

**Sentencing guidelines for
the offence of sale of knives
etc to persons under 18
Response to consultation**

February 2023

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Foreword



In 2020 the Council received a submission on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives to persons under the age of 18. The Council agreed that it would be useful to develop guidelines for this offence which is not very frequently prosecuted but has the potential for serious consequences. From June to August 2022 we consulted on two draft guidelines for this offence, one for sentencing individuals and one for sentencing organisations.

On behalf of the Sentencing Council, I would like to thank all those who responded to the consultation on these guidelines and to the magistrates who gave their time to participate in the research exercise undertaken to test and inform the development of the guidelines. I am also grateful to those retailers who engaged with the Council during the consultation period to give their perspective.

This offence is unfamiliar to most sentencers and the guidelines will, therefore, be particularly useful for ensuring proportionate and consistent sentencing.

Lord Justice William Davis

Chairman, Sentencing Council

Introduction

In 2020 the Council received a submission on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives to persons under the age of 18. The submission argued that sentences being passed for larger organisations did not adequately reflect the seriousness of the offence and the means of the organisation. The Council agreed to add this to the list of future guidelines to be developed when resources were available.

From 1 June to 24 August 2022 the Sentencing Council consulted on two guidelines for the offence of the sale of knives etc to persons under 18 contrary to section 141A of the Criminal Justice Act 1988; one for sentencing individuals and one for sentencing organisations.

This offence is prosecuted by Trading Standards departments within local authorities and almost all prosecutions are as a result of test purchases. This means that the volume of prosecutions is very closely linked to the resources that Trading Standards departments are able to devote to this aspect of their work. The Council drew on the expertise of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) in developing the guidelines.

The offence of selling knives etc to persons under the age of 18 is a summary only offence; it carries a maximum of six months' imprisonment (or, in the case of an organisation, an unlimited fine) and can only be dealt with in magistrates' courts. It is a strict liability offence (there is no requirement to show intention or knowledge) subject to a defence of proving that all reasonable precautions were taken and all due diligence was exercised to avoid the offence.

Summary of research

Small-scale qualitative research on both guidelines took place in June 2022 to ensure the wording was clear and to test how the new guidelines would work in practice. Ten magistrates were interviewed, with each sentencing three hypothetical scenarios: two to test the guideline for organisations, one to test the guideline for individuals. Particular attention was paid to issues the Council had discussed, including: the introductory explanation about the scope of the guidelines; the inclusion of only one level of harm; the proposed sentences; and step 3 – ‘Adjustment of fine’.

Summary of main findings

- None of the 10 magistrates had previously sentenced any cases of sale of knives to persons under 18.
- Magistrates found the introductory text to be ‘self-explanatory’, agreeing both guidelines were generally ‘clear’ and ‘easy to interpret’.
- There was a high level of consistency when determining culpability using both guidelines.
- Magistrates generally agreed with the inclusion of only one level of harm.
- There were some mixed views on the sentencing tables: some felt the starting points and ranges for larger organisations were about right but a little high for smaller organisations, and that on the individuals guideline the ranges could be expanded.
- There was some inconsistency in the application of step 3 – Adjustment of fine with a large/very large organisation, but greater consistency with a smaller organisation and an individual.

Summary of responses

There were 34 responses to the consultation, some from individuals and some from organisations. A breakdown of responses is as follows:

Type of respondent	Number of responses
Magistrates	11
Legal professionals	1
Judiciary	3
Law enforcement and Prosecution	5
Industry	4
Government and Select committee	3
Charity and not for profit organisations	1
Individual	5
Other	1

Scope of the guidelines

The consultation explained that the offence of selling knives etc to children is prosecuted by the Trading Standards departments of local authorities (the offence applies to any knife or article which has a blade or is sharply pointed). It is used to prosecute retailers who fail to ensure that the necessary safeguards are in place to prevent children purchasing knives. In practice prosecutions result from test purchases where a child, under the supervision of Trading Standards officers, attempts to purchase an age restricted item. If the retailer allows the sale to go ahead, they are liable to be prosecuted.

In these situations, the purchase will typically be of a single knife or small pack of knives. When developing the guidelines, the Council noted that the offence could also, at least theoretically, be used to prosecute cases of the deliberate sale of knives to children – perhaps through social media and/or for the sale of knives in large quantities.

Consideration was given to expanding the scope of the guidelines to cater for such cases, but the Council decided that the guidelines should focus on the types of case that actually come before the courts. To make the scope clear to users the following wording was proposed at the beginning of the guidelines.

Guideline for individuals:

Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers or those employed by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children.

Guideline for organisations:

This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children.

In response to a question as to whether this wording was clear, most respondents agreed that it was. However, some questioned what would amount to a small quantity of knives with some suggesting that it should specifically state that a ‘small quantity’ includes a single knife and others wanting it to make clear that it would include a set of kitchen knives even if there were a relatively large number in that set. In research with magistrates, the majority thought the introductory text was clear but again some commented on the interpretation of ‘a small quantity of knives’.

The Justice Select Committee said:

In relation to the text on the scope of the guidelines, we share the concern raised by certain consultees as to whether the reference to a “small quantity of knives etc” is sufficiently precise. Sentencers may require more precise guidance on the number of knives that constitute a small number as opposed to a large number, particularly when knives are often sold as a set. We are also concerned that sentencers could

misunderstand whether a case was one “of a more serious nature”. We understand the explanation that the guidance on scope is designed to limit the use of the guidelines to cases arising from prosecutions brought after test purchases are made by trading standards. The present wording appears to give rise to a risk that a sentencer could mistakenly apply these guidelines to a serious case and then potentially apply a more lenient sentence than they otherwise would have given had they not applied them. We would ask the Council to consider if it would be appropriate to include within the text on the scope a reference to the fact that the guidelines should only apply to the test purchase scenario.

