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## Practice Profile

Harriet commenced pupillage under the supervision of Louise Oakley in October 2023. In her second six she was under the supervision of Gregory Fishwick. She is now in her third six and under the supervision of David Osborne and available to take instructions.

Harriet's Privacy Policy can be downloaded [here](#).

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### The Law on Spiking

15 February 2024

As the law stands today, there is no specific legislation for the offence of spiking. Instead, the law surrounding the offence is a tapestry of various legislative acts which overlap to provide the basis for prosecutions of this type. Harriet Palfreman, a first six pupil at 5KBW has written a commentary about whether there is a need for legislative reform providing a specific provision for the offence of spiking.

The article can be read here: <https://www.5kbw.co.uk/resources/view-article/the-law-on-spiking>

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## Recent Cases

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### The Law on Spiking

*Author: Harriet Palfreman, first six pupil at 5KBW*

# The Law on Spiking

## Introduction

As the law stands today, there is no specific legislation for the offence of spiking. Instead, the law surrounding the offence is a tapestry of various legislative acts which overlap to provide the basis for prosecutions of this type.

The two most common methods of spiking are 'drink spiking' and 'needle spiking'. This article will primarily focus on the legislation which can cover both, with the two primary pieces of legislation being The Offences Against the Person Act 1861[1] and the Sexual Offences Act 2003[2]. The three relevant provisions within those Acts are drafted widely to cover both drink and needle spiking. However, there is other legislation which is construed in a narrower manner to include only those instances of this offence which involve the use of a needle.

### **What is the point of law in question?**

The principal question is whether the codifying of spiking as an offence in itself would provide for a greater ability to assess the prevalence and impact of spiking as an offence, and whether it would therefore become easier to prosecute. Or whether the introduction of a specific legislative provision which defines the offence of spiking in law will place a higher evidential burden on the prosecution.

### **What is the current applicable law?**

#### ***Drink spiking and needle spiking***

Currently, anyone who is convicted of an offence of spiking could face up to 10 years in prison.

The sentence imposed will depend, however, on which provision is used to prosecute the offence.

#### **Offences Against the Person Act 1861**

The primary legislation in this area is the Offences Against the Person Act (OAPA) which was passed in November 1861. This Act 'brought into force one of the earliest examples of what we could refer to today as anti-spiking legislation'[3]. The wording of this Act uses largely 'archaic language and may not readily be identifiable as offences that 'capture' spiking behaviour, these existing offences can (and are) used to prosecute spiking crimes today'[4].

#### **Section 23 and 24 OAPA**

Section 23 OAPA provides:

*"Whoever shall **unlawfully** and **maliciously** administer to or **cause to be administered to or taken** by any other person any **poison** or other **destructive** or **noxious** thing, so as thereby to **endanger the life** of such person, or so as thereby to inflict upon such person any **grievous bodily harm**, shall be guilty of felony, any being convicted thereof shall be liable..."*

Section 24 OAPA provides:

*"Whosoever shall **unlawfully** and **maliciously** administer to or **cause to be administered to or taken** by any other person any **poison** or other **destructive** or **noxious** thing, with **intent to injure, aggrieve, or annoy** such person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable...."*

These two sections provide an identical definition of the "conduct" element of the offence and 'only differ in relation to the "consequence" elements of the offences'[5]. The difference in the offences concerned is, accordingly, the differing threshold that is required for the consequential aspect of the offence.

#### **Sentencing**

When it comes to sentencing under s23 OAPA, the guidelines provide that the maximum sentence is 10 years in

custody, which is reflective of the higher consequential element 'to endanger life or inflict any grievous bodily harm'.

Due to the lower threshold of the consequential element of an offence under s24 OAPA, namely 'with intent to injure, aggrieve, or annoy', the maximum sentence is 5 years custody[6].

#### Sexual Offences Act 2003

Where the spiking occurs and there is also the intention of sexual assault as a result of the substance allowing the offender to overpower or stupefy another, then the prosecution of the spiking will be brought under s61 of the Sexual Offences Act 2003.

#### Section 61 SOA

##### Administering a substance with intent

(1) A person commits an offence if he intentionally administers a substance to, or cause a substance to be taken by, another person (B) -

a. knowing that B does not consent, and

b. with the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

(2) A person guilty of an offence under this section is liable

a. on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

b. on conviction on indictment, to imprisonment for a term not exceeding 10 years.

##### Sentencing

The modern language contained in this provision provides a stark contrast to the wording of the provisions in OAPA. It provides for the maximum sentence within the body of the section. There is full guidance contained on the sentencing council website which includes the relevant aggravating and mitigating factors[7].

#### **Needle spiking only**

Where the spiking has occurred through use of a needle, there is also other legislation open to the prosecutor when deciding how to indict the offence. These, although not the topic of this article, include ss.18, s20 and s47 of The Offences Against the Person Act 1861, in addition to s39 of the Criminal Justice Act 1988.

#### **Commentary**

As a result of the passing of the Police, Crime, Sentencing and Courts Act 2022 the Home Office has committed to publish a report which will highlight the nature and scale of spiking and the 'existing legislative landscape to determine whether there is a need for a new, specific criminal offence for spiking'[8].

Introducing a specific legislative offence of spiking could make headway in providing a statutory deterrent to individuals. A standalone offence would avoid the need to try to fit each specific unlawful act of spiking into the most appropriate of the various provisions under the existing legislation. There would be, in writing, a clear and identifiable provision which allows people to understand the seriousness of spiking as an offence.

There is a suggestion that the lack of spiking as a specific offence puts people off reporting incidents of spiking as victims may not feel protected by existing laws. The existing legislation, although covering the activity, 'address[es] spiking incidentally, not by design'[9] .

The current governmental plan is to amend the current legislation through the Criminal Justice Bill, in order to modernise the language 'which may help increase public awareness of the illegality of spiking and encourage the reporting of such incidents'[10].

[1] The Offences Against the Person Act 1861

[2] Sexual Offences Act 2003

[3] Understanding and tackling spiking (publishing.service.gov.uk) – page 6

[4] Ibid – page 24

[5] Ibid, page 24

[6] Archbold Criminal Pleading Evidence and Practice 2024 Ed. 19-282

[7] Administering a substance with intent – Sentencing (sentencingcouncil.org.uk)

[8] Understanding and tackling spiking (publishing.service.gov.uk) – page 7

[9] Ibid, page 29

[10] Ibid, page 29