

ASSAULTS ON EMERGENCY WORKERS (OFFENCES) ACT 2018: EFFECTIVE DETERRENT OR EMPTY GESTURE?

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ABSTRACT

In 2018, following a significant increase in violence against NHS staff and others serving the public, the UK Parliament passed a piece of legislation which included the creation of a new offence category, 'Assault against an Emergency Worker'. The intention was to codify the aggravating nature of assaults against emergency workers as a reflection of the moral outrage such behaviour should attract. However, the actual implementation of this law has been criticised as adding very little to the lofty promises of promoting a "zero tolerance" culture. In this paper we review the new legal framework and attempt to highlight potential effects arising from its implementation.

Keywords: Emergency workers; assault; common assault; occupational violence

I. BACKGROUND

*"It should go without saying that NHS staff should have the right to work without being assaulted. Unfortunately, physical attacks are an increasingly common occurrence in today's overstretched and overstressed service."*¹

In a 2017 Staff Survey 15% of NHS employees reported experiencing violence from patients, their relatives or the public in the preceding 12 months, the highest recorded figure for five years and a rise of 9.7% in two years.² It was this data that prompted Health Secretary Matt Hancock to launch the "first ever NHS Violence Reduction Strategy" in October 2018, which aimed to "protect the NHS workforce against deliberate violence and aggression from patients, their families and the public, and to ensure offenders are punished quickly and effectively".²

A linchpin in this plan was the introduction of the Assaults on Emergency Workers (Offences) Act 2018 (c.23), which was passed on 13th November 2018. This new legislation saw the maximum prison sentence for an offence of common assault or battery against an emergency worker (broadly including police officers, prison officers, fire services, rescue services and persons "employed for the purposes of providing, or engaged to provide NHS health services", including paramedics, nurses, support workers and doctors working "whose general activities in doing so involve face to face interaction with individuals receiving the services") double from six months to a year as outlined in guidelines provided by the Sentencing Council.³ Furthermore, it legislated that in more severe offences the fact that it was committed against an emergency worker would be considered an aggravating factor, meriting an increased sentence within the maximum for the offence.⁴ The guidance to the Crown Prosecution Service (CPS) accompanying the introduction of the 2018 Act made it clear that police

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and prosecutors should cease charging the existing offences of 'common assault', 'battery', 'assaulting a police officer in the execution of their duty' (an offence which previously attracted a maximum six months custodial sentence⁵), and other existing similar offences where the complainant was an emergency worker.⁶

The NHS Violence Reduction Strategy also included plans for the Care Quality Commission (CQC) to scrutinise violence as part of their inspection regime, identifying trusts that needed further support. This data had previously been collected and published by NHS Protect before the process was discontinued in 2017.

While outlining the objectives of the 2018 Act the Minister of State at the Ministry of Justice set out the following underlying principle:

"An assault on any individual or citizen in our society is a terrible thing, but an assault on an emergency worker is an assault on us all...an attack on them is an attack on us and on the state, and it should be punished more severely than an attack simply on an individual victim".⁶

This paper explores the initial trends in conviction rates within the first year under this new legislation and attempts to understand whether the stated objectives are being realised, particularly in comparison to prosecutions under the frequently used former category of 'common assault'.

II. METHODOLOGY

Data was obtained from the Ministry of Justice directly via a Freedom of Information Request for the 2018/19 calendar year and included information on 'outcomes-by-offence' for the requested time period. Publicly accessible data published by the Ministry of Justice for the period of 2016 to 2017 was also reviewed.

All of the published reports on the CQC website⁷ between 1st January 2019 and 31st December 2019 were searched for the following keywords: *Violence, Assault, RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations), Attack, Injury, Injured, Injuries.*

Data was analysed using the tools available in Microsoft Excel and descriptive statistical analysis performed alongside inferential statistical analysis where appropriate.