The question in the consultation related only to whether the scope was clear but several respondents questioned the Council’s decision to limit the scope of the guideline.

The Expert Panel on Age Restrictions believes that the wording is clear as far as it is drafted, but is too narrow in scope. The drafting wording appears to reflect a traditional retail environment, sometimes described as “bricks and mortar retail”. The retail environment, both formal and informal, is however markedly more diverse than that. Regardless of the circumstances of most prosecutions so far, the Expert Panel thinks that the Sentencing Council’s guidelines should reflect the wider range of circumstances and scenarios where knives are sold to children, including those situations where people over the age of 18 buy a knife and then sell it to a child under the age of 18 in a more informal community setting. **Office of Product Safety and Standards (OPSS)**

BRC members believe creating sentencing guidelines for test purchase convictions without also including associated guidelines for actual sales to underage purchasers is fundamentally flawed. The logical approach would be to produce a set of guidelines covering both circumstances, which would then aid the judiciary in understanding the true nature of the offence they are considering. The clear danger in not including such, is that the sentencing court projects the theoretical harm associated with a test purchase into an actual harm associated with an actual sale to an underage purchaser. It is essential for a court determining a test purchase sale to clearly differentiate between the two scenarios and therefore including both scenarios in the guidelines is the key starting point. **British Retail Consortium (BRC)**

We consider that the wording relating to the scope of the guideline is fairly clear, though we wonder what examples are envisaged for cases of a more serious nature such as those involving the sale of “large quantities of knives”. We have no experience of a sale of a large quantity of knives to children being prosecuted before us. We wonder why such an offence should not be sentenced in accordance with this guideline. Indeed, we are curious why a sale of knives to children following reckless/deliberate marketing of those knives to children is also not included in this guideline. **HM Council of District Judges (Magistrates’ Courts).**

The Council recognised that the explanation given in the consultation (and repeated above) did not fully explain the reasons for restricting the scope of the guidelines.

In developing the guidelines we spoke to police about the sale of knives to children through more informal channels (such as peer to peer and via social media) or directly or indirectly by websites that sell knives in bulk. The police voiced concerns that the proposed guidelines would not sentence these cases effectively. However, the police also

accepted that they do not use this offence to prosecute such offending and therefore the guideline would not apply to such situations.

There are considerable difficulties in devising an effective guideline for theoretical cases. In developing sentencing guidelines the Council considers examples of actual offending and analyses sentencing data in order to decide on the appropriate factors and sentence levels. Without this evidence it is impossible to anticipate how a guideline would work in practice and what the impact of the guideline would be. Therefore, the Council decided to restrict the guideline to the type of offending that is actually prosecuted using this offence.

In the light of the consultation responses, the Council considered this issue again and concluded that the guidelines should provide only for the situations that are being sentenced. The note on the scope of the guidelines would ensure that if other (probably more serious) types of cases should come before a court, the guidelines would not prevent these being sentenced appropriately.

The Council did consider, however, that the wording on the scope of the guidelines could be improved and, taking into account the responses received and the research with magistrates, has amended the wording as follows.

The guideline for individuals:

This guideline applies to the unlawful sale in a single transaction of a knife etc* or a small quantity of knives etc (whether in-store or online) by retailers or those employed by retailers. It does not apply to cases involving large quantities of knives etc or to a person whose marketing of knives etc has deliberately or recklessly attracted children.

*'etc' refers to other articles to which section 141A applies

The guideline for organisations:

This guideline applies to the unlawful sale in a single transaction of a knife etc* or a small quantity of knives etc (whether in-store or online) by retailers. It does not apply to cases involving large quantities of knives etc or to an organisation whose marketing of knives etc has deliberately or recklessly attracted children.

*'etc' refers to other articles to which section 141A applies

The Council also decided that for clarity the scope of the guidelines should be reflected in their titles and has added the words 'by retailers':

Individuals: Sale of knives etc by retailers to persons under 18

Organisations: Sale of knives etc by retailers to persons under 18

Guideline for individuals

Culpability

The culpability factors consulted on for individuals were:

Culpability
<p>A – High culpability</p> <ul style="list-style-type: none">• Offender in a position of responsibility failed to put in place standard measures to prevent underage sales -<ul style="list-style-type: none">• For in-store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts• For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.• Offender in a position of responsibility failed to act on concerns raised by employees or others• Offender falsified documents• Offender failed to make appropriate changes following advice and/or prior incident(s)• Offender disregarded clear measures put in place to prevent underage sales
<p>B – Medium culpability</p> <ul style="list-style-type: none">• Offender in a position of responsibility put in place standard measures but these were not sufficiently adhered to or implemented• Offender failed to fully implement measures put in place to prevent underage sales• Other cases where the offender’s culpability falls between the factors as described in A and C
<p>C – Lesser culpability</p> <ul style="list-style-type: none">• Offender made significant efforts to prevent underage sales where not amounting to a defence

One magistrate in research expressed uncertainty whether all or just some of the standard measures listed in high culpability needed to be present to show compliance. A similar point was raised in the response from the Magistrates’ Association. Other respondents made specific suggestions for further examples or greater explanation.

The West London Magistrates’ Bench thought it would be clearer to amend the high culpability factor to read:

- Offender deliberately or recklessly disregarded clear measures put in place to prevent underage sales

The Council was concerned that this suggestion could lead to less rather than more clarity if courts had to assess whether the disregard of measures was deliberate or reckless or merely negligent.

The West London Magistrates' Bench also proposed an additional low culpability factor:

- Offender not given sufficient training in the sale of bladed articles to minors by the manager, owner or organisation, as appropriate

The Council considered that it was very unlikely that an individual staff member would be prosecuted in such circumstances, it was more likely that the manager, owner or organisation would be prosecuted.

