

Findings from the road testing for Preparation of Terrorist Acts (s5), Collection of Terrorist Information (s58), Encouragement of Terrorism (s1) and Dissemination of Terrorist Publications (s2) offences

Aims and Method

This paper summarises the qualitative research on the guidelines for Preparation of Terrorist Acts (s5), Collection of Terrorist Information (s58), Encouragement of Terrorism (s1) and Dissemination of Terrorist Publications (s2), carried out in October and November 2017. These guidelines were ‘road tested’ to help understand how they might work in practice and whether there are any issues or problems with them as they stand.

In particular, the policy team wanted feedback on Step One of the three guidelines: how well the culpability and harm factors were working and judges’ opinions of the starting points and ranges. To this end, 16 in-depth interviews were carried out (by telephone and face to face) with 17¹ Crown Court and High Court judges who were ticketed to hear terrorism cases, and these interviews focused on Step One of each guideline. A range of scenarios were presented which represented offending at high, medium and low levels of seriousness, and judges were asked to sentence these only to the point of choosing a starting point sentence, and then they were asked to reflect on this process.²

1. Summary

Preparation of Terrorist Acts (s5) Guideline

- The testing of the s5 guideline resulted in a high amount of variability across judges in their classification of harm and culpability for offences **at the lower end** of seriousness.
- Quite often the categories chosen were higher than the team expected, highlighting a risk that the guideline could push sentencing up beyond the level anticipated.
- Judges found it difficult to discriminate between levels of culpability based on factors which were very similar to one another across different levels, and it was apparent that the guideline may benefit from adjusting the wording of these factors to better emphasise the distinction between them.
- There was also a sense that almost all preparation offences could risk endangering life, so that a very many cases would fall into harm 1 on the basis of this factor, again risking over-inflation of sentences. A number of judges felt that harm should be revised to better

¹ One interview involved two judges participating.

² As with all our qualitative work, the sample size was small and self-selecting, which means that the findings cannot be taken as representative of all judges (**although in this particular case, we did speak to a high proportion of the small number of judges currently ticketed to hear terrorism cases**). They provide an insight into how these groups may use and respond to the guideline, but we cannot be sure that these findings are typical of the wider group.

differentiate between different degrees of endangerment (e.g. endangering many versus few; or direct intent to endanger versus more indirect, or less intentional, risk to life).

- In spite of these issues there was broad agreement with the sentence levels (when the judges classified the offences as expected) and broad support for the principle of deterrent sentencing when dealing with lower level crimes of this nature.

Collection of Terrorist Information (s58) Guideline, Encouragement of Terrorism (s1) and Dissemination of Terrorist Publications (s2) Guideline

- The testing of the s58 guideline found that both scenarios were generally categorised consistently for culpability, and as expected by the team.
- The sentencing in s1&2 guideline was varied. The culpability factors that were found to lead to consistency issues were judges' interpretation of whether the offender's culpability was reckless or intended and the judges' interpretation of 'disseminated publication widely'.
- The harm factors in the s1&2 guideline that led to consistency issues were judges' interpretation of whether the offender was indirectly or directly encouraging terrorist activity and judges' interpretation of whether the terrorist activity did or did not endanger life.
- These issues present some risk that sentences could be pushed higher than expected in some types of cases (although because of the lower sentence levels compared to s5, the size of any uplift is less consequential).
- The inclusion of only factors relating to 'statement/publication' presented a problem in one scenario, in which a follower of Isis presented a contact with a screen shot of a route to Syria. Judges appeared to wish to place the offender in harm 2, but none of the factors in this category seemed to apply to the offender's action.
- Despite these small issues judges sentencing both the s58 and s1&2 guideline were in broad agreement with the starting points and ranges in the two guidelines.

2. Background

- Judges were asked about their experience in sentencing terrorism offences and it was interesting to note that most judges we spoke to had sentenced only a handful of such cases, because of their relative rarity to date. Judges did not seem to have a particularly strong 'gut feel' for sentencing in this area (as they do for other offence types) and some noted that sentencing these types of case was difficult. Against this backdrop, the guidelines were welcomed, and some judges praised their clarity. There was some sense that these were important, necessary documents, which will be closely adhered to.