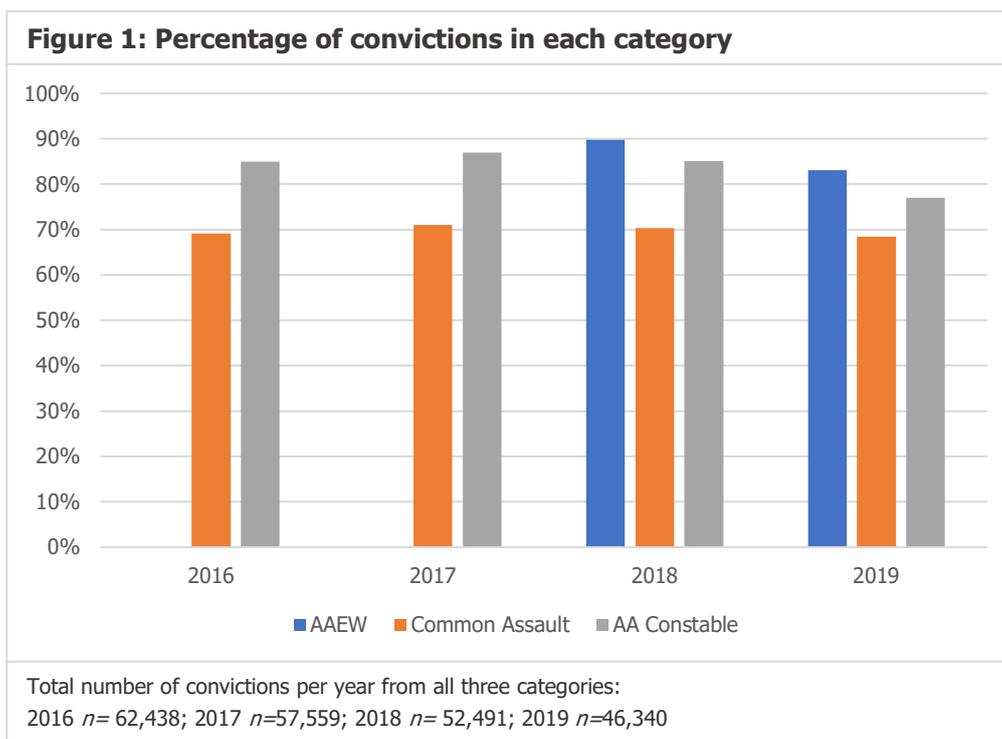
III. RESULTS

A. Use of conviction categories

Based on Ministry of Justice data, the uptake of convictions under the 2018 legislation was swift. Bearing in mind that the legislation was enacted in November of that year, the data for the rest of 2018 indicated that 352 cases were proceeded against resulting in 316 convictions (Table 1). During the 2019 calendar year there were a total of 9,350 convictions from 11,257 cases. The use of the conviction of 'assault against a constable' fell by almost half during this period of time, from 14,819 in 2018 to 7,778

in 2019, while numbers of 'common assault' convictions also fell by 20% (56,306 in 2018 to 45,319 in 2019).

	Pre-introduction of AAEW Act		Post-introduction of AAEW Act	
	2016	2017	2018	2019
Assault Against Emergency Worker			352 (316)	11,257 (9,350)
Common Assault	73,286 (50,700)	64,209 (45,591)	56,306 (39,573)	45,319 (31,006)
Assault Against Constable	13,813 (11,738)	13,756 (11,968)	14,819 (12,602)	7,778 (5,984)



B. Conviction rates

The rate of conviction under the new legislation was high; in 2018 89.8% of 'assault against an emergency worker' prosecutions resulted in convictions, and 83.1% in 2019. This is in comparison to a conviction rate of 70.3% for 'common assault' in 2018 and 68.4% in 2019 (*Figure 1*). The total number of convictions in all three categories has fallen since 2016 (62,438 in 2016 to 46,340 in 2019) (*Figure 1*).

C. Sentencing

For the purposes of analysis sentence types have been grouped into 'community sentence', 'suspended sentence', 'immediate custodial sentence' and 'fine'. A broad comparison of data for 2018 and 2019 can be viewed in Figure 2.

Ministry of Justice data indicates that 'immediate custodial sentences' were used more liberally following the introduction of the new legislation, with 28% of 'assault against an emergency worker' convictions receiving a custodial sentence compared to 17% of 'common assault' convictions in 2018. The rate of custodial sentences for 'assault against an emergency worker' fell to 19% in 2019, marginally higher than the 16% handed down for 'common assault' in the same year.

The average length of custodial sentence was comparable for the two categories: 2.6 months for 'assault against an emergency worker' and 2.9 months for 'common assault' in 2019.

Community sentences remained the predominant form of disposal for both categories, however rates were higher for 'common assault' convictions: 51% and 53% in 2018 and 2019 respectively, compared to 39% and 45% for 'assault against an emergency worker' in the same years.

In contrast the use of financial penalties was higher for convictions under the new legislation, 24% in 2019 compared to 19% for 'common assault' in the same year. The category of 'assault of a constable' showed very different trends with regards to sentencing; fines were used in the majority of cases (73% in 2019) with much lower rates of community sentences (down to 18% in 2019) and few custodial sentences (6% in 2019).

