

# Bladed Articles and Offensive Weapons Guideline

## Response to consultation

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# Foreword



These offences can be particularly serious, and the Council is aware that there is growing concern amongst the public about offences of this kind. The Council hopes that these guidelines will improve consistency in the approach to sentencing adults, children and young people.

**Lord Justice Treacy  
Chairman, Sentencing Council**

On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on the Bladed Articles and Offensive Weapons sentencing guideline. I also extend my thanks to the members of the judiciary who gave their time to participate in the research exercises undertaken to inform the development of this guideline, as well as the groups who hosted and attended feedback events. As with all Sentencing Council consultations, the views put forward by all respondents were carefully considered, and the range of views and expertise were of great value in informing the definitive guideline.

As a result of those views a number of changes have been made to the guideline including the addition of a definition for the term 'highly dangerous weapon', and further guidance on the type of information a court should consider when determining whether it would be unjust to impose a mandatory minimum custodial sentence.

# Introduction

In October 2016 the Sentencing Council published a consultation on a draft guideline for Bladed Articles and Offensive Weapons. There is some existing guidance for adult offenders being sentenced in the magistrates' court, but no guidance for adult offenders being sentenced in the Crown Court, or for children or young people.

In the magistrates' court the existing guidance, Possession of Bladed Article/Offensive Weapons, was produced by the Sentencing Guidelines Council (SGC), and is contained within the Magistrates' Court Sentencing Guidelines (MCSG). This guideline was produced in August 2008 alongside an additional note *sentencing for possession of a weapon - knife crime* which was produced to be read with the guideline. The additional note draws a distinction between offences involving a knife and those involving other weapons, and refers to the judgment in *R v Povey*<sup>1</sup> which recommended that, when sentencing an offender for an offence involving a knife, the MCSG guideline should normally be applied at the most severe end of the appropriate range to reflect prevalence concerns. This meant that the starting point sentence should be at least 12 weeks' custody when the offence involves possession of a knife.

Since the development of the MCSG guideline in 2008, a number of new offences have been

introduced, many of which are subject to mandatory minimum sentences. These new offences are not covered by any guidance.

The new guideline will provide sentencers across the Crown Court, magistrates' court and youth court with guidance for all of the relevant offences which will assist in achieving the Council's objective of consistent sentencing, and provide transparency for the public regarding the possible penalties for these offences.

The aim of the guideline is to ensure that sentence levels reflect the serious social problem of offenders carrying knives, and reflects the judgments in a number of leading Court of Appeal Cases.<sup>2</sup> This is a similar approach as was adopted in the MCSG guideline, when read alongside the additional note. The structure of the new adult 'Possession' guideline and the fact that it incorporates the key principles set out in case law, may lead to an increase in the sentences received by some offenders for carrying bladed articles or other 'highly dangerous' weapons. Further details of this are set out in the Sentencing Council's resource assessment.

The adult 'Threats' guideline aims to reflect both the principle set in case law, and also the fact that Parliament has set a mandatory minimum sentence for those that use a weapon to threaten. Due to the mandatory minimum, the starting point sentence for any offender charged with this offence must be at least six

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<sup>1</sup> [2008] EWCA Crim 1261

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<sup>2</sup> *R v Povey* [2008] EWCA Crim 1261; *R v Monteiro & Others* [2014] EWCA Crim 747

months' custody. This means that where the weapon used to threaten was a bladed article or 'highly dangerous' weapon, the starting point sentence will always be higher than six months. This may lead to an increase in the sentences received by some offenders who threaten using a bladed article or other 'highly dangerous' weapon. Again, further details are set out in the Sentencing Council's resource assessment.

The Council consulted on the draft guideline between 6 October 2016 and 6 January 2017. During the consultation period the Council attended events to discuss the consultation. This included an event at the Annual General Meeting of the North Yorkshire Branch of the Magistrates Association, and at an event in Luton magistrates' court. The Council is grateful to those who hosted and attended events.

The adult definitive guideline will apply to all those aged 18 or over who are sentenced on or after 1 June 2018, regardless of the date of the offence. The children and young person specific guideline will apply to those aged under 18 who are sentenced on or after 1 June 2018.

The current sentencing guideline for the magistrates' court, Possession of Bladed Article/ Offensive Weapon, is replaced by this guideline, once in force.

