

Sentencing for possession of a weapon – knife crime

A guideline is provided on pages 32-33 of the *Magistrates' Court Sentencing Guidelines* for sentencing offenders found in possession of a bladed article or offensive weapon. Significant attention has been paid to this guideline ahead of it coming into effect as a result of the current focus of the press/media on violent crimes involving knives.

The purpose of this note is to set out the effect of the guideline (which is not limited to the possession of knives) and of the Court of Appeal decision in *Povey*.¹

1. The guideline has been strengthened from the previous Court of Appeal guideline *Celaire and Poulton*² and is likely to result in many more offences (committed by adult offenders) crossing the custody threshold.
2. In *Povey*, attention was drawn to the recent escalation in offences of this kind and the importance, for the time being, of courts focussing on the purposes of sentencing of reduction of crime (including its reduction by deterrence) and the protection of the public.
3. In *Povey*, the Court of Appeal recommended that the *Magistrates' Court Sentencing Guidelines* guideline should normally be applied at the most severe end of the appropriate range to reflect current prevalence concerns. This will be likely to lead to more cases being sentenced in the Crown Court.
4. When the current concerns have been overcome, courts will be notified that the approach should return to the guideline as published.
5. The guideline provides three categories of seriousness:
 - **level 1** is for the situation where a person has a weapon or bladed article, is not in a “dangerous circumstance” and the weapon or bladed article is not used to threaten or to cause fear; in those circumstances:
 - applying *Povey*, where the offensive weapon is a knife the starting point would be close to 12 weeks custody for a first time adult offender who has pleaded not guilty;
 - in relation to an offensive weapon other than a knife, the starting point for a first time adult offender who has pleaded not guilty is a high level community order.
 - **level 2** is for the situation where a weapon is in the possession of the offender in “dangerous circumstances” but is not used to threaten or to cause fear; in those circumstances:
 - applying *Povey*, where the offensive weapon is a knife the starting point for a first time adult offender who has pleaded not guilty is committal to the Crown Court and, therefore, a custodial sentence in excess of 6 months;
 - in relation to an offensive weapon other than a knife, the starting point for a first time adult offender who has pleaded not guilty is a custodial sentence of 6 weeks.
 - **level 3** is for the situation where a weapon is used in dangerous circumstances to threaten or cause fear; in those circumstances, both the starting point and range for a first time adult offender who has pleaded not guilty are for sentencing in the Crown Court and, therefore, in excess of 6 months custody.

“Dangerous circumstances” has not been judicially defined but was used in the previous Court of Appeal guideline judgment in *Celaire and Poulton*. In relation to a knife, a circumstance is likely to be dangerous if there is a real possibility that it could be used.

¹ [2008] EWCA Crim 1261

² [2003] 1 Cr.App.R.(S) 116