



An article by Eleanor Gleeson

Spitting at a Police Officer: Expect a custodial sentence

Since the start of the pandemic criminal lawyers and the general public have had to get to grips with a myriad of new laws, guidance and restrictions imposed by Parliament. Many of the things we used to do pre-pandemic are now discouraged or can result in criminal sanctions.

Perhaps one of the more disturbing consequences of the pandemic is the increase of assaults on police officers by spitting. Commenting about this increase Andy Berry of the Devon and Cornwall Police Federation said spitting had been "weaponised by Covid". In November 2020 he noted that there had been a 62% increase in assaults on officers by spitting during the six months since the first lockdown.

Charging decision

The most common charge for spitting at an officer is Assaulting an Emergency Worker contrary to section 1 of the Assaults on Emergency Workers (Offences) Act 2018 (hereafter 'the Act') and section 39(2) of the Criminal Justice Act 1988. Subsection 1(1) of the Act provides that for a person to be guilty of this offence they must commit an assault or battery. This assault or battery must be committed against an emergency worker acting in the exercise of functions as such a worker.

Prior to the inception of the Act, police officers were protected by section 89 of the Police Act 1996 which created a specific offence of assaulting police officers. This offence remains in place today, however, it is preferable to charge under the 2018 Act as charge under this Act allows the court to impose a more severe sentence. Where it is in dispute

as to whether the officer was in fact acting as a police officer at the time the offence was committed against him/her a prudent measure for prosecutors would be to also charge common assault.

If the spitting formed part of a more serious assault on the emergency worker, prosecutors are not confined to charging a Defendant with the section 1 offence. Defendants committing serious assaults can still be prosecuted for more serious offences including those found at s47, s20 and s18 of the Offences Against the Person Act 1861. In more serious offences of assault against officers, section 2 of the Act creates a statutory aggravating feature for sentencing purposes. When an offence is committed against an emergency worker the Act requires the court to regard the offending as more serious, meriting an increased sentence within the maximum for the offence.

Sentence

Currently, there are no sentencing guidelines for assaulting an emergency worker. The Act prescribes that the maximum sentence for such an offence is 12 months custody. There are [draft guidelines](#) in consultation however there is no date set for when these will come into force. These guidelines should not be relied upon whilst still in their draft form. In the absence of definitive guidelines some courts in the past had been tempted to look to the guidelines for [common assault](#) or [assaulting a police constable](#). However, the Court of Appeal in [R v McGarrick \[2019\] EWCA Crim 530](#) made clear that these guidelines should not be relied upon as *“It is perfectly clear that Parliament intended the sentencing regime for [assaulting an emergency worker] to be more severe.”* The only guidelines that currently can be relied upon when sentencing Defendants for assaulting emergency workers is the [General Guideline: Overarching Principles](#).

If the definitive guidelines do come into force before the end of the pandemic it is anticipated that prosecutors will argue that spitting at police officers and other emergency workers should be placed in the highest categories of harm and culpability.

When considering culpability, the draft guidelines in their current form provide a number of characteristics that indicate higher culpability. The most pertinent to the issue of

spitting is whether there was an intention to cause fear of serious harm, including disease transmission. It is probable that the courts will take the view that spitting at another person during a pandemic was done with the intention to cause fear of contracting Covid-19 unless the Defendant suffers from a mental disorder or disability.

When considering harm, for an offence to be placed in Category 1 the harm or distress caused must be more than minor. This harm or distress can be physical or psychological. It is expected prosecutors will submit that spitting at someone during pandemic would cause a victim substantial distress. The potential harm would also be obvious to the court. In the absence of any medical evidence or suggestion that the virus was in fact contracted by the victim it is likely that defence practitioners will seek to argue that spitting would fall into Category 2- minor harm or distress. Further strength would be added to this argument if the Defendant did not in fact have Covid-19 or make any suggestion that he carried the virus at the time of the act. As these guidelines are yet to be used in the courts of England and Wales it is unclear at this stage which arguments will prove to be the most persuasive.

Recent cases

Recent cases reported in the local and national press have attracted a range of sentences. It appears that despite the Magistrates Courts having the power to commit these kinds of assault to the Crown Court many have retained jurisdiction.

- [In April 2020](#) a man who claimed he had Covid-19 was sentenced at Barkingside Magistrates Court to 6 months custody for spitting at two officers when he was being put into a police van in addition to offences of affray and criminal damage.
- [In April 2020](#) a man who claimed he had Covid-19 was sentenced at Burnley Magistrates Court to 12 months custody for spitting at two officers and one offence of criminal damage.
- [In June 2020](#) a man was sentenced at Manchester and Salford Magistrates Court to 22 weeks custody after spitting at an officer in Bolton.

- [In September 2020](#) a woman was sentenced at Burnley Magistrates Court to 16 weeks custody and ordered to pay £150 compensation for spitting in an officer's face at Burnley Manchester Road train station.
- [In November 2020](#) a woman was sentenced at Warwick Crown Court to 6 months custody suspended for 2 years after spitting in the face of an officer at a police station.
- [In November 2020](#) a man was sentenced at Exeter Magistrates Court to 6 months custody for spitting at a police officer and spitting at a member of the public as part of the same incident.

It is clear from these examples that few cases merit anything but an immediate custodial sentence. It is also apparent that despite the increased risks caused by spitting during the pandemic these cases rarely attract sentences in excess of 6 months custody. If the Sentencing Council decide to implement the current draft guidelines during the pandemic, Defendants who spit at police officers could expect to be committed to the Crown Court for sentence more frequently and receive harsher punishment.

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