# Summary of research

To assist the Council in developing the guideline, a number of research exercises were conducted between 2015 and 2017.

In 2015, at the very earliest stage of guideline development, the Council requested feedback from magistrates and judges about how well they felt the current guideline was working in practice and whether they had any observations which they felt the Council should take note of when revising the guideline. Ninety-one sentencers provided feedback.<sup>3</sup> Another source of information used in the early development of the guideline was current sentencing statistics, which informed the starting points and ranges in the draft guideline.

In order to understand more about sentencing these types of offences in the magistrates' court, a structured telephone survey was conducted with a sample of 60 sentencers (52 magistrates and eight district judges) who had responded to the request for feedback. The survey explored sentencers' beliefs and attitudes to sentencing this type of offence, and examined current sentencing behaviour using hypothetical sentencing scenarios.

In parallel, to help understand more about the nature of cases in the Crown Court, a content analysis of 110 transcripts of Crown Court sentencing remarks was undertaken for the offences of possession of a bladed article or

offensive weapon, and threatening with a bladed article or offensive weapon. The aim here was to understand more about the nature of offences receiving sentences of varying lengths, to help determine what factors differentiated a more from a less serious offence.

This research had a bearing on the factors included in the draft guideline and the sentencing ranges. However, when scenario-based sentencing exercises were carried out at various consultation events, the hypothetical sentences given for a scenario involving possession of an offensive weapon were higher than the Council expected. The wording was therefore clarified, and a sub-sample of 40 magistrates who had taken part in the previous telephone research then tested the revised guideline by carrying out a scenario-based sentencing exercise online, to make sure the sentencing was now in line with the Council's expectations. In this way, research and analysis played an important part in the development of the guideline.

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<sup>3</sup> The Council requested feedback from magistrates and judges who are part of its "research pool" (a group of sentencers that have given the Council permission to approach them to participate in research exercises from time to time). The request for feedback (and a link to the survey) was also publicised in a Magistrates Association newsletter.

# Summary of responses

The consultation sought views from respondents on the three separate guidelines. Views were sought on five main areas: the principal factors that make the offence more or less serious; the additional factors that should influence the sentence; the approach taken to structuring each draft guideline, the information provided on statutory minimum sentences and the sentencing tables. The consultation also included a number of case studies to obtain detailed responses on the workability of each draft guideline and whether any difficulties arose.

In total, 90 responses to the consultation were received of which 23 provided email or paper responses and 67 responded online.

## Breakdown of respondents

Type of respondent	Number
Magistrates (including 4 collective responses)	30
Charity/not for profit organisations	2
Legal professionals (including 6 collective responses)	7
Judiciary (including 1 collective response)	3
Other	38
Academics	1
Government	1
Youth Justice Representatives (including 3 collective responses)	3

Police/law enforcement (including 1 collective response)	2
Parliament (including 1 collective response)	2
Prosecution (including 1 collective response)	1
<b>Total</b>	<b>90</b>

Feedback received from the Council's consultation events and interviews with sentencers during the consultation period is reflected in the responses to individual questions below.

In general, there was a positive response to the proposals. However, the Council was also grateful for constructive criticism and considered suggestions for amending parts of the three draft guidelines.

The substantive themes emerging from the responses to all three guidelines included:

- The need for the term 'highly dangerous weapon' to be defined;
- The need for more guidance when deciding whether it would be 'unfair in all of the circumstances' to impose a statutory minimum sentence;
- That there were a disproportionate number of aggravating factors compared to mitigating factors.

The Council has, therefore, made changes in these areas across all three guidelines.

The main themes in the responses to the adult 'Possession' guideline concerned:

- The structure of the culpability factors - many respondents felt the gradation of seriousness was not correct; and

- Requests for additional factors to be added to category 1 of the harm model.

The main theme in the responses to the adult 'Threats' guideline concerned the structure of the harm model.

The 'Children and Young People' guideline structure and many of the factors contained within it replicated the draft guidelines for sentencing Children and Young People for Sexual Offences and Robbery which were consulted on from 12 May 2016 until 3 August 2016. Therefore, any changes made to the structure or general terminology of those guidelines have now been reflected in this 'Bladed Articles /Offensive Weapons' guideline.