	Assault Against Emergency Worker	Common Assault	Assault Constable
Total Number of Fines (<i>n</i> =)	1,876	4,979	3,564
Average Fine (£)	181	231	182
	Number of penalties given per category (%)		
Up to £25	6 (0.32)	22 (0.44)	52 (1.46)
£25 – 50	157 (8.37)	477 (9.58)	503 (14.11)
£50 – 100	549 (29.26)	1,074 (21.57)	984 (27.61)
£100 – 150	432 (23.03)	934 (18.76)	652 (18.29)
£150 – 200	238 (12.69)	735 (14.76)	237 (6.65)
£200 – 250	112 (5.97)	326 (6.55)	679 (19.05)
£250 – 300	123 (6.56)	394 (7.91)	100 (2.81)
£300 – 500	196 (10.45)	649 (13.03)	266 (7.46)
£500 – 750	39 (2.08)	210 (4.22)	51 (1.43)
£750 – 1000	18 (0.96)	97 (1.95)	19 (0.53)
£1000 – 2500	5 (0.27)	53 (1.06)	18 (0.51)
£2500 – 5000	1 (0.05)	6 (0.12)	1 (0.03)
£5000 - 10000	0 (0.00)	1 (0.20)	0 (0.00)
Over £10000	0 (0.00)	1 (0.20)	2 (0.06)

D. Fines

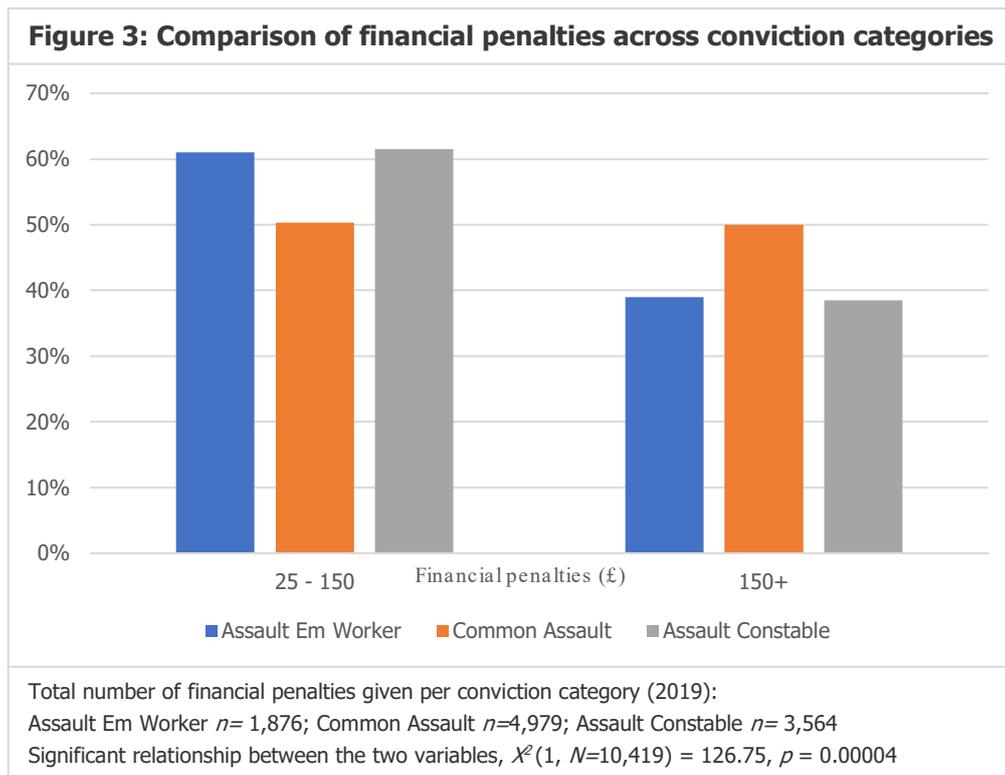
On average, individuals convicted of 'common assault' received higher financial penalties than those convicted under the new legislation. In 2018 the average fine

handed down in convictions of 'assault against an emergency worker' was £166, over £50 less than the average for 'common assault' in the same year (£221). This trend was repeated in 2019 (total average difference of £52.50) (Table 2).

The highest proportion of fines for 'assault against an emergency worker' in 2019 were in the range of £50-150 (52.3%), compared to only 40.3% of individuals convicted of 'common assault' who received the same penalty. However, 28.7% of those sentenced for 'common assault' were handed down larger fines of over £250 (1.6% given fines of £1000 to £5000 plus) compared to only 20.3% of those sentenced for 'assault against an emergency worker' (with 0.3% given these maximum penalties). Only 12.9% of those convicted of 'assault of a constable' received penalties within this higher range, with 15.6% receiving fines within the lowest range of £25 to £50.

