

# SQE2 sample question and discussion of answer

Advocacy (Criminal Litigation)

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November 2020

Candidates will undertake 16 assessments in SQE2. To pass SQE2 candidates will need to obtain the overall pass mark for SQE2.

This sample question and discussion of answer is an example of an advocacy assessment. Candidates will have 45 minutes to prepare and 15 minutes to conduct the advocacy.

For further detail see the SQE2 Assessment Specification.

**Please note that the sample questions are provided to give an indication of the type of tasks that candidates could be set. They do not represent all the material that will be covered in SQE2. Future questions may not take exactly the same format.**

# Question and additional candidate papers

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## **Email to Candidate**

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**From:** Partner  
**Sent:** 13 December 202#  
**To:** Candidate  
**Subject:** Steven Jackson

I would like you to represent Steven Jackson at his initial appearance before the District Judge at West London Magistrates' Court today.

You will find **attached**:

1. Statement of Emma Jackson (1 page)
2. Statement of Dr Dora Simpson (1 page)
3. Statement of PC Collins (1 page)
4. Record of police interview of Steven Jackson (2 pages)
5. Client's instructions (2 pages)
6. Sentencing Council for England and Wales Assault Definitive Guideline: Extract from Specific Sentencing Guideline for s.47 Offences Against the Person Act 1861 (4 pages)

Mr Jackson is charged with a single offence of assault occasioning actual bodily harm on his wife contrary to s.47 Offences Against the Person Act 1861. He asserts his innocence and intends to plead not guilty. The Court will therefore proceed to allocation and case management. Mr Jackson has no previous convictions or cautions.

The prosecution will invite the District Judge to decline summary jurisdiction on the basis that the case is too serious to be tried summarily. The prosecution will point to the serious nature of the injuries sustained by the complainant and the context in which they occurred. Steven Jackson wants his case to remain in the Magistrates' Court. You need to be prepared therefore to make appropriate representations to this effect on allocation.

**[For the purposes of this assessment and irrespective of your submissions on allocation, the District Judge will retain summary jurisdiction and the case will remain in the Magistrates' Court. The District Judge will then proceed to ask you to address him/her on pre-trial issues.]**

The District Judge will want to know the basis upon which Steven Jackson is pleading not guilty so that the case can be properly managed and a date set for trial. He/she will also want you to address him/her on the basis on which we seek to challenge the admissibility of Steven Jackson's confession in his audio-recorded police station interview under caution.

**Therefore, at today's hearing you should set out orally the following:**

- **The defence representations as to why the Magistrates' Court should retain jurisdiction in this case;**
- **The basis on which Mr Jackson is pleading not guilty including an outline of the disputed issues of fact, and those which are agreed; and**
- **The legal arguments you will use in seeking to exclude Mr Jackson's confession in his audio-recorded police station interview under caution.**

Thanks

Partner

**Note to Candidates:**

**For the purposes of the assessment, neither the prosecuting solicitor, nor the defendant will be present in the room with you. However, in constructing your arguments you should assume that they are present.**

**You will address a single District Judge who will have heard the prosecution's submissions as to allocation. The District Judge will have a copy of Attachments 1-4 and 6 listed above.**

**STATEMENT OF WITNESS**

**(CJ Act 1967, s9; Crim PR Rule 16.2)**

**Name:** Emma Jackson

**Age:** Over 18

**This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.**

I have been married to Steven Jackson for three years. We live at 9 Lancaster Road, London, W12 7PR with my daughter from my previous marriage (Katy, aged 16) and our son (Thomas, aged 13 months). Steven is not an easy man to live with. He drinks a lot and is aggressive. His business has money troubles which have led to him becoming very uptight. He regularly loses his temper which I find frightening.

A few months ago I began to suspect that Steven might be having an affair. There was a lot of tension in the house. Steven kept coming home late. When I challenged him he maintained he had been working. I was aware that he had been having business difficulties. I told him I was prepared to help but he was not interested. He started drinking a bottle of wine most nights. Several weeks ago we had a heated argument. He stormed out of the house and did not return that night. The next day he apologised but warned me not to keep on at him as he had a lot on his mind.