This includes:

- a change in the terminology used (instead of 'youth' or 'offender' the guideline now refers to 'children and young people');
- the guideline now includes more detailed factors within the 'personal mitigation' section (previously referred to as 'offender mitigation');
- there is now greater detail in the 'review the sentence' section, including information about referral orders.



# Bladed Articles and Offensive Weapons - Possession

## Culpability factors

### Highly dangerous weapon

The first question of the consultation asked consultees if they agreed with the proposed approach to the assessment of culpability: 84 per cent agreed. The second question asked if there are any culpability factors that should be added or removed: 67 per cent said 'no'.

One of the main concerns raised by both respondents and sentencers in consultation events was the use of the term 'highly dangerous weapon'. Respondents did not understand the term and at consultation events, where sentencers were invited to test the guideline against a case scenario, the term was applied in a way that was not intended by the Council.

*In general, we agree with this. We are however concerned about the concept of "a highly dangerous weapon". It is not clearly defined and can and will be a subject for endless debate. Council of HM Circuit Judges.*

In response to the issues raised the Council has now included additional guidance as follows:

*An offensive weapon is defined in legislation as 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.*

This term appears in the culpability factors across all three guidelines (adult 'Possession' guideline, adult 'Threats' guideline and the 'Children and Young People' guideline), and so this guidance has been added to each.

### Structure of culpability

Some respondents also raised concerns about the gradation of seriousness as set out in the culpability factors of the draft guideline. For example, some respondents took issue with the fact that a person who threatens with, say, a baseball bat would fall into the medium category as would a person simply in possession of a baseball bat, unless their possession of the bat fell just short of reasonable excuse.

For these reasons the Council has adapted the culpability factors to incorporate four levels of culpability to show a clearer gradation of seriousness.

The top culpability level is still 'Possession of a bladed article /highly dangerous weapon'. A small number of respondents criticised the fact that any offence involving possession of a knife would fall into this category as they argued that

possession of some knives is not very serious at all and that there should not be a blanket approach to the treatment of knives. Having considered the comments the Council is still of the view that possession of these weapons should attract the highest penalties. Where the possession of a knife is not particularly serious, due to the nature of the weapon or the circumstances of the case, the court can mitigate down within the range and, if the case is exceptional can sentence outside of the range. The Justice Committee, the CPS and a number of others agreed with these top culpability factors.

*We agree with Council's view that the possession of a bladed article or highly dangerous weapon indicates a high level of seriousness. We also agree the inclusion of other highly dangerous weapons in the list of high culpability factors. Crown Prosecution Service.*

Some respondents were confused by the inclusion of the factor 'Weapon (other than a bladed article or highly dangerous weapon) used to threaten or cause fear' given that there is a separate offence and guideline for threatening to use a weapon. Whilst this is a 'Possession' guideline the Council decided to include a threat factor as many possession cases which include an offender threatening with a weapon would not be charged as the threatening offence because they might not reach the very high threshold to be charged as such. The offence of 'threatening' requires the offender to have unlawfully and intentionally

threatened another person with a weapon and to have done so in such a way that there is an immediate risk of serious physical harm to that other person amounting to grievous bodily harm. Anything short of this would be charged as a simple possession offence. Having said that, a person in possession of a weapon who does threaten another is clearly more highly culpable than a person who has a weapon in their pocket. For this reason, the Council has kept this factor in the guideline as culpability factor B.

The new third level of culpability is for simple possession of a lesser weapon: 'Possession of a weapon (other than a bladed article or highly dangerous weapon) – not used to threaten or cause fear'. This will ensure a person who threatens with a baseball bat is treated more severely than a person in simple possession of the bat.

The fourth level is still 'Possession of weapon falls just short of reasonable excuse'.

## Harm factors

The consultation asked whether respondents agreed with the proposed approach to the assessment of harm and 78 per cent agreed. The consultation also asked whether there are any harm factors that should be added or removed: 50 per cent of respondents said there were.

The majority of respondents who felt that factors should be added, wanted other locations where serious disorder could occur, to be included such as hospitals, public transport, in a

domestic setting, at a sporting venue and at a music festival.