An individual magistrate thought that the guideline should take into account the extent to which the offender took steps to deceive the retailer. Another suggested adding a medium culpability factor of 'Offender failed to seek appropriate purchaser identification documents at the point of sale'. Another suggested adding a factor relating to employing underage staff and allowing them to sell knives.

The Council considered that these particular additions were unnecessary. In a test purchase situation deceit (such as false ID) would not be used, but if a prosecution did result from such circumstances, the existing factors would still apply, i.e. to what extent did the offender fail to take the appropriate steps? Failure to seek ID documents is covered by existing high and medium culpability factors and allowing underage staff to sell knives would be covered by high culpability factors.

The British Independent Retailers Association felt that '[t]he indicators for high culpability seem tougher for in-store sales than on-line sales. There are several proposed measures for shops, many of which make little difference to the offence (e.g. refusal logs), and yet the on-line business does not need to indicate number of refused orders. Yet, relevant authorities, including the police, widely accept that there is a greater risk from on-line sales where it is perceived to be an easier purchase. It seems very easy to be highly culpable in the way the factors are described and that is a concern.'

Having considered all of the comments and suggestions, the Council agreed that the culpability factors could be improved and has revised them to read:

Culpability

A – High culpability

- Offender in a position of responsibility failed to put in place appropriate measures to prevent underage sales -
 - For in-store sales measures should include some or all of the following: identifying restricted products, clear signage, age verification checks, Challenge 21 or Challenge 25 policy, staff training, a means of monitoring refusals, till prompts
 - For online sales measures should follow government guidance [on the sale and delivery of knives](#) including:

identifying restricted products, age verification on delivery or collect in-store policy with age verification on collection

- Offender in a position of responsibility failed to act on concerns raised by employees or others
- Offender falsified documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)
- Offender disregarded clear measures put in place to prevent underage sales

B – Medium culpability

- Offender in a position of responsibility put in place appropriate measures but these were not sufficiently adhered to or implemented
- Offender failed to fully implement measures put in place to prevent underage sales
- Other cases where the offender’s culpability falls between the factors as described in A and C

C – Lesser culpability

- Offender made significant efforts to prevent underage sales where not amounting to a defence

Harm

The Council consulted on having just one level of harm.

HARM

The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

The justification for this was set out in the consultation:

Where a prosecution results from a test purchase, the child making the purchase does not go on to retain the item(s) and so in these cases there is no risk of harm resulting from that particular transaction. However, the harm associated with the offence is considered to be very serious. There is the risk of serious physical harm to purchasers and to others as well as the risk of wider social harms associated with the circulation of weapons amongst children. A child purchasing a knife is also at risk of prosecution for possession of the knife. In the case of an in-store purchase the young person could face immediate arrest for possession of a knife in a public place.

The Council considered whether there were factors that might point to greater harm in some situations, such as the age of the purchaser, the nature of the knife or the quantity sold. However, in reality, given the nature of the cases prosecuted there is no meaningful distinction in harm between cases.

Magistrates in research and many respondents agreed in general with having only one level of harm. However, concern was expressed by several respondents, in particular retailers, that the offence can be committed by the sale of any knife and that by having only one level of harm there was no way of distinguishing between the sale of, for example, a carving knife and a butter knife.

We do not consider that it is appropriate to have only one level of harm in respect of knives. The offence under section 141A, Criminal Justice Act 1988 covers a broader range of bladed articles than just knives. The definition of bladed articles covers products ranging from cutlery to small craft knives, and from gardening tools to specialist sports equipment, which have no appeal to street gangs and present a significantly lower risk to the wider community than knives.

We therefore consider that a distinction should be made when considering the risk of harm between:

- knives (and other bladed articles which have clear appeal to street gangs) and all other bladed articles; and
- whether any actual harm occurred as a result of the sale.

Womble Bond Dickinson LLP

The decision to show no distinction in harm really shows a lack of understanding of the nature of the knives used in crime and the products caught by this legislation. Cutlery knives, butter knives etc are not to be sold to under-age people, and yet these products represent very limited harm and are not involved in knife crime (unless subsequently modified by the criminal). It will be argued that the test purchase will not focus on cutlery knives which is doubtful, and if it were true, it suggests that if trading standard are differentiating in the test purchase, sentencing should equally differentiate. **British Independent Retailers Association**

The Expert Panel on Age Restrictions does not believe that there should be one level of harm for the offence of selling knives to under 18s. Cutlery knives, for instance, which are usually kept on the shelves in supermarkets, should not be comparable to knives which pose a higher risk of injury and are more dangerous. **Office of Product Safety and Standards (OPSS) Expert Panel**

At a meeting to discuss the draft guidelines some retailers expressed a concern that an individual Trading Standards officer could bring a prosecution for sale of cutlery knives in situations where most would not. Retailers explained that in many stores kitchen knives would be kept in a locked cabinet and it would require two members of staff to unlock and approve the sale, whereas sets of cutlery would be on open display and staff would be less likely to appreciate the need for care when selling them even with the benefit of training and till prompts etc. Trading Standards have reassured us that any prosecution has to be approved by multiple people and it is unlikely that a prosecution relating to a set of cutlery would be considered to be in the public interest.

Some respondents went further:

[N]o harm whatsoever can arise from a test purchase sale as it is in controlled circumstances and the prosecution should acknowledge the fact that there is no harm if there is no evidence of any actual sales to minors by the retailer in question. This is vital to ensure the matter is considered in the correct context. Potential, and we stress potential, harm only arises from an actual sale and even then there may

in fact be no harm arising unless one assumes ALL under- age sales are to people determined to use the item for a crime.