Things improved for a time. On 27 November 202#, however, I discovered a text on Steven's phone that left me in no doubt that he was seeing another woman. When he returned home at approximately 11.15 pm, he came up to our bedroom. I could see that he was drunk. When I asked him about the text message he started shouting and accused me of spying on him. I told him I wanted him out of the house. He reacted violently. He grabbed me by the throat and pinned me to the bedroom wall. I was terrified.

Steven released his grip. He started to pack a suitcase and stormed out of the bedroom onto the landing at the top of the stairs. I followed him and asked him what he was doing. He punched me in the face and then pushed me backwards causing me to fall down the stairs. He stormed down the stairs and out of the front door. I felt sick and dazed and realised immediately that I was hurt and was bleeding. My arm was in excruciating pain. I rang my sister who took me to hospital. It was confirmed that I had fractured my arm, had cut my lip and had bruising to my face and ribs. I am terrified about returning home.

Signed: *E Jackson*

Dated: *28 November 202#*

**STATEMENT OF WITNESS**

**(CJ Act 1967, s9; Crim PR Rule 16.2)**

**Name:** Dr Dora Simpson

**Age:** Over 18

**This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.**

I am a doctor based at St Mary's Hospital Accident and Emergency.

On 28 November 202# at 2.30am, I had cause to examine a female patient by the name of Emma Jackson.

She had a cut to her lip and bruising to the left side of her face and ribs as well as a fractured left forearm.

I cannot comment on how these injuries were caused.

After an X-ray, the patient had her arm put in a plaster cast and sling and was provided with painkillers and discharged with a follow up appointment at the fracture clinic.

Signed: *Dora Simpson*

Dated: *28 November 202#*

**STATEMENT OF WITNESS**

**(CJ Act 1967, s9; Crim PR Rule 16.2)**

**Name:** Sally Collins

**Age:** Over 18

**This statement, signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.**

I am PC 1322 Sally Collins based at Hammersmith Police Station.

On 28 November 202# at 1800 hours, I attended 9 Lancaster Road, London, W12 7PR where I took a statement from Emma Jackson. I also took a set of photographs of injuries Emma Jackson said she had sustained on 27 November 202#. The photographs are exhibited as SC1<sup>1</sup>.

Acting on information received, I attended the business premises of Steven Jackson at Longsdale Road, London, W12 8RT at 2030 hours on 28 November 202#. Mr Jackson was asleep at his desk. I woke, arrested and cautioned Steven Jackson on suspicion of assault occasioning actual bodily harm to Emma Jackson, contrary to s.47 Offences Against the Person Act 1861. It was clear to me that Steven Jackson was very drunk. His speech was slurred and he was unsteady on his feet. He was taken to Hammersmith Police Station where his detention was authorised in accordance with PACE 1984 and he was interviewed the following morning.

At 0730 hours on 29 November 202#, I conducted an audio-recorded interview with Steven Jackson together with PC 6531 Jason Jones (Exhibit SC2). The interview commenced at 0730 hours and concluded at 0752 hours. At the conclusion of the interview, Steven Jackson was charged with assault occasioning actual bodily harm on Emma Jackson and released on bail subject to conditions to attend West London Magistrates' Court on 13 December 202#.

Signed: *S Collins*

Dated: *29 November 202#*

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**<sup>1</sup> Note to Candidates: Exhibit SC1 has not been produced for the purposes of the assessment.**

## Record of Police Interview Under Caution (Exhibit SC2)

**Person interviewed:** STEVEN JACKSON  
**Place of interview:** Hammersmith Police Station  
**Date of interview:** 29 November 202#  
**Time commenced:** 0730 hours  
**Time concluded:** 0752 hours  
**Duration of interview:** 22 minutes  
**Interviewer:** PC Sally Collins 1322  
**Other persons present:** PC Jason Jones 6531

**STEVEN JACKSON cautioned and reminded of his entitlement to legal advice. JACKSON replied that he understood the caution and did not need a solicitor.**

**PC Collins:** Do you understand why you have been arrested?

**SJ:** Yes, a false allegation of assaulting my wife.

**PC Collins:** Your wife alleges you pushed her down the stairs at your home causing her to break her arm and hurt her ribs. She states the incident happened on the 27 November 202#, just after 11.15 pm. What do you have to say in response to the allegation?