The Council felt that listing locations risks omitting ones that could be important, or including too many, risks sentence inflation. For that reason, the Council has separated the factor, 'Offence committed in prison or other premises where there may be a risk of serious disorder' into two: 'Offence committed in prison', and, 'Offence committed in circumstances where there is a risk of serious disorder'. This second bullet will capture offences at various locations, but only where the presence of the weapon could have caused serious disorder. It will be for the court to determine, based on the facts of the case, whether this factor applies.

### Structure of harm

A number of respondents felt that 'Minimal risk of weapon being used to threaten or cause harm' should not be included as it would be too difficult for a court to assess.

In addition, the Council had concerns that few cases would fall into the middle category of harm. For that reason, the Council decided to change the structure so that there are now just two levels of harm, with the highest harm cases falling into category 1 and all others into category 2.

### Sentence levels

Question five of the consultation asked consultees if they had any comments on the sentencing starting points and ranges in the possession guideline. 64 per cent had no

comments. Of those who did comment, the views were mixed, with some suggesting that sentences should be higher:

*In general, we agree. Our initial reaction had been to question the upper limit in the highest category. We wonder whether it ought not to be 3 years which would represent ¾ or 75% of the maximum. We of course accept the well-known and frequently stated principle that sentencing is not an exact mathematical science. We think that an upper limit of 3 years is still some way below the maximum which is to be reserved for extremely serious cases that fall outside the guidelines. At the same time, it would provide a degree of flexibility for those undoubtedly serious cases where it is not possible to justify a departure from the guidelines under s.125(1). In other words, we think that the proposed degree of headroom need not be so large.*

**Council of HM Circuit Judges.**

*...We recommend that the Sentencing Council consider whether the proposed category ranges for the offences of possession and threatening with bladed articles/offensive weapons, with a maximum of 2 years 6 months and 3 years' custody respectively, should approximate more closely to the statutory maximum penalty of 4 years' imprisonment. **Justice Committee.***

However, many suggested that the sentence levels should be lower:

*The CJA appreciates the seriousness of the offences of possessing bladed articles and offensive weapons. We realise the potential impact and harm that can be caused by*

*individuals carrying such items in public. We fully acknowledge the need to reduce the number of such offences which don't only affect victims, where there are victims, but also undermine perceptions of community safety. However, in our view this would be best achieved through improved youth awareness and education on the consequences of carrying such items, improving relations between police and local communities and the effective rehabilitation of those previously convicted of such offences. We are concerned that the new sentence ranges and starting points will almost certainly inflate sentences for these offences. It is a general position of the Criminal Justice Alliance that we don't support heavier sentencing in any area unless there is firm evidence that such sentencing would cause a reduction in offending. We don't believe that is present here. **Criminal Justice Alliance.***

*The Council should recognise that the proposed sentence ranges and starting points reflect a significant increase in the level of sentence imposed when compared with the current guidelines... **Criminal Law Solicitors Association.***

Given the restructure of the culpability and harm factors the Council had to make changes to the sentencing table in any event. The new table now includes four levels of culpability and two levels of harm instead of three levels of culpability and three levels of harm. To accommodate these changes the Council broadened the range of sentences available for harm category 2 to account for the wider set of

circumstances that could now apply, and applied a new lower set of sentences to the culpability D category.

The Council took account of the views of the respondents in considering whether to increase or decrease the sentences. The Council is concerned, in particular, about offenders in possession of knives or highly dangerous weapons, and is not persuaded to reduce sentencing in this area.

### **Aggravating and mitigating factors**

The consultation asked whether respondents agreed with the aggravating factors; 95 per cent said they did. However, a number of respondents commented that there were a disproportionate number of aggravating factors. As the aggravating and mitigating factors are non-exhaustive the Council aims to only include those factors that are most relevant. The Council has, therefore, decided to remove the following aggravating factors:

- Victim is targeted due to a vulnerability (or a perceived vulnerability)
- Planning
- Offence committed against those working in the public sector or providing a service to the public
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Location of the offence (where not taken into account at step one)

- Timing of the offence (where not taken into account at step one)

The Council considered that the first four factors will not be relevant to the majority of possession cases as there will be no specific victim. However, in the cases where the factors do apply, the court can still aggravate the offence as this is a non-exhaustive list.

‘Location’ and ‘Timing’ have been removed as, although there is additional wording that a court should not consider them if they have already taken them into account at step one, respondents, including the Justice Committee, were still concerned about the risk of double counting.

