

298.11a *Defendant has relevant convictions*

Example: *Att-Gen's Ref No 32 of 2014* 2014 EWCA Crim 1320 (Convicted. Section 18 and assault by beating. Locks changed following his violence. Attacked woman who opened door and stabbed partner. Age 25 with 82 convictions including five offensive weapons/bladed articles and six ABH/battery offences. Held. His default position is to reach for a bladed instrument. **12 years** not 9.)

298.20 *Hammers, bars bottles (unbroken) etc.*

R v Law 2014 EWCA Crim 1772 D was convicted of wounding with intent. D and his wife had separated and V was in a relationship with D's wife. D's 18-year-old son, H, was employed by V. D and H pulled up in a car and H got out, crossed the road and spoke to V. After an exchange of words, H returned to the car and was followed by V. The car then drove off and it was accepted that V may have acted in an unpleasant manner towards H during these events. About 20 minutes later, V was on the same stretch of road and D, wielding a 4ft metal pole, ran up behind him, struck V over the head and to the kidney area. V then turned around and was struck on the elbow but managed to disarm D. H then threatened V with a shovel. V suffered a cut to his head requiring stitches, a 3cm laceration to the elbow and bruising to his back. Blood was also found in his urine but a scan showed nothing abnormal. In interview, D admitted striking in retaliation for V's altercation with H. D was aged 52, of good character and was hard-working and resourceful. The Judge considered Categories 1 and 2 and adopted a starting point of 10 years. Held. These injuries were not more serious than those commonly found in s 18 cases. We do not consider there was 'greater harm' but there was significant premeditation and use of a weapon. This therefore falls into Category 2. The attack was from behind and at night. With good character, **6 years**, not 8.

298.24 *Knives, With 6 years or less appropriate*

R v Garcia 2014 EWCA Crim 93 D pleaded to section 18 and burglary. V was the landlady of a pub and lived above the premises. D had formerly been an employee at the pub. In the early hours, D broke in. V was disturbed and she got out of bed, looked down the stairs, got back into bed and called the police. She heard D come upstairs. He entered her room and, whilst she was still on the phone, he struck her five or six times on the head, probably with her own phone as blood and clumps of hair were later found on it. Police attended and he was found nearby with blood on his hands and £1,690 that he had stolen from the pub. D was under the influence of alcohol and drugs at the time. V suffered a 3cm cut to her forehead which had to be stitched. She went to live with her son after the attack and, despite an intention to return to the pub, was unable to do so for several weeks. She was unable to live alone. The Judge described the attack as 'gratuitous and vicious' and noted that V could not understand why he had carried it out. D was treated as being of good character. Held. The theft was an aggravating feature of the wounding and the Judge was entitled to treat it as such. There was minimal premeditation. It was a very serious offence. The correct starting point was at the top of Category 2 or the bottom of Category 1, namely 9 years not 11. With credit for the plea, **6 years**, not 7. The concurrent sentence of 2 years on the burglary would be unaltered.

298.25 *Knives, With 6+ years appropriate*

R v Streeter 2014 EWCA Crim 392 D pleaded to section 18. D and V were long-time friends but had recently fallen out over a girl. About 10.00 pm D visited V's home. Shortly after, D stabbed V twice in the chest and also in the head and hand. A wound required stitches, V lost movement in two fingers and

suffered a pneumothorax. D, aged 25, had no previous convictions and the incident was said to be “an isolated incident completely out of character”. The Judge was not able to say that the knife was brought to the premises. Held. This was a bad assault aggravated by having taken place in V’s own home and involving more than one stabbing. Nevertheless there is significant personal mitigation. Starting point 12 years not 15. With full credit, **8 years** not 10.

Att-Gen’s Ref Nos 55-56 of 2014 2014 EWCA Crim 1727 (10 years for both see **298.35**)

See also: *R v Malin* 2014 EWCA Crim 1651 (Plea. Also possessing an offensive weapon (knife) and supply of Class A. Cat 1. In a shop, V refused to sell vodka to D, because it was out of hours. D left and then immediately returned and repeatedly stabbed V. D stopped when V said, “Take what you want”. V had flashbacks and fear of people in his shop. Eight convictions including theft and minor assaults. Held. Carrying and use of knives is one of the most serious factors indicating higher culpability. Because of D’s age (22) etc. **6 years 8 months**, not 8 years.)