**SJ:** Has she made a formal complaint or has someone put her up to this?

**PC Collins:** Answer my question. This is your opportunity to give your account.

**SJ:** How long will this farce last? I am feeling really sick, and I've got to get to work this morning.

**PC Collins:** Please answer my questions. It is very much in your interests. We take incidences of domestic violence very seriously. I have explained the caution to you. This is your chance to have your say. We can sit in silence if you want to.

(6 minutes of silence elapses on the tape)

**PC Collins:** Tell me something about your relationship with Emma.

**SJ:** (Suspect's reply inaudible)

**PC Collins:** Your wife states that you came home drunk on the 27 November. She challenged you about an affair you have been having. She alleges that whilst you and she were in your bedroom, you lost your temper, grabbed her by the throat and pinned her up against the wall.

**SJ:** I don't know what to say. I am speechless. My wife is making this up. She attacked me. You believe everything my wife says don't you?



**PC Collins:** It's not a case of what I believe Mr Jackson. This is your chance to comment. Your wife then says she was standing at the top of the stairs when you punched her and pushed her backwards down the stairs. Is that what happened?

**SJ:** You do. You believe it all. I didn't push her. She was drunk.

**PC Collins:** That's not what she says.

**SJ:** Look officer, how long is this going to take? I really need this matter to be sorted out quickly. You have had me here all night. I have already told you that I am feeling unwell, and I must get back to work this morning. I have a very urgent meeting to attend.

**PC Collins:** It depends on your willingness to cooperate, Mr Jackson. If you keep on denying the allegation, we will be forced to keep you here while we make further enquiries and then refer the case to the Crown Prosecution Service, which will take time.

**SJ:** It seems to me that you're going to charge me whatever I say?

**PC Collins:** If you deny the allegations against you, the matter will be referred to the Crown Prosecution Service who will need to consider the evidence before deciding whether to charge you.

**SJ:** Look, I accept that things have not been easy between Emma and me. She has a drink problem. I admit that I lost my temper the other night. I slapped her face at the top of the stairs and pushed her away. Emma then lost her balance and fell down the stairs. That's it now. Charge and release me, so I can get out of this police station and attend to my business.

**Interview Terminated.**

## Client's Instructions

**Name:** Steven Jackson

**DOB:** 14 May 1979

**Address:** 9 Lancaster Road, London, W12 7PR.

I am a self-employed business man. I run my own carpet cleaning business.

### The offence

I have been charged with assaulting my wife, Emma Jackson, occasioning her actual bodily harm. She is 36. We have one child, Thomas, aged 13 months. Emma has a daughter from her previous marriage, Katy, aged 16. She lives with us. I deny assault.

The relationship between my wife and I has become increasingly difficult over the past month or so. Every time I have returned home late she has started an argument. She drinks secretly. She tries to hide it from me but I know that she is a secret drinker. I have found empty bottles of vodka and gin in her handbag and in the rubbish bin. When I challenge her about it, she gets very defensive.

I admit that on occasions I have been verbally abusive to Emma. I have not, however, assaulted Emma. Emma easily loses her temper and when she does she is not in control of her actions, especially when she has been drinking.

To make matters worse my business is in financial difficulties. It has been under threat of insolvency. I am owed a substantial amount of money by two large companies who are themselves in financial difficulties. I have been working late trying to make up the money owed, and also trying to find new business.

My wife alleges that I assaulted her on 27 November 202#. She says I pinned her against a wall by the throat, punched her to the face and pushed her down the stairs at our home resulting in her fracturing her arm, sustaining a cut lip and bruising. This is not true.

I returned home late on 27 November. I think it was around 11pm. I had had a meeting with a potential customer, an area manager for a chain of restaurants, some distance away that evening and had been delayed on the way home by an accident on the motorway. I was tired. I was completely sober. I was confronted by Emma who was in the bedroom. I could see that she was drunk. She appeared to be upset. She had my mobile phone in her hand. I had been searching for it all day. I realised she had taken it. She confronted me about certain text messages, accusing me of having an affair.