The consultation asked whether there are any mitigating factors that should be added or removed. Thirty-four per cent of respondents said there were factors that should be added or removed. A number of respondents felt that ‘No planning’ should be removed as in a case where the offender is genuinely unaware that they were carrying a weapon this would most likely fall under the culpability category ‘Possession of weapon falls just short of reasonable excuse’. For this reason, the Council removed the mitigating factor ‘no planning’.

## Statutory minimum sentencing provisions

The consultation asked respondents if the section on minimum sentences provides an

adequate explanation of the provisions, and if the location is correct. Most respondents agreed (81 per cent and 87 per cent respectively), however, there were some proposals for change. Of those that disagreed with the location, the majority thought that the guidance should come at the start of the guideline. For this reason, the Council has added a prompt at the start of the guideline to highlight that the provisions apply.

With regard to the content of the guidance, many respondents requested further information on what would make it ‘unjust’ to impose the mandatory minimum. The Council has, therefore added a section on this as follows:

### Unjust in all of the circumstances

*In considering whether a statutory minimum sentence would be ‘unjust in all of the circumstances’ the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.***

### The offence:

*Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between*

*offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.*

*The offender:*

*The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;*

- any strong personal mitigation;*
- whether there is a realistic prospect of rehabilitation;*
- whether custody will result in significant impact on others*



# Bladed Articles and Offensive Weapons - Threats

## Culpability factors

Question 11 of the consultation asked consultees if they agreed with the proposed approach to the assessment of culpability. Of those who commented, 88 per cent agreed. Question 12 asked if there are any culpability factors that should be added or removed: 57 per cent said no.

There was no consistency amongst those who wanted factors to be added or removed and so no changes have been made. However, as with the 'Possession' guideline, a number of respondents raised concern about use of the term 'highly dangerous weapon' and so additional guidance has been added (see page 9).

## Harm factors

Question 13 asked whether consultees agreed with the proposed approach to the assessment of harm: 96 per cent agreed. Question 14 asked whether there are any harm factors that should be added or removed: 71 per cent of respondents said there were not. As with the possession guideline, a number of respondents suggested adding a reference to other locations

where serious disorder could be caused by a person threatening others with a weapon. For the reasons outlined at page 10 the Council was not keen to list a large number of locations but instead added the factor 'Offence committed in circumstances where there is a risk of serious disorder'.

## Harm structure

As with the 'Possession' guideline, the Council had concerns that few cases would fall into the middle category of harm. For that reason, the Council decided to change the structure so that there are just two levels of harm, with the highest harm cases falling into category 1 and all others into category 2.

## Aggravating and mitigating factors

The consultation asked whether respondents agreed with the aggravating factors. The majority said they did, and so no additional changes are proposed as a result of the responses. However, as with the 'Possession' guideline there were some concerns that there are a disproportionate number of aggravating factors. The Council has, therefore, decided to remove the following aggravating factors:

- Location of the offence (where not taken into account at step one)
- Timing of the offence (where not taken into account at step one)
- Established evidence of community/wider impact

'Location' and 'Timing' have been removed as, although there is additional wording that a court should not consider them if they have already taken them into account at step one, respondents, including the Justice Committee, were still concerned about the risk of double counting.

A number of respondents raised concerns about the addition of the factor 'Established evidence of community/wider impact'. The Council agreed to remove this factor as this guideline has been drafted following the principles set out in Povey and Monteiro, both of which advocated the use of higher sentences because of the community wide impact of the possession and use of knives. The Council agreed, therefore, that having this as an aggravating factor may be double counting and lead to over-inflated sentences.

The consultation asked whether there are any mitigating factors that should be added or removed. Thirty-four per cent of respondents said there were factors that should be added or removed. A number of respondents felt that 'No planning' should be removed as in a case of threatening with a weapon this is less relevant. For this reason, the Council removed the mitigating factor 'No planning', but accept that there may be cases where it is relevant, in which case the court may still apply it as the list is non- exhaustive.

### Statutory minimum sentencing provisions

The consultation asked respondents if the section on minimum sentences provides an adequate explanation of the provisions, and if

the location is correct. The majority of respondents agreed (87 per cent and 90 per cent respectively). However, for consistency with the possession guideline the Council has moved the location of this step to step three to ensure that sentencers have given full consideration to the factors of the offence and the offender before reaching this step. In addition, a prompt has been added to the start of the guideline to highlight that the provisions apply.