3. Preparation of Terrorist Acts (s5) Guideline

a. Categorisation of culpability and harm in the scenarios

- For the s5 offences, the **higher seriousness scenarios were categorised consistently**: a right-wing extremist who had purchased materials for making a bomb was unanimously categorised as A1 (although one judge *considered* using culpability B), which was as expected by the team; and a van driver in a well-developed plot (Scenario 1 – see Table 1) was unanimously classified as B1, as expected by the team. Judges tended to see the van driver as a lesser participant in which preparations were ‘almost complete’ although a couple of judges also saw his contribution as ‘significant’ rather than lesser (so reaching culpability B based on the factor, ‘acting alone, or *significant* participant, in terrorist activity where preparations are well advanced but not complete or almost complete’), even though he knew no details of the plan.
- The **lower level scenarios were more discrepant**: For the scenario involving the electrician who had a key role in facilitating enactment of a plan he knew relatively little about (Scenario 4 – see Table 2), harm was pretty consistently categorised at 2, but on culpability, opinion was generally divided between B and C. The citing of culpability factors for this scenario was variable: Just under half of the judges saw this offence as culpability B, usually based on the factor, ‘acting alone, or *significant* participant, in terrorist activity where preparations are well advanced but not complete or almost complete’; whereas the other half saw this offence as culpability C (as expected by the team) on the basis of either, ‘lesser participant in activity where plans are well advanced but not complete or almost complete’ or, ‘act(s) of significant assistance or encouragement to others’. One judge, however, saw this offender as culpability A, ‘significant participant in terrorism activity where preparations are complete or almost complete’.³
- **The scenario in which a terrorism-sympathising offender drives his friend to the airport to fight in Syria** (Scenario 3 – see Table 3) **attracted the most variable responses overall**: some judges placed the offender in culpability C, higher than the team expected, sometimes on the basis of, ‘act(s) of significant assistance or encouragement to others’ and sometimes on the basis of, ‘determined attempts to travel abroad’, even though this offender only *assisted* in this process. Other judges placed the offender in culpability D (‘act(s) of limited assistance or encouragement to others’) and two judges placed him between C and D, uncertain as to whether they felt the assistance he gave was limited or significant.
- In this scenario, the categorisations of harm varied across levels 1, 2 and 3, with three judges placing him in harm 1 (a full two levels higher than expected) because his action was endangering lives, and one further judge giving serious consideration to harm 1 but deciding on harm 3. These differences in categorisation led to very variable sentence starting points for this scenario, from 15 and 12 years (in the case of two judges who categorised it at levels C/D1 and C2 respectively) to 4 and 3 years (where the judges gave a C/D3 and D3 categorisations, respectively).

³ It should probably be noted that this is the most ambiguous of the scenarios in terms of what the plan is, and how advanced it is.

- Overall, a potential concern may be **the frequency with which judges categorised offenders at higher levels of culpability and harm than the team expected**. As shown in the tables, across two out of the four scenarios, at least half of the judges who sentenced the scenarios categorised the offenders at a higher level than anticipated, and there were no instances in which judges gave a lower than expected categorisation. This is illustrated in the colouring of the tables where light red/grey indicates ‘as expected’ and dark red/grey indicates ‘higher’. For s5, there is therefore a potential risk of sentence inflation above and beyond that intended by the Council.

b. Culpability factors

- Based on the differences in the judges’ thinking described above, it was clear that particularly for lower seriousness s5 cases, **judges found it difficult to differentiate cases on the basis of fine gradations in (a) how advanced preparations were (‘complete or almost complete’ versus ‘well advanced’); (b) level of participation (‘significant’ versus ‘lesser’); and (c) nature of their role (‘preparation’ versus ‘assistance’)**. Indeed, some judges commented that they found making these judgements difficult and/or confusing. For example, one said:

“Not sure what is meant by significant participant, lesser participant and the like - what one is doing to be a participant. Also, I’m not sure how someone who co-ordinates others is not a participant. And arguably someone who commits an act of significant assistance is a significant participant but they’re in different categories of culpability here. What it depends on is his state of mind, but the culpability doesn’t cover that.” (J 9)