This is not the first time that Emma has said this, and I have not been having an affair. In that moment I realised that things were not going to change between us. I admit that I was angry. I reached for a suitcase and began to pull clothes out of various drawers. Emma asked me what I was doing. I told her our marriage was over and that I was leaving. She screamed at me and tried to hit me. I pushed her away. She accused me of having an affair. She said I was unfit to be Thomas's dad and, that if I attempted to divorce her, I would not see Thomas again and that she would take the business from me.

We were yelling at each other. I accused her of being drunk. I grabbed my suitcase and went onto the landing at the top of the stairs. I just wanted to leave. Emma followed me and attempted to block my way at the top of the stairs. I put my suitcase down and tried to talk to her, but she became hysterical. She lunged at me with her fists clenched, but as she did so, she tripped over my suitcase and lost her balance and, regrettably, fell down the stairs. I did not hit her or push her down the stairs. I admit I was angry. I did not realise that she was hurt; she was still screaming at me, telling me to get out of the house. I stepped over her at the bottom of the stairs and just left the house. I was arrested the following evening at my office. I had been drinking for much of the day. Emma's sister had sent me a text saying I was to keep away from Emma and that Emma was in hospital.

I had never been arrested before. I have no previous convictions or cautions, and have never been to court before.

### **Detention at the police station**

I was detained overnight by the police. I woke up in a cell with a dreadful headache. I told the officer that I felt sick. I was given a cardboard sick bowl and a glass of water. This was at 6.00 am in the morning. I was offered breakfast but felt too sick to eat it. I had not eaten anything for 24 hours and felt very weak.

I asked the officer what was going to happen to me. I was informed I would be interviewed later that day. I told the officer I needed to be released as I had a very important business meeting and contractual commitments to meet. The meeting was with the potential client from the evening of 27 November. I really needed the new work. I was told my job would have to wait.

I had been offered legal advice when I arrived at the police station. I did not know any solicitors, and so I asked if I could see the duty solicitor. I was told that the duty solicitor had three other individuals to see before me and that I would therefore have to wait a while to see him. I was told I could be interviewed within the next hour, if I was ready to cooperate. I decided not to wait for the duty solicitor.

### **The police interview**

The officer's attitude throughout the interview was hostile and aggressive. She said that if I kept denying the allegation, she would have to make further enquiries and that I would be kept at the police station. I was feeling very sick. I also needed to get out of the police station to get to my meeting. My business needed the new work if it was going to survive.

I decided that I was not going to be believed and that the only way I was going to be released was to admit that I slapped and pushed my wife causing her to fall. It was a foolish thing to do, but I felt under pressure. I was not thinking straight during the interview, and I said things that were untrue.

I now wish to retract what I said in interview.

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Part 12 - Assault, UKBC-BLKSCRIP 486295835 (2020)

## Part 12 - Assault

Blackstone's Criminal Practice 2020

Authors: David Ormerod QC (Hon); David Perry QC

Supplement

Sentencing Guidelines

Part 12 - Assault

### Definitive Guideline

#### Assault Occasioning Actual Bodily Harm

Offences against the Person Act 1861 (section 47)

Racially/Religiously Aggravated ABH

**Crime and Disorder Act 1998 (section 29)**

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 47): 5 years' custody

Maximum (section 29): 7 years' custody

Offence range: Fine—3 years' custody

#### STEP ONE Determining the offence category

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm (serious injury must normally be present) and higher culpability
<b>Category 2</b>	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability

**Category 3**

Lesser harm and lower culpability

The court should determine the offender’s culpability and the harm caused, or intended, by reference only to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

**Factors indicating greater harm**

Injury (which includes disease transmission and/or psychological harm) which is serious in the context the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is less serious in the context of the offence

**Factors indicating higher culpability****Statutory aggravating factors:**

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)

**Other aggravating factors:**

A significant degree of premeditation Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)

**Factors indicating lower culpability**

Subordinate role in a group or gang  
A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

**STEP TWO Starting Point and Category Range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of

culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	1 year 6 months' custody	1–3 years' custody
Category 2	26 weeks' custody	Low level community order–51 weeks' custody
Category 3	Medium level community order	Band A fine–High level community order

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing category 2 offences, the court should also consider the custody threshold as follows:

- Has the custody threshold been passed?
- If so, is it unavoidable that a custodial sentence be imposed?
- If so, can that sentence be suspended?