The grouping of financial penalties was further reduced to reflect relative 'low' penalties (range of £25 - £150) and 'high' penalties (over £150) in order to provide a broader comparison (Figure 3). 39% of those sentenced for 'assault against an emergency worker' received a 'high' penalty, compared to 50% of those sentenced for 'common assault'.

A chi-square test of independence was performed to examine the relationship between conviction category and size of financial penalty handed down ('low' versus 'high' penalties). The relationship between these was significant ($\chi^2(1, N=10,419) = 126.75, p = 0.00004$), demonstrating a correlation between conviction categories and financial penalties.



E. Care Quality Commission Oversight

There was a total of 64 reports published on the CQC website⁷ during 2019. Across all the reports covering that timeframe there were no references to assault, six mentions of RIDDOR, and 185 reports surrounding keywords related to injury. In relation to the latter, all reports around injuries related to either needle-stick injuries, workplace-based injuries or protective measures related to radiation exposure. Notably there were no reports that made any mention of patient-on-staff assaults. The scrutiny around RIDDOR related primarily to having policies and procedures in place governing the reporting of injuries, rather than reporting on the injuries themselves.

IV. DISCUSSION

The observation that emergency workers are particularly vulnerable to being assaulted whilst undertaking duties is not new and it is, in fact, seen as becoming an increasing problem. There is justifiable concern from many corners that assaults on individuals in the caring professions are becoming increasingly commonplace, however a proliferation of statements around “Zero Tolerance” has yet to lead to a tangible reduction in violence. As with any policy position, lofty ambition is only as good as its implementation and the organisational will behind it.

In this respect, codifying specific criminal offences to harness this level of moral outrage is an understandable societal impulse, and in the past has led to the implementation of legislation to criminalise assaults against police officers as well as airline cabin crew. The 2018 NHS Violence Reduction Strategy and associated Assaults on Emergency Workers (Offences) Act appear to follow in this vein.

Data from the first year following implementation of the Assaults on Emergency Workers (Offences) Act 2018 shows that sentencing for these offences has remained as lenient as the equivalent offence category of ‘common assault’. The overall rate of conviction has fallen consistently since 2016 across all categories. While individuals charged with ‘assault against an emergency worker’ may be more likely to receive a conviction, they are less likely to receive an immediate custodial sentence, and those that do are equivalent in length or marginally shorter than sentences for ‘common assault’. Financial penalties are also notably lower for those convicted of ‘assault against an emergency worker’ than ‘common assault’, a finding which has proved to be statistically significant. The role of the CQC in scrutinising violence as part of their inspection regime also appears to have been lost, with no reporting on this area since this direction was given in 2018.

These results provide preliminary evidence that the objectives outlined in the Assaults on Emergency Workers (Offences) Act 2018 have yet to be realised. The “clear legislative intent that assaults on public servants doing their work as part of the emergency services should be sentenced more severely than hitherto”⁶ is not reflected in the lower levels of custodial sentences and reduced financial penalties under the new conviction compared to those previously used. There will, of course, be cases where the new legislation is applied as intended; while passing sentence during an early case at the start of 2019,⁸ the Judge observed “that the officer had been in

uniform and it was apparent that he was only doing what he was duty-bound to do". The defendant was sentenced to four months' imprisonment which was upheld by the Court of Appeal, who noted that "it is perfectly clear that Parliament intended the sentencing regime for such offences to be more severe [than sentences in alternative assault categories]".⁸

However, the success of individual cases such as this is not reflected in the wider picture, with the average length of custodial sentences under the new legislation remaining equivalent to those under 'common assault'. The same pattern is reflected in the severity of fines handed down for a conviction of 'assault against an emergency worker', which were on average substantially lower than those for other assault categories. This could lead some to the bleak interpretation that a conviction under the new legislation is in fact more 'cost effective' than a conviction under one of the previously used categories, despite the fact that it was explicitly designed to demonstrate the opposite.

While we cannot state with any certainty why the aims of the 2018 legislation have not yet been realised, a number of hypothesis can be considered. Firstly, one possible problem may have been the initial use of draft sentencing guidelines under the 2018 Act,⁹ which were comprehensive but comparatively more complex when viewed alongside the sentencing guidelines for 'common assault'.⁴ While the suggested starting point for the offences with the highest level of harm and culpability was an eight month custodial sentence, the category range went as low as 26 weeks and there was no recommended minimum tariff given. Information regarding the use of financial penalties was given but not incorporated into the guidance for starting points. In comparison, sentencing guidelines for a conviction of 'common assault' focused largely on the use of community orders and fines. While flexibility in sentencing may be beneficial in some cases, it is possible that this contributed to disparities and a more lenient use of the legislation than was originally suggested by its proponents.

