

Sentencing Council Assault Offences: Consultation

Introduction

1. The members of the All Party Parliamentary Group on Retail Crime (APPG on Retail Crime) at the UK Parliament welcome the opportunity to make this submission to the Sentencing Council's consultation on assault offences.
2. In our response we are focussing on issues which impact retailers, particularly independent retailers operating local news and convenience stores.
3. The Group was founded highlight the cost of retail crime to the high street (£600m a year), improve understanding of how this type of crime affects small businesses and what impact incidents of retail crime will have an effect on our high streets if left unchecked¹.
4. Members of the Group, together with sector trade associations, have called for retail workers to be given the same level of protection as is offered to emergency service workers. Such protection would recognise workers who were classified as "essential" during the coronavirus lockdown and play an important role in their local communities. The USDAW "Freedom from fear" survey showed that around two thirds of respondents have experienced verbal abuse, 41% were threatened and 5% were assaulted, or 400 assaults every day². Abuse rates are particularly high for Asian or British-Asian staff, with 23% physically threatened and 33% verbally abused after asking for I.D – compared with only 7% of White British workers. However, the response retailers receive from police is inconsistent across force areas, 70% of retailers report that police response to retail crime is poor or very poor³.
5. In our responses we have focused on the questions relating to the category of common assault. We are very aware that some retailers have been victims of assaults occasioning actual bodily or grievous bodily harm, or worse. The principles we have laid out for commons assault apply in equal or greater measure for these more serious offenses. Rather than lengthen our response with repeated answers we would ask that our submission be considered with that in mind.
6. The APPG on Retail Crime would be happy to further discuss the issues raised with the Council. Please contact our Secretariat, details at the end of this submission, if we can be of further assistance.

¹ <https://publications.parliament.uk/pa/cm/cmallparty/200807/register-200807.pdf>

² <https://www.usdaw.org.uk/About-Us/News/2019/Nov/Retail-staff-are-abused-threatened-or-assaulted-on>

³ BRC Retail Crime Survey 2020

Question 1: Do you have any comments on the proposed culpability factors?

7. The APPG on Retail Crime is aware of the rising level of attacks on retailers, and welcomed the governments focus on violence against retailers through its call for evidence. A significant trigger for attacks on those working in newsagents and convenience stores is the refusal to sell age restricted products to customers who are known or believed to be under age or who are unwilling or unable to prove their age in a manner required by law. Thirty percent of instances of violence arise when shop workers request proof of I.D on age-restricted products, such as alcohol, tobacco and lottery products⁴. Considering that in most cases the customer will be aware that they are not able to purchase the age restricted product and that tobacco retailers are required to display a notice to that effect, any assault (or threat of assault) that follows should carry a high level of culpability .
8. Any assault, or threat of assault, should be assessed in the context that the retailer was acting in a way the law requires (and can themselves face sanction for not conducting age checks⁵), that the customer would have known or been told that and that the assault may be have been part of an intention to obtain the goods through intimidation of the staff member or simple theft.
9. Members of the APPG on Retail Crime therefore believe that assaults that take place against a refusal to sell an age restricted product should be classified as having a high level of culpability.

Question 2: Do you agree with the revised approach to assessing harm, and with the factors included?

10. Being involved in incidents of robbery where threat or aggression can have an enormous impact on the victim, their colleagues and on the communities which they serve. Small and micro retailers are too often targeted because they do not have the sort of security that larger retailers have, and are open from early in the morning until late into the evening, often with few or only one member of staff on duty. This makes them particularly vulnerable.
11. There is concern, however, that inconsistent and in too many cases nonexistent, use of Victim Impact Statements is hampering the Court's understanding of the ways that victims suffer and therefore sentencing is not fully reflective of the harm done.
12. For a member of staff that has been attacked, the psychological effects will often outlast the physical impact, leaving them nervous to work in the store

⁴ <https://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=ac12525f-fdc6-4b3b-b6cf-69f6529c4178>

⁵ <https://www.underagesales.co.uk/alcohol.html>

and unwilling to work the hours when they might be alone in the store. This may lead to them leaving the job, and can place additional burdens on the other members of staff

13. The members of the APPG on Retail Crime would like to see the use of Victim Impact Statements made mandatory.

Question 3: Do you have any comments on the proposed sentence levels?

14. The members of the APPG on Retail Crime understand the constraints that the Sentencing Council and the Courts operate under, and believe that sentencing must reflect fully the harm on both the shop worker who was the victim of the assault but also the knock on effect on the business and the community which it services.
15. We have already indicated the Group's belief that Victim Impact Statements should form part of the Court's deliberations, and we would encourage the Government to undertake a piece of research to prove that more appropriate sentences are given in cases when victim impact assessments are used. Similarly, the Court should also consider Business Impact Statements when considering sentencing. A member of staff having time off to recover places strains on the business and other members of staff who are taking on the extra hours. In more extreme cases, store closures, even if temporary or reduction in opening hours will impact the whole community, particularly the more vulnerable members who rely more on their local stores.

Question 4: Do you have any comments on the proposed aggravating and mitigating factors?

16. The members of the APPG on Retail Crime believe that any assault on a shop worker in the course of their duties should be considered aggravated as no-one should be attacked for doing their job. Furthermore, if the refusal to sell an age restricted product to a person who has been unable to prove their age, or in some other way infringes the requirements placed upon retailers by law, then this should be a further aggravating factor. Having placed duties upon retailers to ensure that they do not sell to underage customers, it is the very least the justice system can do to recognise the fact if a retailer is attacked as a result of doing what the law requires.
17. The Group agrees that previous offences should be taken into consideration, particularly those that have taken place in a retail setting, with particular emphasis on offences, even lesser ones, that have been committed at the same store.
18. To improve confidence in the retail community, it would be helpful to have "shop workers" as a specific group of key workers that serve the public and should therefore be protected within the sentencing guidelines.

Question 5: Do you have any other comments on the Common assault guideline?

19. The revised guidelines set out a number of high and low culpability factors. It is stated that high culpability include “Intention to cause fear of serious harm”, “targeting of a vulnerable victim”, “prolonged assault”, “use of substantial force”, “strangulation”, “threatened or actual use of a weapon” and “leading role in group activity”. All of these are regular occurrences during assaults against shop workers, for example in publicised incidents like the death of the shop-workers in Southport⁶ Mill Hill⁷ and Pinner⁸. It is also worth noting that one comment from a respondent to the Under Age Sales survey that: “Receiving abuse after asking for ID is a weekly occurrence for me. I’m very often told they will be waiting for me outside when I finish my shift, which is very intimidating. I feel sorrier for my staff having to put up with the abuse. We are only doing our job and the implications of failing to get it right can cost us our job.”⁹

APPG Retail Crime

Chair: Steve McCabe MP

Secretariat: NFRN (Federation of Independent Retailers)

Contacts: Adrian Roper, Head of Political Engagement

(Adrian.roper@nfrn.org.uk)

Fiona Cuthbertson, Political Consultant (fiona.cuthbertson@keystone-consulting.co.uk)

www.NFRNOnline.com

⁶ <https://news.sky.com/story/man-held-on-suspicion-of-murder-after-woman-attacked-in-tui-shop-in-southport-11206477>

⁷ <http://www.bbc.co.uk/news/uk-england-london-42616297>

⁸ <https://www.expressandstar.com/news/uk-news/2019/03/24/shop-worker-stabbed-to-death-in-newsagent-robbery/>

⁹ *ibid*: 4.