When sentencing category 3 offences, the court should also consider the community order threshold as follows:

- Has the community order threshold been passed?

**Factors increasing seriousness****Statutory aggravating factors:**

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Offence was committed against an emergency worker acting in the exercise of functions as such a worker

**Other aggravating factors include:**

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Offence committed against those working in the public sector or providing a service to the public

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

No previous convictions or no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

# Discussion of answer

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## **Advocacy: Points to note**

The assessment criteria for advocacy are as follows:

### **Skills**

1. Use appropriate language and behaviour.
2. Adopt a clear and logical structure.
3. Present a persuasive argument.
4. Interact with/engages the court appropriately.
5. Include all key relevant facts.

### **Application of law**

6. Apply the law correctly to the client's situation.
7. Apply the law comprehensively to the client's situation, identifying any ethical and professional conduct issues and exercising judgement to resolve them honestly and with integrity.

Marking is by solicitors who have been trained as assessors and who will play the role of the judge. Marking has been standardised. It is based on global professional judgements rather than a tick box or checklist approach.

The starting point for these global professional judgements is the standard of competency of the assessment, namely that of the just competent Day One Solicitor ([The Threshold Standard](#)). Markers are flexible as to the approach taken by the candidate.

Marking is based on performance on each of the assessment criteria judged on a scale from A – F as follows:

A: Superior performance: well above the competency requirements of the assessment

B: Clearly satisfactory: clearly meets the competency requirements of the assessment

C: Marginal pass: on balance, just meets the competency requirements of the assessment

D: Marginal fail: on balance, just fails to meet the competency requirements of the assessment

E: Clearly unsatisfactory: clearly does not meet the competency requirements of the assessment

F: Poor performance: well below the competency requirements of the assessment

For further details of the marking see the [Assessment Specification](#) and the Marking and Moderation Policy (to be published). The Assessment Specification provides further information about what is meant by clear, precise, concise and acceptable language, and correct and comprehensive application of law.

**Key legal points** include the following:

Case law and exact statutory citations (eg provisions of Police and Criminal Evidence Act 1984 (PACE) and the PACE Codes of Practice) are not required.

### **Venue for trial**

- Key points of the Allocation Guideline with some application to the case as regards sentence, complexity of the case, and powers of the court.
- The likely sentence with reference to the definitive sentencing guideline for ABH (these are provided with the question) applied to this case: 'offence category': culpability and harm; consideration of the starting point and sentencing range: aggravating and mitigating factors.

### **Basis of not guilty plea, summary of disputed and agreed facts**

- Identifying the key factual issue in the case: a denial that the defendant's conduct caused the complainant's injuries as alleged; the defendant's case is that the complainant's injuries were caused by her own actions.
- Identifying disputed and agreed facts by analysing the evidence supporting the prosecution and defence cases.

### **Legal arguments to exclude confession evidence**

- Police and Criminal Evidence Act 1984 (PACE) s.76: with some application identifying the 'things said or done' which were likely to have rendered the confession unreliable.
- PACE s.78 with some application identifying breaches of PACE/COP relating to the confession which would mean the fairness of the proceedings would be adversely affected if it was admitted.

### **Note on sample answers:**

**Two sample answers are provided (Sample A and Sample B). Neither answer is perfect nor a model answer and there are further points which could be made in both. You should not assume that everything in the samples is correct. A is a stronger answer than B but both at least reach the Threshold Standard.**

**SAMPLE A** (see note on sample answers, page 18)

Madam, I appear on behalf of Mr Steven Jackson, and I would like to address the Court in relation to three matters: firstly, why it is appropriate for the Court to retain jurisdiction in this case; secondly, the basis on which Mr Jackson has pleaded not guilty; and thirdly, the legal arguments to exclude Mr Jackson's confession in interview under caution.