In May 2021 revised guidelines were published which give specific guidance for sentencing offences of assault on emergency workers.¹⁰ These new guidelines appear to simplify the process of sentencing under the new act by citing the assault of an emergency worker as an aggravating factor in assault offences and allowing for increased sentences in such cases (up to the maximum of a 12 month custodial sentence as outlined in the original legislation); having determined the category of the basic offence of assault the court is then encouraged to apply an appropriate uplift to the sentence in accordance with the level of culpability and harm demonstrated i.e. increase in length of custodial sentence or penalty or consideration of a more severe type of sentence.³ The Sentencing Council stated their hope that this would "bring a consistent approach to sentencing assault offences and assist sentencers in making a balanced assessment of the seriousness of those offences and imposing appropriate and proportionate sentences".¹⁰ It remains to be seen whether or not this clarity is reflected in a more consistent approach to sentencing under the new act.

Secondly if offenders are tried in a Magistrates' Court sentencing powers will not allow for the deliverance of the maximum 12 months custodial sentence. This means that a case would need to be referred to and heard in Crown Court. As a summary offence

assault, and by extension 'assault against an emergency worker', would be heard in Magistrates Court and only committed to Crown Court for sentencing after a trial if the case required satisfied the criteria of greater harm culpability and seriousness of the offence. The new sentencing guidelines published in 2021 do make reference to this, recognising that "Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence [of an assault on an emergency worker] would result in a sentence in excess of the Magistrate's powers. If so, they must commit for sentence to the Crown Court".³

Thirdly with regard to the aim of harsher sentences acting as a deterrent, in many cases assaults against emergency workers take place in the context of the assailant being intoxicated, under severe stress or suffering from some form of mental impairment. As a result, the defendant is generally unable to think rationally at the time of their offence, and therefore unable to weigh up the potential consequences of a more severe outcome for their actions. These factors may also play a role in sentencing; the presence of a mental illness or disability is generally viewed as a mitigating factor¹¹ and guidelines produced in 2020 outline the considerations that need to be made when assessing the culpability of and determining the sentence for an offender with a mental disorder.¹² In contrast English and Welsh sentencing guidelines mandate alcohol and drug intoxication as an aggravating factor, however research suggests that the context of the offence and offender demographics appear to influence the way in which intoxication affects the final sentence.¹³ These confounding factors are likely to an ongoing impact on sentencing under the new act.

V. CONCLUSION

On the whole there is no reason to believe that the implementation of this new legislation has acted as any form of deterrent for violence towards emergency workers, as was previously hoped. In fact, some reports have suggested that the problem has worsened throughout the last 12 months coinciding with the COVID-19 pandemic, as assaults on emergency workers rose 24% in the four weeks to 7th June 2020, compared with the same period in 2019.¹⁴

In 2005 Scotland implemented similar legislation¹⁵ with the aim of "protecting emergency workers from the threat of assault".¹⁶ Despite these efforts, statistics published in October 2020 showed a 6% rise in incidents in Scotland compared to the previous year, with a total rise of 16% over the past decade, painting a bleak future for prospects in England and Wales under the equivalent 2018 Act.

Following a manifesto promise to consult on tougher sentences, and with ministers "determined to recognise the debt of gratitude the public feels towards emergency workers [following the pandemic]",¹⁷ the government launched a new consultation in July 2019 on whether the maximum penalty for a conviction against an emergency worker should be doubled to a two year custodial sentence. As yet there has been no decision regarding these legislative changes.

At the launch of this new consultation the current Home Secretary, Priti Patel said:

*"This consultation sends a clear and simple message to the vile thugs who assault our emergency workers – you will not get away with such appalling behaviour and you will be subject to the force of the law."*¹⁷

While this principle may be admirable and the sentiment emotive, it has yet to be seen if equivalent changes made to the same law two years ago can be implemented effectively. The data gathered thus far would suggest this has yet to be achieved, and inquiries into why this is the case should come as a matter of priority. The problem of violence against NHS and emergency workers requires a more complex and considered solution; reviewing the implementation of current legislation may provide more benefit during this time of unprecedented pressure for our public services, as opposed to the headline-grabbing response of once again indiscriminately raising sentencing thresholds.

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