As with the earlier guideline, many respondents requested further information on what would make it 'unjust' to impose the mandatory minimum. The Council has, therefore added a section on this as follows:

#### Unjust in all of the circumstances

*In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence or the offender, make it unjust to impose the statutory minimum sentence then the court must impose **either a custodial sentence less than the statutory minimum or an alternative sentence.***

#### The offence:

*Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custodial threshold the court may consider it unjust to impose the statutory minimum sentence.*



The offender:

*The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;*

- any strong personal mitigation;*
- whether there is a realistic prospect of rehabilitation;*
- whether custody will result in significant impact on others.*

# Bladed Articles and Offensive Weapons – Children and Young People

This guideline incorporates both the offences of possession and threats.

Many of the changes made to this guideline are to achieve consistency with the changes that the Council made to the Children and Young People Sexual Offences and Robbery guidelines which were consulted on during the summer of 2016.

The Definitive Children and Young People Sexual Offences and Robbery guidelines were published on 7 March 2017 alongside a consultation response document which fully explained the changes that had been made to the definitive guidelines since consultation.

The Council considered that many of the changes made to the Children and Young People Sexual Offences and Robbery guidelines could apply equally to these Bladed Articles and Offensive Weapons Children and Young People guideline, and for the sake of clarity and consistency in the youth court, the changes should be made.

The amendments include changing the words 'offender' or 'youth' to 'child/ young person'; including additional references to the

Overarching Principles guideline; replacing the word 'conviction' with 'finding of guilt'; the addition of more detailed factors within the 'personal mitigation' section (previously referred to as 'offender mitigation'); minor amendments to the 'guilty plea' section; and additional wording in the 'review the sentence' section.

The full rationale for these changes can be seen in the consultation response document for the Children and Young People Sexual Offences and Robbery guidelines;

(<https://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-response-to-consultation/>).

## Non- custodial and custodial Factors

Question 22 asked consultees if they agreed with the factors which indicate a non-custodial sentence: 81 per cent of respondents agreed.

Question 23 asked consultees if they agreed with the factors which indicate a custodial sentence: 90 per cent of respondents agreed with these factors.

Given the high rate of agreement the Council has made no further amendments to these factors. However, as with the adult guideline, a number of respondents did raise concern with the use of the term 'highly dangerous weapon' and so the Council has defined this term as set out at page 9.

## Aggravating factors

Question 24 asked consultees if they agree with the aggravating factors: 61 respondents said they did agree and just 2 said they did not. Of

those that did not agree, and a number of those that did agree but also provided comments, the main issue seemed to be that the list was too long, and significantly outweighed the list of mitigating factors.

The Council reflected on this comment and agreed to remove the following factors:

- Location of the offence (where not taken into account at step one)
- Timing of the offence (where not taken into account at step one)
- Failure to comply with current court orders
- Failure to respond to warnings about behaviour
- Established evidence of community/ wider impact

The factors concerning 'Location; Timing; Failure to comply with current court orders'; and 'Failure to respond to warnings about behaviour' are ones that are in many of the Council's guidelines, however these were not included in the Children and Young People Robbery or Sex Offences guidelines and so the Council concluded that it would be appropriate to remove them from this guideline.

The factor 'Established evidence of community/ wider impact' is also one which appeared in the adult guidelines. The Council decided to remove this factor from all three drafts as the guidelines have been drafted following the principles set out in the cases of Povey and Monteiro both of which advocated the use of higher sentences because of the community-wide impact of the possession and use of

knives. The Council agreed, therefore, that having this as an aggravating factor may be double counting and lead to over-inflated sentences.

In addition, the group /gang factor was commented on by a number of respondents:

*It should be noted that there are concerns about the information used to establish whether or not a child is part of a gang, including concerns that police intelligence on this disproportionately and unfairly categorise BAME children as being gang affiliated. It is not clear why being a member of a group should be an aggravating factor where the group was not related to or aware of the offence, particularly in possession cases. We do not agree that this necessarily indicates criminal intent, as stated in the consultation document. SCYJ would recommend rephrasing the aggravating factor around groups and gangs so that it better aligns with criminal intent in a way that does not disproportionately affect BAME children. For example, "offence was committed as part of a group. **Standing Committee for Youth Justice (SCYJ).***

The Council accepted that a child or young person's membership of a gang was only relevant where it was a feature of the offence and so reworded this factor to 'Offence was committed as part of a group or gang'.