To suggest there is harm in a test purchase sale is to suggest that because the test was failed, there must inevitably be occasions in the past or future when a sale has or will be made and that sale will result in harm. This supposition without any evidence in fact seems a novel approach to law. **British Retail Consortium (BRC)**

[W]e propose there should be more than one level of harm. Purchases by minors which are test purchases under the control of adults from the local authority or other agencies can be placed in the lowest level, as there should be no harm caused here. Purchases other than test purchases should then be distinguished by both the type of bladed article sold and the number of bladed articles sold. We propose three levels of harm that should be assessed for a particular offence. **West London Magistrates Bench**

Not all retailers thought there should be more than one level of harm:

We think the statement of harm is clear and acknowledge it is not possible to have a meaningful distinction of harm. **Association of Convenience Stores**

The Council noted that all, or almost all, prosecutions for this offence are as a result of test purchases and the harm from the offence is therefore the **risk** of knives falling into the hands of young people. Contrary to what the BRC suggests this approach is based in law. [Section 63 of the Sentencing Code](#) states:

Where a court is considering the seriousness of any offence, it must consider—
(a) the offender's culpability in committing the offence, and
(b) any harm which the offence—
(i) caused,
(ii) was intended to cause, or
(iii) might foreseeably have caused.

Several respondents thought that the age of the purchaser should be a factor in assessing harm but the majority accepted that there was no clear correlation between the risk of harm and the age of the purchaser. One respondent thought that the age of the purchaser was relevant to culpability in that a sale to a younger child demonstrated deliberate or reckless selling. The Council concluded that, in the context of how test purchases are carried out, the age of the purchaser should not be a key factor in assessing seriousness.

The Council considered all of the arguments relating to harm very carefully and debated whether two or more levels of harm were required. The Council concluded that in the context of the scope of this guideline, i.e. that it will be used for sentencing cases where a retailer has sold a knife to a child either in person or online as a result of a test purchase, there was no distinction in harm.

Sentence levels

The majority of offences committed by individuals are punished by way of a fine. In the five year period 2017 to 2021, of around 70 adult offenders sentenced, 76 per cent were fined, 14 per cent received an absolute or conditional discharge, and six per cent were made subject to a community order. A further three per cent were 'otherwise dealt with', and the remaining two per cent received a suspended sentence order. Fine levels for individuals in

2017 to 2021 ranged from £34 to £6,000 (the median was £383). All of these sentences are after any reduction for a guilty plea.

The Council proposed sentence levels with a view to maintaining current sentencing practice in terms of the type of sentence passed, while allowing for an increase in the level of fines for the more serious cases to align with the guideline for organisations.

Bearing in mind the limited situations in which the offence is prosecuted and in order to avoid sentence inflation, the Council proposed no custodial sentences in the range.

Culpability		
A	B	C
<p>Starting point Medium level community order or Band E fine</p> <p>Category range Low level community order or Band D fine – High level community order or Band F fine</p>	<p>Starting point Low level community order or Band D fine</p> <p>Category range Band B fine – Medium level community order or Band E fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

Most respondents who commented, agreed with the decision not to include custodial sentences for individuals. Some individual respondents took a different view: one compared the proposed sentences with those for possession of a bladed article and stated that ‘the starting point for selling a knife underage over the counter should be custody’. In research one magistrate made a similar comparison and suggested that the range should be expanded to include custody. Another respondent suggested that custodial options should be available for repeated offences and again this view was echoed by one magistrate in research.

The British Independent Retailers Association thought that the level of fines seemed very high. They also suggested that there should be a distinction between online and in-store sales.

One magistrate respondent noted that the culpability C sentence levels are considerably lower than those for A and B and suggested that the sentence levels should be distributed more evenly. Two magistrates in research made a similar point. The Council noted that this imbalance in the distribution was deliberate, reflecting the fact that culpability C cases are only just above the threshold for prosecution.

Other magistrates in research either thought that the sentence levels were about right or, in the case of one, that they were too high.

In research the sentences (before guilty plea but after adjustment at step 3) varied, with some imposing community orders (low or medium level) and others fines (varying from £450 to £2,000). While one aim of the guideline is to aid consistency, it is perhaps understandable that in the context of a theoretical exercise, sentencing an unfamiliar offence with only limited information and without the benefit of discussion with colleagues or any input from the Probation Service, that magistrates would arrive at a fairly wide range of final sentences. That said, as the guideline specifically provides for fines or

community orders in the range for culpability A, all of the sentences were within the category range (allowing for adjustment of fines at step 3) and the magistrates were generally satisfied with the final sentence they arrived at.

Taking into account the various comments, the type of offending that the guideline applies to and the need for flexibility in the guideline to allow for the different circumstances of offenders, the Council concluded that no changes to the sentence levels were required.

Aggravating and mitigating factors

There were only a limited number of aggravating factors in the draft guideline reflecting the fact that most relevant factors are covered in culpability factors and the relatively narrow range of offending that is captured by this offence:

Factors increasing seriousness
Statutory aggravating factors:
<ul style="list-style-type: none"> • 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
Other aggravating factors:
<ul style="list-style-type: none"> • Obstruction of justice

The British Transport Police suggested having the age of the child as an aggravating factor and the Northumbria Violence Reduction unit suggested that the prevalence of violence in the area was a relevant consideration. The West London Magistrates' Bench were unsure what was meant by the aggravating factor 'Obstruction of justice'. They suggested rewording to: 'Obstruction of justice – including the hiding or destruction of evidence, blaming others, etc'. Alternatively they suggested two new factors: 'Poor level of co-operation with the investigation' and 'Limited or no acceptance of responsibility'. They also suggested adding: 'No evidence of any steps taken since the current offence to prevent recurrence'. A similar suggestion was made by a magistrate in research.