298.29 Pub fights

R v Chamberlain and Others 2013 EWCA Crim 1859 D pleaded to section 18 and common assault. C and R pleaded to section 20. V1 and his girlfriend, V2, were in a nightclub. A disagreement arose between R’s sister and V2. C punched V1 and all were asked to leave. The dispute continued outside the club and insults were thrown. C and V1 threw punches at each other, whereupon C asked R and D to assist. V1 was dragged, kicked in the head by D and punched by C. V2 lay across V1 and was kicked in the face by R. V1 attended hospital and was treated for cuts and bruising to the ribs and discharged. The pain worsened and he was later found to have closed fractures to his forearm, face, two ribs and spine. V2 suffered slight swelling and bruising. All three expressed extreme remorse and blamed alcohol for their actions. D, aged 24, had a conditional discharge for criminal damage. The Judge categorised the case as Category 1. Held. It was a joint attack at night. Part of the attack was when V1 was on the ground. It was also not premeditated and of very short duration. The Judge was wrong to categorise V1’s injuries as serious with no evidence of residual effect. The case was on the cusp of Category 1. There should be credit for the remorse. We sentence on the basis the offence was out of character. There was no evidence D was wearing boots. Starting at 7 years, with full credit, **4 years 8 months** not 7 years.

For the sentences for C and R see the **OFFENCES AGAINST THE PERSON ACT 1861 s 20** at **299.14**.

R v Thomas 2014 EWCA Crim 917 D pleaded (10% credit) to section 18. D and V were engaged in a game of pool at a pub. D’s girlfriend was present and watching. As V was waiting to take his shot, he engaged in a light-hearted conversation with D’s girlfriend, and placed his hand on her shoulder. D became jealous and challenged V. He then struck him over the back of the head with a pool cue, holding the cue by the thinner end. The Judge described it as a ‘full bloodied swing’. He apologised for his actions and left the pub. V sustained a deep laceration to his scalp which required six sutures. He was prescribed a course of antibiotics and was off work for four weeks. He suffered from headaches in the aftermath. The Judge placed the offence in Category 2. D had previous for section 18 and threatening behaviour. There were also various assaults and batteries ‘over the years’. Held. There was no suggestion that D was not rightly considered to be dangerous. The appropriate sentence was an **extended sentence** with **4 years’ custody** (not 5) and an extended licence of 3 years.

298.33 Relationship attacks Men attacking wives and partners etc. 6+ years

See also: *Att-Gen’s Ref No 32 of 2014* 2014 EWCA Crim 1320 (Convicted. Section 18 and assault by beating. Locks changed following his violence. Attacked woman who opened door and stabbed partner.

Age 25 with 82 convictions including five offensive weapons/bladed articles and six ABH/battery offences. Held. His default position is to reach for a bladed instrument. **12 years** not 9.)

298.35 *Revenge/punishment, Motive was*

Att-Gen's Ref Nos 55-56 of 2014 2014 EWCA Crim 1727 D1 and D2 were convicted of GBH with intent on V1. D1 was also convicted of ABH on V2. They were bouncers of substantial build and D2 was D1's manager. Outside their nightclub, D1 and D2 had an argument with V1 and V2 about entry with derogatory remarks and a scuffle. The police were called by a friend of V1 and V2 and searched them looking for a knife but none was found. About 1 ½ hours later, after their nightclub had closed, four bouncers in a number of cars chased V1, V2 and another X in their car. After over 1 ½ miles, the V1 and V2 stopped and X ran off. D1 and D2 smashed the Vs' car windows with batons and pulled the Vs out through them. D1 used a knife and D2 a baton to injure V1 and V2, including when they were on the ground. The incident lasted at least two minutes. They required hospital treatment for multiple serious injuries. V1 required 57 stitches. He had multiple bruises, deep scalp wounds down to the bone, a severe ear laceration, a broken elbow and defensive wounds. V2 (ABH count) had cuts, bruising and a black eye. The attacks lasted at least two minutes. At sentence D1 was aged 27 and D2 was 37. Both were of good character or treated as such, with references. Held. No provocation occurred and one of the victims was vulnerable as he was trapped in a car. Greater harm and higher culpability were present. D2, as manager, could have prevented the attack. Regard was to be had to the short period V1 spent in hospital. This was a premeditated and determined act of revenge aggravated by the weaponry use and that the Ds' job was to keep order. D2 did not carry a knife but had a managerial role. D1, **10 years** not 5 and 8 months concurrent not consecutive. D2, **10 years** not 6.