In relation to allocation, the prosecution submit that Mr Jackson's case is too serious to be dealt with in the Magistrates' Court. However, although s.47 is an either-way offence, this is a straightforward case: there are no complex issues of law or fact and the prosecution case is effectively one person's word against another's. Even if Mr Jackson were convicted, he is unlikely to receive a custodial sentence that would be clearly in excess of 6 months' imprisonment. In my submission, the Court is more likely to impose a non-custodial sentence on the basis of Mr Jackson's lack of previous convictions and the absence of premeditation.

Madam, may I direct you to the sentencing guideline for ABH? In my submission this is a Category 2 offence on the basis of 'greater harm' and 'lower culpability'. It is accepted by the defence that Mrs Jackson suffered a fractured forearm, which in the context of this offence is serious. However, there is 'lower culpability' because none of the factors indicating 'high culpability' are present and there are no 'other aggravating factors', such as premeditation, that apply.

On the basis that the Court agrees that the offence falls within Category 2, the starting point for sentence would be 26 weeks' custody and the sentencing range would be a low level community order to 51 weeks' custody. The injuries occurred in the family home in the middle of the night. However, bearing in mind the victim was not forced to leave her home; there was no premeditation; and Mr Jackson is of good character, I would submit that Mr Jackson could expect to receive a sentence at the lower end of the scale.

For these reasons, if Mr Jackson was found guilty, the Court would have adequate sentencing powers, and I would ask you to retain jurisdiction of his case.

**Court accepts summary jurisdiction**

Turning to the basis of Mr Jackson's not guilty plea, Mr Jackson has pleaded not guilty because he does not accept that he caused Mrs Jackson's injuries. Mr Jackson agrees that a heated argument took place with Mrs Jackson after he returned home late, and that this argument culminated in Mrs Jackson falling down the stairs and sustaining injury.

Mr Jackson disputes, however, that he grabbed Mrs Jackson by the throat or pinned her to the bedroom wall. You will note that the medical evidence in this case makes no mention of bruising to Mrs Jackson's throat, and I would argue that this undermines Mrs Jackson's allegations.

Mr Jackson also denies that he punched Mrs Jackson in the face or pushed her down the stairs.

It is Mr Jackson's case that Mrs Jackson was drunk at the time of the incident and when he attempted to leave the matrimonial home she became hysterical. Mr Jackson states that when he was at the top of the stairs Mrs Jackson attempted to block his way and lunged at him. Mrs Jackson then tripped over a suitcase, lost her balance and fell down the stairs and sustained injury as a result.

As regards Mr Jackson's confession in his police interview, it is my submission that Mr Jackson's confession should be excluded under s 76 PACE, on the grounds that it was obtained in breach of the PACE Codes of Practice (COP) and is unreliable.

There are two significant breaches that I wish to draw to the Court's attention. The first breach relates to an inducement. Madam, if I may direct you to the transcript of Mr Jackson's police interview, you will note that PC Collins told Mr Jackson that if he continued to deny the allegation, he would be kept longer in the police station and that his case would be referred to the CPS, which would take time. PC Collins knew that Mr Jackson wanted the interview to be concluded quickly because he had to attend an urgent meeting. It is the defence case that PC Collins induced Mr Jackson to confess by suggesting that he would be kept longer in the police station unless he admitted involvement in the offence.

The second breach relates to the pressure put on Mr Jackson to decline legal advice. Mr Jackson was interviewed in the absence of a solicitor, but this was only because he was told by the police that if he wanted to see the duty solicitor, this would result in delay, but if he was "ready to co-operate", he could be interviewed within the next hour. This placed undue pressure on Mr Jackson to be interviewed without the benefit of legal advice.

The defence will argue that Mr Jackson's confession should also be excluded under s 78 PACE.

