, delivering a number of punches to D's face. They both ended up on the ground. D took out an extendable baton from his bag. He struck V once on the arm in order to free himself. V grabbed the baton and D let go and ran away. Four of V's teeth became loose and he suffered a cut lip. D pleaded on the basis that he punched V once, and used the baton (which was not his) to protect himself. D was aged 25 at appeal. He had seven previous court appearances between 2006 and 2013. Held. This offence was above Category 3 in the Guidelines because of the particular position of taxi-drivers who provide a public service and who are frequently assaulted by passengers not wishing to pay their fare or robbed. D punched V hard in the face after a reasonable request for some of the monies owed to V, causing four teeth to be loose. It was not a Category 2 case however as greater harm or higher culpability were not present. Immediate custody was required but a starting point of 12 months was not merited. Starting at 8 months was consistent with the offending. The appropriate credit for the plea was 25%. **6 months** not 9.