298.36 *Robbery/Burglary/Aggravated burglary, And*

R v Garcia 2014 EWCA Crim 93 D pleaded to section 18 and burglary. V was the landlady of a pub and lived above the premises. D had formerly been an employee at the pub. In the early hours, D broke in. V was disturbed and she got out of bed, looked down the stairs, got back into bed and called the police. She heard D come upstairs. He entered her room and, whilst she was still on the phone, he struck her five or six times on the head, probably with her own phone as blood and clumps of hair were later found on it. Police attended and he was found nearby with blood on his hands and £1,690 that he had stolen from the pub. D was under the influence of alcohol and drugs at the time. V suffered a 3cm cut to her forehead which had to be stitched. She went to live with her son after the attack and, despite an intention to return to the pub, was unable to do so for several weeks. She was unable to live alone. The Judge described the attack as 'gratuitous and vicious' and noted that V could not understand why he had carried it out. D was treated as being of good character. Held. The theft was an aggravating feature of the wounding and the Judge was entitled to treat it as such. There was minimal premeditation. It was a very serious offence. The correct starting point was at the top of Category 2 or the bottom of Category 1, namely 9 years not 11. With credit for the plea, **6 years**, not 7. The concurrent sentence of 2 years on the burglary would be unaltered.

298.48 *Wooden plank, baseball bat etc., With a*

R v Lodi 2014 EWCA Crim 904 (In a YOI. **7 years 4 months**, see the **PRISON OFFENCES** update at **317.3a**)

See also: *R v Hunt* 2014 EWCA Crim 1010 (D pleaded to possession of an imitation firearm with intent to cause fear. Returned to a party after being told that a friend's brother had been assaulted. Handed a plastic toy gun. Threatened to shoot a neighbour. Struck him with the weapon several times causing heavy bleeding. Punched another neighbour in the face. Threatened other partygoers that he would kill them if

they called the police. Boasted about assaulting people with the weapon. One victim left with severe anxiety. Just short of his 19th birthday at the time. Under the influence of alcohol and cocaine. Consecutive sentences appropriate. **4 years** with 18 months consecutive making **5½ years YOI**, not 8.)

Note: The case is listed in the paragraph because the weapon was used like a piece of wood and the firearms paragraph is reserved for cases where a firearm is discharged. Ed.

298.51 Defendant aged 15

R v T 2014 EWCA Crim 1906 D and K were convicted of s 18 assault and K was also convicted of possession of an offensive weapon. D was aged 15 and arranged to meet V in a park as V had been “disrespecting” him over a video. D abruptly changed the venue of the meeting to a take-away shop. On arrival D told V to wait for K. D and V remained separate and then K arrived. K told V to walk along and, as he did so, he stabbed V in the chest. The knife penetrated the muscle layer and the wound later required seven stitches. V ran away, bleeding, pursued by D and K. D tried to punch V and the attack stopped only when a friend intervened. When interviewed, D denied arranging K’s attendance or any intention that V be stabbed. D had one conviction for robbery, committed a year prior to the instant offence (9-month referral order). He also had been excluded from school for violence. The PSR noted it was a gang offence and D’s impulsivity, poor temper control and aggression. D continued to lie about his involvement. It recommending an extended sentence for public protection. K was aged 18 and, having received a *Goodyear* indication, pleaded guilty. The Judge held that the section 18 was borderline Category 1 or 2. With a 6-year starting point, he received 4 **1/2** years’ detention. Held. The discount for D’s age and immaturity, borne out at trial and in the PSR, was insufficient. An appropriate discount from the sentence for an adult results in **4 1/2 years’ detention**, not 6.

298.52 Defendant aged 16-17

R v Giles 2014 EWCA Crim 1172 D pleaded (full credit) to section 18. When drunk, he approached V as he walked to evening prayers and asked him, “Are you a white Muslim?” V, aged 79, was dressed in Bangladeshi clothes and had an age-related condition which lightened his skin. D punched V and kicked him to the head after he had fallen. V suffered life threatening injuries with a fracture to the skull and the nose, a bruise to the brain which impaired his cognitive functions and damage to the auditory canal. His quality of life had been much reduced. D, aged 17, had spent the day drinking and had no memory of the offence. He had no relevant convictions. The Assault Guideline did not apply to D owing to his age, otherwise it would have been a Category 1 offence. Held. Dreadful though the offence was, account should be taken of D’s age, his early plea and his otherwise good character. **6 years**, not 8.

See also: *R v L* 2014 EWCA Crim 1952 (GBH and burglary. During burglary, V stabbed, potentially life threateningly, not initially by D. Later on all three burglars stabbed V multiple times. D, 16, gang activity and grown up in care with little stability, suffered physical abuse. Just convicted of several serious offences. Refused to engage with probation, no empathy and self-centred. D proud of criminal identity and planned to make a living from crime. Held. For an adult start at 15 years. **10 years’ detention**, not 12, and **5-year extended licence upheld**.)