### **Statutory minimum sentencing provisions**

As with the adult guidelines, the Council decided to move the step regarding statutory

minimum sentencing provisions until later in the guideline, when the sentencer will have considered the full details of both the offence and the child or young person. This step is now at step five. In addition, the Council has put a prompt at the start of the guideline to remind sentencers that these provisions do apply but that the detail can be seen at a later step.

A couple of respondents pointed out that the guideline should be clearer in explaining that the statutory minimum sentencing provisions only apply to those aged 16 and over on the date of the current offence. This has now been added to the guideline at step five.

Again, as with the adult guideline, many respondents requested greater assistance about the factors that should be considered by the court to determine whether it is unjust to impose a mandatory minimum sentence. To assist, the Council has added the following guidance relevant to both the offence and the offender:

**Unjust in all of the circumstances**

*In considering whether a statutory minimum sentence would be 'unjust in all the circumstances' the court must have regard to the particular circumstances of the offence, any relevant previous offence and the young person. If the circumstances make it unjust to impose the statutory minimum sentence then the court **must impose an alternative sentence.***

**The offence:**

*Having reached this stage of the guideline the court should have made a provisional*

*assessment of the seriousness of the offence. Where the court has determined that the offence seriousness falls far below the custody threshold the court may consider it unjust to impose the statutory minimum sentence.*

*Where the court is considering a statutory minimum sentence as a result of a second or further relevant offence consideration should be given to the seriousness of the previous offences and the period of time that has elapsed between offending. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.*

**The young person:**

*The statutory obligation to have regard to the welfare of a young person includes the obligation to secure proper provision for education and training, to remove the young person from undesirable surroundings where appropriate, and the need to choose the best option for the young person taking account of the circumstances of the offence.*

***In having regard to the welfare of the young person, a court should ensure that it considers:***

- any mental health problems or learning difficulties/ disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug

*and alcohol abuse) and the developmental impact this may have had;*

- *any speech and language difficulties and the effect this may have on the ability of the young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;*
- *the vulnerability of young people to self-harm, particularly within a custodial environment; and*
- *the effect on young people of experiences of loss and neglect and/or abuse.*

*In certain cases the concerns about the welfare of the young person may be so significant that the court considers it unjust to impose the statutory minimum sentence.*

# Conclusion and next steps

The consultation has been an important part of the Council's consideration of this guideline. Responses received from a variety of sources have informed changes made to the definitive guideline.

The two definitive 'adult' guidelines will apply to all adults aged 18 or over sentenced on or after 1 June 2018, regardless of the date of the offence.

The definitive Children and Young People guideline will apply to all children and young people aged between 10 and 17 sentenced on or after 1 June 2018, regardless of the date of the offence.

Throughout the development of the guidelines the equality impacts have been considered. The guidelines are intended to be neutral with regard to gender and ethnicity but do treat children and young people differently to adults.

The Council has gathered data in relation to offenders sentenced for these offences. This data includes volumes of offenders sentenced grouped by gender, ethnicity and age and is available on our website

(<https://www.sentencingcouncil.org.uk/publications/>)

Following the implementation of the definitive guideline, the Council will monitor its impact.