These suggestions should be considered in the context of the high culpability factors:

- Offender failed to act on concerns raised by employees or others
- Falsification of documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)

The Council reflected on these suggestions and concluded that it was not entirely clear what conduct 'Obstruction of justice' was aimed at when 'Falsification of documents' is included at step 1. The other suggestions from the West London Magistrates' Bench are mirrors of mitigating factors and the Council considered that it would not be appropriate to aggravate for failure to take positive action.

The other suggestions not already covered by step 1 factors relate to the age of the purchaser (which was also mentioned by some magistrates in research) and the sale taking place in a high violent crime area. Magistrates in research also suggested the number of items sold could aggravate the sentence. The Council concluded that these

factors (in the context the range of offending that is, in reality, captured by this offence) would not necessarily make the offence more serious in ways that are not already captured at step 1.

Consequently the Council decided to remove the aggravating factor ‘Obstruction of justice’ and not to add any further factors bearing in mind that the list is non-exhaustive and courts can take into account other relevant factors in individual cases.

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

There were only a few comments on mitigating factors. The British Independent Retailers Association asked for clarity around ‘high level of co-operation with the investigation’. From their response it appears that they interpreted this as relating to making changes required by Trading Standards whereas that would be more relevant to ‘Evidence of steps taken voluntarily to prevent re-occurrence’. They made the point that for smaller retailers it is not always financially or physically possible to make changes requested by Trading Standards (e.g. changing store layout). The Council was satisfied that a court would take into account steps taken in the context of the case.

West London Magistrates’ Bench suggested splitting the third factor into two factors:

- High level of co-operation with the investigation
- Acceptance of responsibility

The Council considered this helpful suggestion but was concerned that ‘acceptance of responsibility’ could be conflated with a guilty plea, whereas it was intended to indicate pre-court admissions or acceptance. However, in the context of this strict liability offence pre-court admissions are not particularly relevant. The Council, therefore, decided to remove this part of the factor.

Womble Bond Dickinson LLP queried what was encompassed by ‘Good record of compliance with Trading Standards’ given the broad remit of Trading Standards. They also proposed additional mitigating factors:

- previous test purchase record;
- the target audience – selling and marketing services to the trade creates less of a risk of than selling to consumers, especially those stores which appeal to children;
- engagement with community initiatives and/or the Police to reduce knife-related crime;
- additional efforts to tackle underage sales in areas with high-levels of knife crime;
- engaging in voluntary initiatives to reduce underage sales such as public pledges.

This last suggestion was echoed in part by the BRC who suggested that being a signatory to the Home Office Voluntary Agreement should be taken into account. The Council

considered that participation in various initiatives is not necessarily mitigation if it does not lead to compliance.

The Council was persuaded that it would provide clarity to add '(particularly in relation to age restricted sales)' to the factor 'Good record of compliance with Trading Standards'.

There were also some comments on the mitigating factors: 'age and/or lack of maturity' and 'sole or primary carer'. The comments suggested clarification may be required. The Council noted that these are standard factors in (almost) all guidelines and there are expanded explanations (which would not have been evident from the consultation document) for both of them.

The final version of the mitigating factors is therefore:

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation
- Good record of compliance with Trading Standards (particularly in relation to age restricted sales)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Step three – Adjustment of fine

As noted above, the most common sentence for this offence is a fine. Although offenders are being prosecuted as individuals, the offence will have been committed in the course of running or working in a business and it is important that any fine reflects the commercial nature of the offending. The Council, therefore, proposed a step where the court 'steps back' and reviews any financial element of the sentence.

Where the sentence is or includes a fine, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders.

The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the financial position of the offender and the seriousness of the offence.

See the Fines dropdown above for more information

Only a few respondents commented on this step for individuals and they generally agreed with the wording. In research with sentencers eight magistrates were positive about step 3, with one suggesting we "highlight the phrase 'the court should step back and consider the

overall effect of its orders’ [as] it makes you think about equal opportunities, different cultures, ways of life etc”. In contrast one magistrate said that the step “doesn’t add anything”.

In the light of the responses the Council decided to retain the version consulted on.

Steps four to eight

Steps 4 to 8 in the guideline are largely standard steps but the Council particularly sought views on step 7.

Step 7 – Compensation, confiscation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates’ court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates’ court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

There were a few comments in response to the consultation relating to step 7.

Respondents suggested clarifying the section on compensation and adding a reference to an order for forfeiture and destruction of the knife.

The Council reconsidered the reference to compensation in the context of this offence and decided to remove it as irrelevant. Regarding forfeiture and destruction orders, Trading Standards have confirmed that they do not apply for forfeiture and destruction orders for this offence as the knife has been test purchased rather than seized. The revised wording at step 7 is:

Step 7 – Confiscation and ancillary orders

In all cases, the court should consider whether to make ancillary orders.

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

- [Ancillary orders – Magistrates' Court](#)

Guideline for organisations

Culpability

The factors consulted on were:

Culpability
<p>A – High culpability</p> <ul style="list-style-type: none"> • Offender failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender failed to act on concerns raised by employees or others • Falsification of documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented • Other cases where the offender’s culpability falls between the factors as described in A and C
<p>C – Lesser culpability</p> <ul style="list-style-type: none"> • Offender made significant efforts to prevent underage sales where not amounting to a defence

Many of the points made in response to the culpability factors for individuals were also made in relation to organisations. There was a strong body of responses challenging the idea of ‘standard measures’ and several questioned the reference to refusal logs.

The Criminal Justice Act 1988 does not specify what are referred to in the draft guideline as "standard measures" in the "High" culpability category. The draft guideline would therefore indirectly create a checklist by listing "standard measures".

This raises the question of what happens if retailers adhere to different guidance including, perhaps assured advice received from their Primary Authority? In addition, it removes the element of discretion to creating an effective due diligence system, which is a more of an issue for online retailers. The law does not prescribe what steps should be taken to ensure that you have a defence of due diligence in the context of retail stores and we are not aware of any "standard measures" relating to online age verification.