In my submission, Mr Jackson's confession should be excluded under s 78 because it would have an adverse effect on the fairness of proceedings. The confession was obtained not only in breach of the COP that I have already mentioned, but also because the police continued to question Mr Jackson, despite Mr Jackson saying that he felt sick at the beginning of the interview. Mr Jackson's interview was therefore conducted in breach of PACE, which provides that an interview should be stopped if a suspect appears to be unwell. It is also apparent from the transcript of Mr Jackson's police interview that Mr Jackson was made to sit in silence for 6 minutes, which in my submission, created more pressure on Mr Jackson to make admissions that he would otherwise not have made had a solicitor been present.

In conclusion, Mr Jackson's confession should be excluded on the grounds of unreliability and because its admission would have an adverse effect on the fairness of proceedings.

Madam, unless I can assist you further, that concludes my submissions.

**SAMPLE B** (see note on sample answers, page 18)

Madam, I am here today to represent my client, Mr Jackson. Mr Jackson has pleaded not guilty to ABH, an offence contrary to s 47 of the Offences Against the Person Act 1861.

In relation to summary trial, the maximum sentence you could impose, if my client was convicted, would be 6 months' imprisonment. However, if you examine the sentencing guidelines, which I believe you have, I don't see how this would be more than a Category 2 offence, should Mr Jackson be found guilty. My client accepts that Mrs Jackson suffered a broken arm and this injury is serious. But there is no evidence of premeditation. Furthermore, there are no statutory aggravating factors present, and my client is a man of exemplary character - he has no previous convictions or cautions and is self-employed. There is nothing to suggest that the offence was anything more than an isolated incident. We would therefore be looking at Category 2 and potentially a low level community order. My client is currently doing all he can to save his business, and a custodial sentence is likely to damage his income and jeopardise the survival of his business.

I would therefore submit that the Court should retain summary jurisdiction.

**Court accepts summary jurisdiction**

Madam, most of the facts in this case are in dispute. What is agreed is that Mr Jackson suffered financial difficulties and had a heated argument with Mrs Jackson on the night in question.

If I may refer to the statement of Mrs Jackson, she alleges that Mr Jackson came home late in a state of intoxication. Mrs Jackson states that she believed that Mr Jackson was having an affair and when she challenged him about this, he reacted violently and grabbed her by the throat and pinned her against the bedroom wall. He then let go and started to pack his bags in order to leave the house. Mrs Jackson followed Mr Jackson onto the landing and asked him what he was doing. At this point, Mr Jackson punched Mrs Jackson in the face, causing her to fall backwards down the stairs. Mrs Jackson was then taken to hospital and states that she was terrified to return home.

My client disputes Mrs Jackson's account of events. He states that he had been working late, because he was trying to save his business. He had not been drinking and had driven home completely sober. The reason he arrived home late was because of traffic and not because he was having an affair. My client alleges that it is Mrs Jackson who has a drink problem.

When my client arrived home, Mrs Jackson was heavily intoxicated and confronted him about having an affair. My client denied he was having an affair. My client told Mrs Jackson at this point that their marriage was over and that he was leaving. Mrs Jackson then said that he was not fit to be a parent and threatened that she would take the business from him. She then followed my client onto the landing and, at the top of the stairs, lunged at him before tripping

over a suitcase and losing her balance and falling down the stairs. My client left the property and did not realise that Mrs Jackson was hurt.

For these reasons, my client has pleaded not guilty to the offence.

The prosecution submit that my client confessed to slapping and pushing Mrs Jackson at the top of the stairs in his police interview. It is my submission that this confession is not admissible in evidence. My client admits that he had been drinking all day after the alleged incident and woke up in his cell with a bad headache. Despite telling the police that he felt unwell, and feeling too unwell to eat breakfast, he received no medical treatment. Furthermore, my client was pressured to waive his right to legal advice, because he was led to believe that he would be interviewed more quickly if he did not have a solicitor. My client has never been arrested before and the police exploited his vulnerability and inexperience.

I would therefore submit that my client's confession is inadmissible. It is unreliable and it would be unfair to rely on it under PACE. My client said things that he should not have said but this was because he was under pressure and should have been legally represented.

I have no further submissions to make.