## Annex A

### Consultation questions

<b>Bladed Articles and Offensive Weapons – Possession</b>
1. Do you agree with the proposed approach to the assessment of culpability?
2. Are there any culpability factors that should be added or removed?
3. Do you agree with the proposed approach to the assessment of harm?
4. Are there any harm factors that should be added or removed?
5. Do you have any comments on the sentence ranges and starting points?
6. Do you agree with the aggravating factors? Please state which, if any, should be removed or added.
7. Are there any mitigating factors that should be added or removed?
8. Does the section on minimum sentences provide adequate explanation of the provisions?
9. Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?
10. Do you consider that the sentence in Case Study A is proportionate? If you do not agree, please tell us what sentence should be imposed and why.
<b>Bladed Articles and Offensive Weapons – Threats</b>
11. Do you agree with the proposed approach to the assessment of culpability?
12. Are there any culpability factors that should be added or removed?
13. Do you agree with the proposed approach to the assessment of harm?
14. Are there any harm factors that should be added or removed?
15. Do you agree with the aggravating and factors? Please state which, if any, should be removed or added.
16. Does the section on minimum terms provide adequate explanation of the provisions?
17. Do you agree that the guidance on minimum terms is at the right stage of the sentencing process?
18. Do you consider that the sentence in Case Study B is proportionate? If you do not agree, please tell us what sentence should be imposed and why.
<b>Bladed Articles and Offensive Weapons – Youth Guideline</b>
19. Does the section on minimum sentences provide adequate explanation of the provisions?
20. Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?
21. Do you agree that the guidance on minimum sentences is at the right stage of the sentencing process?
22. Do you agree with the harm and culpability factors proposed at step one which indicate a non-custodial sentence? If not, please specify which you would add or remove and why.
23. Do you agree with the harm and culpability factors proposed at step one which indicate that the starting point should be a custodial sentence? If not, please specify which you would add or remove and why.
24. Do you agree with the aggravating factors for this offence? Please state which, if any, should be removed or added.
25. Are there any offence-specific mitigating factors that should be added?
26. Are there any offender-specific mitigating factors that should be added?
27. Do you agree with the inclusion of the 'Review the Sentence' step? Please state what, if anything, should be removed or added?
28. Do you consider that the sentence in Case Study C is proportionate? If you do not agree, please tell us what sentence should be imposed and why.
29. Do you have any further comments you wish to make about any of the guidelines?

## Annex B

### Consultation Respondents

Responses were received from the following:

1. Ian Allott JP
2. Anonymous
3. Anonymous
4. Anonymous
5. Anonymous
6. Anonymous
7. Anonymous
8. Anonymous
9. Anonymous
10. District Judge Anne Arnold
11. Association of Youth Offending Team Managers
12. Alan Atkinson JP
13. D Auton JP
14. Vivienne Barnard
15. Tim Bateman
16. Mary Belchem
17. Chris Bell
18. Stephen Carr
19. Barry Cave
20. Enid Charlton JP
21. Chris Clegg JP



22. Peter Connor
23. M Cooper
24. Council of HM Circuit Judges
25. Criminal Bar Association
26. Criminal Justice Alliance
27. Criminal Law Solicitors Association
28. Criminal Prosecution Service
29. Wendy Crompton (Justice for William)
30. Benjamyn Damazer JP
31. Philip Davies MP
32. Anthony Davies
33. John Dehnel
34. Andy Du Port
35. Malcolm Ford JP
36. Stephen Fosberry
37. Chris Gidden
38. Dominic Goble JP
39. David Goodman
40. Alan Hardy JP
41. TP Heath
42. Colin Hillary JP
43. C J Hills JP
44. HM Council of District Judges
45. HHJ Michael Hopmeier

46. Howard League
47. Norman Hughes
48. Ashley Irons
49. Michael Johnson JP
50. Justice Committee
51. Wilma Keighley
52. Shane Kiely
53. Janet King JP
54. Law Society
55. Janice Leach JP
56. London Criminal Courts Solicitors Association
57. Virginia Lovell JP
58. James Macnamara JP
59. Peter Maden
60. Magistrates Association
61. Karen Mairs JP
62. John Marr
63. Simon Massarella JP
64. The Mayor's Office for Policing and Crime
65. Ministry of Justice
66. A Morecraft JP
67. National Crime Agency
68. Eoghan O'Neill
69. Richard O'Neill – Roe

70. Oxfordshire Bench
71. Geoff Paul
72. Ian Pearson
73. Tony Pratt JP
74. Christine Pugh JP
75. Paul Radcliffe JP
76. Barbara Richardson JP
77. Jane Smith
78. South East London Bench
79. Standing Committee for Youth Justice
80. Elizabeth Stead
81. Chris Thompson
82. Roger Utley JP
83. Eve Vamvas
84. West Sussex Bench
85. Anthony Wilde
86. Stuart Wilkinson JP
87. Gareth Williams
88. Peter Wilson
89. David Wright
90. Youth Justice Board