It is also not clear whether the level of culpability would be "high" if only one or two etc of the "standard measures" was not in place.

For all of these reasons, we consider that the wording of the guideline would benefit from making it clearer that typical measures to prevent age restricted sale may

include the various steps currently labelled as "standard measures". The Court should be invited to look at the overall system that was in place and particular circumstances relating to the offence in question.

The guideline will need to be kept under continuous review as the guidance and/or technology evolves, particularly in respect of online sales. **Womble Bond Dickinson LLP**

The indicators for high culpability seem tougher for in-store sales than on-line sales. There are several proposed measures for shops, many of which make little difference to the offence (e.g., refusal logs), and yet the on-line business does not need to indicate number of refused orders. Yet, relevant authorities, including the police, widely accept that there is a greater risk from on-line sales where it perceived to be an easier purchase. It seems very easy to be highly culpable in the way the factors are described and that is a concern. **British Independent Retailers Association**

The suggestion there is a standard list of due diligence requirements misunderstands the nature of such requirements. For example, not all retailers believe a refusals log serves much purpose even if they use one to please Trading Standards. The due diligence procedures should be seen as a suite of measures possibly based on Primary Authority advice not as a tick box list. The measures for online sales should not refer to standard approaches. It should reflect the requirements of the Offensive Weapons Act and its statutory guidance including that age verification on delivery can be used as well as collect in store. **BRC**

Having considered all of the comments and suggestions, the Council agreed that the culpability factors could be improved and has revised them to read:

Culpability
<p>A – High culpability</p> <ul style="list-style-type: none"> • Offender failed to put in place appropriate measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in-store sales measures should include some or all of the following: identifying restricted products, clear signage, age verification checks, Challenge 21 or Challenge 25 policy, staff training, a means of monitoring refusals, till prompts ○ For online sales measures should follow government guidance on the sale and delivery of knives including: identifying restricted products, age verification on delivery or collect in-store policy with age verification on collection • Offender failed to act on concerns raised by employees or others • Offender falsified documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented • Other cases where the offender’s culpability falls between the factors as described in A and C
<p>C – Lesser culpability</p> <ul style="list-style-type: none"> • Offender made significant efforts to prevent underage sales where not amounting to a defence

Harm

Harm is treated in the same way as in the guideline for individuals. The responses relating to harm are dealt with at page 12 above.

Sentence levels

Of nearly 90 organisations sentenced in the five year period 2017 to 2021, 99 per cent were fined and one per cent were sentenced to a discharge. In 2017 to 2021, the range of fine amounts was £269 to £200,000 (the median was £2,500). All of these fine amounts are after any reduction for a guilty plea.

The sentence levels consulted on were:

Very large organisation

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large organisation - Turnover or equivalent: £50 million and over

Culpability		
A	B	C
Starting point £400,000	Starting point £200,000	Starting point £50,000
Category range £200,000 – £1,000,000	Category range £100,000 – £400,000	Category range £12,000 – £100,000

Medium organisation - Turnover or equivalent: between £10 million and £50 million

Culpability		
A	B	C
Starting point £200,000	Starting point £100,000	Starting point £20,000
Category range £100,000 – £400,000	Category range £50,000 – £200,000	Category range £5,000 – £50,000

Small organisation - Turnover or equivalent: between £2 million and £10 million

Culpability		
A	B	C
Starting point £50,000	Starting point £25,000	Starting point £6,000
Category range £25,000 – £100,000	Category range £12,000 – £50,000	Category range £3,000 – £12,000

Micro organisation - Turnover or equivalent: not more than £2 million

Culpability		
A	B	C
Starting point £12,500	Starting point £6,000	Starting point £1,500
Category range £6,000 – £25,000	Category range £3,000 – £12,000	Category range £500 – £3,000

The Magistrates' Association (MA) suggested six size categories of organisation by adding a category with a turnover equivalent to £1 billion or over at the top end and adding a category at the bottom for an organisation with a turnover of not more than £500,000. They considered that a significant portion of offences involve smaller retailers with turnovers of around £150,000 - £200,000 and that there is scope for more guidance for sentencers for this size of business.

In making this assertion (about the proportion of smaller businesses) the MA seem to have included sole traders who would be more likely to be prosecuted as individuals. However, the Council accepted the point made about the difficulty of the micro organisation category encompassing businesses with turnovers of less than £100,000 up to £2 million.

In research some magistrates made similar comments: suggesting a category below micro and/or more guidance for very large organisations. These comments reflected the scenarios that were used in the research.

The four categories of size of organisation are used across other guidelines for organisations (for example health and safety, environmental, food safety) and the Council considered that it was helpful to keep to consistent categorisation across guidelines (as was recognised by some respondents). The Council noted that the adjustment of fine at step 3 is provided to address the potential problem of grouping together a wide range of organisation sizes in each category.

The British Retail Consortium felt that the fines for culpability C in particular were too high. They also stated:

The BRC believes that the decision to publish a Guideline with fines of £1million plus for large organisations potentially misunderstand the problem. There is no evidence either in the consultation or elsewhere that the under-age sale of knives in large stores is behind knife crime. ...The BRC is concerned that the mere publication of the Guideline with increased sentences will encourage enforcers to ignore a lack of evidence that retailers are a source of underage sales to minors and increase their enforcement activity in the wrong place instead of focussing on the actual source of most purchases because that is much more difficult to enforce.

...

Against that background we believe the Guideline should

1. Take into account in setting the fine the reputational damage a business will suffer.
2. Set the starting point for a fine for a test purchase sale for a large organisation (which actually includes many organisations that are relatively small given the category is set at £50 million) with low culpability lower. It should not be a massive increase of 500% on the existing mean level of £10,000
3. Reduce the disparity in fines for large organisations - the high end of the sentencing range is more than 50% of the starting point which unfairly penalises larger organisations.

The British Independent Retailers Association repeated the comments they made in relation to the guideline for individuals. The West London Magistrates' Bench agreed with using the same type of format for organisations as with other guidelines. They suggested a helpful minor clarification: using 'annual turnover' rather than 'turnover'.

One magistrate said that the penalties for micro organisations provide too little deterrent. The Association of Chief Trading Standards Officers supported the fine levels consulted on.

In research there were mixed views on the starting points and ranges in the sentencing table for organisations: while some magistrates felt the ranges and starting points were appropriate another felt they were too high. One felt that while they were right for larger companies, they were too high for smaller companies. Another agreed that for smaller companies the starting points were high. There was also concern that the ranges were large and one magistrate noted that there was a big drop between big companies and the smaller ones.

The fine levels consulted on were set with reference to fine levels in other guidelines for organisations. The Council compared the proposed levels with what might broadly be considered equivalent levels of offending in other guidelines.

Two scenarios were used in research with magistrates, one involving a very large company and one a micro company (at the lower end of that range). There was some inconsistency in the sentences arrived at, although for the micro organisation there was a cluster of pre guilty plea sentences of £6,000 (i.e. the bottom of the range for culpability A) which was in line with expectations. Several magistrates in the research noted that they had never sentenced a case involving a very large company and in reality such cases are likely to be allocated to a district judge (magistrates' court).

The Council noted that while the sentence levels for larger organisations appear to be more severe, as a proportion of turnover they are lower than those for smaller organisations.

The Council concluded that taken in conjunction with step three (discussed below) the fine levels consulted on were proportionate.

Aggravating and mitigating factors

The aggravating factors consulted on were:

Factors increasing seriousness
Statutory aggravating factors:
<ul style="list-style-type: none"> • 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
Other aggravating factors:
<ul style="list-style-type: none"> • Obstruction of justice

The limited number of aggravating factors reflects the fact that most relevant factors are covered in culpability factors and the relatively narrow range of offending that is captured by this offence. Sentencers are not restricted to the items listed, if other relevant factors are present, these can be taken into account.

As with the guideline for individuals, the Council decided that the factor 'Obstruction of justice' was already covered by culpability factors and decided to remove it.

Womble Bond Dickinson LLP suggested that previous convictions should be considered in the context of the size of the defendant's retail operation by specifically taking into consideration the number of stores operated by the defendant organisation and/or volume of sales of age restricted products.

The Council considered providing more context to previous convictions. There was an expanded explanation for the previous convictions factor but the content was aimed at individual offenders and contained information that did not apply to organisations. The Council therefore decided to create a new expanded explanation for previous convictions in guidelines for organisations which reads:

Guidance on the use of previous convictions

The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:

1. Previous convictions are considered only after the starting point for the sentence has been reached.
2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences.
3. For sentencing purposes, previous convictions are normally relevant to the current offence when they are of a similar type.
4. Previous convictions of a type different from the current offence **may** be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders.
5. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence.
6. When considering the number and frequency of previous convictions it **may** be relevant to consider the size of the offending organisation. For example, a large organisation with multiple sites may be more likely to have previous convictions than a smaller organisation with only one site.
7. The aggravating effect of relevant previous convictions reduces with the passage of time; older convictions are less relevant to the offender's culpability for the current offence and less likely to be predictive of future offending.
8. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise.
9. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
10. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.
11. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.

This will be used for all guidelines that apply specifically to organisations.

Factors reducing seriousness or reflecting mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

The non-exhaustive mitigating factors consulted on were the same as those proposed in the guideline for individuals but without those that apply solely to personal circumstances.

The Council has made the same changes to these factors as discussed in relation to individuals at page 18 above, so that they now read:

Factors reducing seriousness or reflecting mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation
- Good record of compliance with Trading Standards (particularly in relation to age restricted sales)

Step three – Adjustment of fine

In recognition of the fact that the financial position of an organisation will depend on more than its turnover, the Council consulted on wording at step three which requires the court to look at the financial position and the seriousness of the offence in the round to ensure that the fine is proportionate.

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

Respondents who commented generally agreed with this step. All but one magistrate in research thought it was useful though several found it quite complicated. The BRC suggested adding two further factors to consider in adjusting the fine:

- The potential reputational damage that the offender will suffer and be likely to deter any future offence
- Recognition that a fine for a test purchase should reflect only that purchase and not make suppositions that a single failed test purchase is a guide to future behaviour for which there is no evidence

The West London Magistrates' Bench preferred this wording in the fines dropdown in the guideline for individuals:

When sentencing organisations the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

To the wording in the guideline for organisations:

The fine must be substantial enough to bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

The Council considered these suggestions carefully. Regarding the suggestion that reputational damage should be a factor, the Council noted that reputational damage was inherent in any criminal conviction and felt that any particular reputational damage in addition to that would be impossible to measure or reflect in the sentence.

The Council agreed with the suggestion from the West London Magistrates' Bench and revised step 3 to read:

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

Steps four to eight

As with the guideline for individuals, the Council consulted on guidance on compensation and confiscation at step 7 and the same issue was raised by respondents regarding the relevance of compensation. The Council has removed the reference to compensation so this step now reads:

Step 7 – Confiscation and ancillary orders

In all cases, the court should consider whether to make ancillary orders.

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there

(section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

Overall considerations

The consultation sought views on matters relating to issues that cut across the guidelines.

Impact of the guidelines

The consultation stated that the guidelines were developed with current sentencing practice in mind and the Council did not expect them to have any significant impact on prison or probation resources. The Council acknowledged that they may lead to an increase in fine amounts particularly for larger organisations.

The Council invited comments from consultees on whether the draft guidelines are likely to change sentence levels and whether any change would be desirable.

Some respondents welcomed the improvement in consistency that the guidelines would bring:

We believe these guidelines will result in a more consistent approach from the Courts and sentences that better reflect the detriment and harm caused by these type of offences. **ACTSO**

The draft sentencing guideline will address the significant degree of inconsistency in the approach to sentencing which is welcome. It is this inconsistency which has, in our experience, resulted in the better known national retail brands being disproportionately punished when compared with less reputable businesses that may often present a greater risk from the perspective of allowing under 18s access to knives. **Womble Bond Dickinson LLP**

I welcome the Council's intention to ensure the courts take a consistent approach to sentencing this offence and, in the case of organisations, impose fines linked to turnover to make penalties proportionate to the size of organisation. **Sarah Dines MP Parliamentary Under-Secretary of State for Justice**

Various respondents (especially retailers) raised concerns that increased penalties for reputable retailers will lead to them withdrawing knives from sale:

If retailers believe they can do nothing more in terms of due diligence there is a danger that they will decide the potential reputational damage – and financial damage – is too great and withdraw from the market – as they have largely online – driving customers to less well organised or less reputable retailers or websites. **BRC**

Whilst the guideline will address inconsistency, the levels of fine will undoubtedly increase. The result is that retailers are being held increasingly accountable for knife crime which, as far as we are aware, is not substantiated with evidence. The real harm is caused by those retailers who deliberately or recklessly market knives to children, which are expressly excluded from the guideline. We therefore consider that a number of amendments can be made to the guideline to be more reflective of the overall risk of harm in the context of bladed articles by national retailers who, in reality, are the primary target of test purchasing activities. **Womble Bond Dickinson LLP**

Independent retailers are responsible but not perfect. Mistakes are made by owners and employees but in general these business owners are practical, sensible and aware of their legal responsibilities. Since the legislation was introduced, many measures have been taken with regards to the sale of knives to ensure that it is safer.

These sentencing guidelines may well deter retailers from selling bladed articles altogether which would be a poor outcome. If shops, where the controls in place are visible and easily assessed, ordinary consumers and criminals will buy more and more on-line - a sales channel that is a far harder to control and regulate. In all our discussions with police forces, on-line sales have been an area of much more concern so these guidelines may well make it even harder to effectively regulate the sale of knives. **British Independent Retailers Association**

The Council noted these comments but remained of the view that the guidelines provide for proportionate sentences taking into account the circumstances of the offence and the offender. The guideline can only address the sentencing of cases that are successfully prosecuted.

A slightly different concern was raised by some respondents:

The Expert Panel considers that publication of these guidelines may, possibly inadvertently, lead to an increase in the number of large organisations being taken to court more frequently, given it may lead to an increase in test purchasing programmes where some sales are identified as a result of a single failure of human judgement in verifying age rather than systemic failure of age restricted sales policies or abuse. **OPSS Expert Panel**

We are concerned that issuing this Guideline to increase fines on large organisations will send the wrong message – that more test purchasing of large retailers is the key to solving the problem. **BRC**

The Council was not persuaded that an increase in prosecutions would necessarily follow the publication of the guidelines. It is important to note that an increase in fine levels will not increase the resources of Trading Standards departments and there was no increase in the number of prosecutions correlating to the statutory maximum fine increase from £5,000 to unlimited in 2015.

An updated [resource assessment](#) has been produced which sets out the likely impact of the guidelines on prison and probation resources.

Equality and diversity

The Council asked for suggestions from consultees as to any equality and diversity matters that it should address in the development of these guidelines.

There were very few responses to the consultation questions relating to disparities in sentencing and issues of equality and diversity. The Northumbria Violence Reduction Unit commented:

In terms of operational responsibility, should further consideration be given on the expectations on Trading Standards to ensure the new guidelines when communicated to retailers are accessible and easily understood? We are aware

that a significant number of small retailers are owned by people from minority communities and language may be a barrier for some. It is important that all retailers understand their responsibilities.

This is also relevant in considering how you ensure there is increased awareness and understanding of sentencing guidelines, there is a need to ensure the guidelines are also clearly understood by people from diverse cultures.

In future how do you ensure there is robust collection of demographic data (for instance, lack of data on ethnicity) where this data is absent it makes it difficult to understand disparity amongst certain groups.

The Council agreed that these were good points and will seek to work with Trading Standards and industry groups to ensure that retailers of all sizes are aware of the guidelines when they are published. The issue of lack of robust demographic data is highly relevant but unfortunately it is outside the Council's control.

Conclusion and next steps

As a result of the consultation the Council has made the changes to the draft guidelines set out in the sections above. The definitive guidelines are published on the Council's website (<https://www.sentencingcouncil.org.uk>) on 15 February 2023, they will come into force on 1 April 2023.

The final resource assessment is published on 15 February 2023 on the Council's website.

Following the implementation of the definitive guidelines, the Council will monitor their impact.

List of respondents

Alex Brander
Association of Chief Trading Standards Officers
Association of Convenience Stores
British Transport Police
Brian Locke JP
British Independent Retailers Association
British Retail Consortium
Chief Magistrate
Christopher Turner JP
Criminal Sub-committee of the Council of HM Circuit Judges
David King JP
Eamon Lambert JP
Gary Birchall JP
Gary Knight JP
HM Council of District Judges
John Lavin JP
John Mansfield JP
Justice Select Committee
Magistrates' Association
Member of the public
Member of the public
Member of the public
Member of the public
Member of the public
Northumbria VRU
Ocado Retail Ltd
OPSS Expert Panel
Paul Thacker JP
Prison Reform Trust
Ministry of Justice
Sarah Saunders
Trading Standards Wales
West London Magistrates' Bench
Womble Bond Dickinson LLP