- In particular, if a defendant committed a one-off act that was nevertheless important to the potential success of a plan (e.g. hiring and delivering a van, opening the gate of the electricity station, driving a friend to the airport to fight) there was a tendency for at least some judges to see the level of participation as significant rather than lesser, and/or to see the offender as participating rather than assisting. In the words of two judges:

“Well it’s perfectly arguable that someone who gets the bit of kit they haven’t got, without which plainly they can’t do what they need to do, is a significant participant, as opposed to a lesser participant.” (J 16)

“He’s a key player, lesser, but important because he’s giving them access to the area. He’s not a co-ordinator but he certainly matches bullet 2. Is he a significant or lesser? I do think he’s significant. (J 8)

- Consideration might therefore be given to sharpening the terminology around participation and role, in particular the use of the word ‘significant’ in A and B, which was construed as important in the context of the plan, rather than denoting a more global, leading role.
- The distinction between whether a plan was deemed ‘well-advanced’ or ‘almost complete’ was also a judgement call which resulted in variability, at least on basis of these relatively blunt scenarios, and consideration might be given to teasing these further apart (e.g. using ‘advanced’ rather than ‘well advanced’ in contrast to ‘complete or almost complete’).

- The culpability factor, ‘determined attempt to travel abroad to engage in terrorist activity’ attracted comment from a few of the judges. One or two wondered about its relevance, with one suggesting that this factor seemed to elevate the importance of acting or intending to act abroad, compared to acting domestically. One or two also wondered how they would classify a ‘less than determined’ attempt to travel abroad.

c. Harm factors

- As discussed above, in one of the scenarios in which an offender drives his friend to the airport in order to fight in Syria (scenario 3 – see Table 3) some judges took the view that, applying the guideline entirely logically, his actions were endangering life and hence placed him in harm 1 (with several making the point from Kahar that where those lives will be lost, home or abroad, is immaterial). Leading on from this there was **some wider sense that almost all terrorism activities will endanger life and could go in harm 1, leading potentially to very high sentences across the board.** In one judge’s words:

“My problem was that category one is so wide. On the basis it is terrorist activity, most terrorist activity is going to be intended to take life, they are not doing it to injure people. [] How would we apply category one if, for example, there was a terrorist plot to blow up a road tunnel at night, at night time and still open [] still real risk of people being killed, but the intention is to create carnage? [] It will endanger life but it is difficult to say those types of attacks are the same as packing a lorry full of explosives and driving it into a city. And yet on these you’ll be starting from the same category of harm. It ought to be made clear that’s what we mean to do or sub-divide it.” (J 6)

- Judges had various views on how harm should **better discriminate across different types of offence**, including: that the number of lives endangered should be taken into account at Step 1 (two judges); that the level of harm should differentiate between direct endangerment of life and indirect endangerment of life (as per the driver’s actions); or that it should differentiate between a clear intention to actually kill, and more incidental endangerment of life (as per the quotation above). The latter suggestion hints at the importance of intent and mindset, as per one of the quotations under culpability, above (“*What it depends on is his state of mind, but the culpability doesn’t cover that*”).
- A couple of the judges also objected to the inclusion of ‘widespread’ as a descriptor at harm 2, seeing this as difficult to pinpoint and holding the potential to cause argument in court.

d. Views of starting points and ranges

- Judges generally viewed the **starting points and ranges in the guideline as high, but acceptable** given the gravity of these offences and the current high level of threat from terrorism. For some scenarios, some of the judges felt that the sentence levels were too high, but these tended to be for scenarios that they had categorised at a higher level than the team expected, with their intuitive sentences aligning more closely with the sentence for the category we expected them to choose.
- However, there were exceptions to this general pattern. In particular, **several of the judges who were more experienced in hearing these types of case considered the sentence levels**

too high, even in cases where their categorisation met our expectations, using phrases like, ‘swingeing’ and ‘hefty’ and expressing their ‘discomfort’. Concerns centred around proportionality compared with other offences (*‘you wouldn’t be at a starting point of 35 years even on a double murder, and this has not in fact in this case resulted in anybody losing their life’*); proportionality in relation to role (e.g. giving a ‘star-struck’ 19 year old a draconian sentence that comes close to the one given to the ‘main man’); and some sense that punitive sentencing may result in disaffection and further radicalisation:

“Well I think it’s lifting sentencing. Particularly on s5 and I think the danger is you risk deepening radicalisation particularly amongst those whose participation is comparatively limited. I think the problem with terrorist cases is that they attract a lot more attention than the usual run of cases – at least at the moment they do – judges are only human, they don’t want to appear to be soft on things and if the guidelines suggest a heavy sentencing and the case broadly speaking fits into the categories that’s that what they’ll do. I’ve expressed some views that suggest I’m soft on sentencing, I don’t think I am actually, but I think you need more breadth and flexibility, certainly on s5 than these give you.” (J 7)

- There were also comments to the effect that given the wide range of types of offending behaviour that this guideline covers, **the ranges sometimes felt narrow**. Several judges used the term ‘bunching’ to describe this. For example, one judge felt that the effective range was low because, due to lack of mitigating factors in the guideline, a judge would generally be sentencing between the starting point and upper boundary. Another noted the wide gaps between starting points across different culpability levels compared to the fine-grained difference which would take an offender into culpability A, B or C. Against the general backdrop of high sentences, judges sometimes seemed to want to take the sentencing of scenarios lower in the range than the guidelines permitted.
- The inclusion in the sentencing table of suggested **extension periods for offenders deemed dangerous met with some consternation**: some judges felt this was the wrong place and that although the guideline correctly points to Step 5, their inclusion in the table sets an expectation that dangerousness will be found. For others, this simply seemed to feel a step too far in terms of the Council’s reach over their decision making.

e. Aggravating and mitigating factors

- As discussed previously this particular road testing exercise did not explore aggravating and mitigating factors in detail, although some observations were made. In particular, the significant minority of judges who were uncomfortable with the starting points and ranges (even when they classified the offence as expected by the team) would look to mitigate, and there was some sense that the guideline offered relatively little by way of prompted mitigating factors.
- Importantly, **some judges felt strongly that the youth and/or impressionability of the defendant should feature in the guideline** (the same point was made in relation to the s1 and 2 guideline). Some judges assumed age and immaturity was included as a mitigating factor and others found it very conspicuous by its absence. For example, one said:

“Grooming is a significant feature, especially with younger people in these type of cases and that word doesn't appear anywhere. [] I think if there is evidence that a person was vulnerable and impressionable and had been groomed I think that is a factor would mitigate my view substantially” (J K)

- One or two judges also noted the absence of targeting an impressionable or young audience as an aggravating factor, and, perhaps influenced by the current spotlight on attacks on emergency service workers, one or two felt that targeting this group should be a specific aggravating factor.

4. Collection of Terrorist Information (s58) Guideline, Encouragement of Terrorism (s1) and Dissemination of Terrorist Publications (s2) Guideline

a. Categorisation of culpability and harm in the scenarios

- **The first scenario in s58 was generally categorised consistently and as expected by the team.** An offender who was found in possession of a soldier’s address, knife and newspaper article, 10 minutes from the soldier’s house in Scenario 5 was categorised as culpability A (bar one judge who chose B) and harm category 1 (bar one judge⁴ who chose 2).
- Some of the judges struggled with the harm factors in the second s58 scenario (scenario 6 – see Table 7) where the offender had no terrorist connection, but had collected material that provided instruction for building a detonator and other items that could endanger life. In this scenario, it stated that the court had accepted the offender had obtained the materials purely out of curiosity. The offenders case might have fallen into harm category 1, which was expected by the team, but most judges placed the offender in harm category 2 on the basis that they did not intend the materials to be used by anyone engaging in terrorist activity. The culpability was unanimously categorised as C, as expected by team.
- **The sentencing in s1&2 guideline was varied,** depending on the scenario.
- The offender in scenario 7 (see Table 4) who glorified the murder of the British soldier attracted the most variable culpability responses. The team expected the culpability to be B, however opinion was generally divided between A and B and one judge thought that it was a C. The judges that placed the offender in B did so as they considered the offender to be **reckless** as to whether others would be encouraged (as expected by the team), however, those who placed the offender in A considered the offender to have **intended** to encourage others. Most judges categorised the harm as 2 because the offender was **indirectly** encouraging or glorifying terrorist activity which endangers life (as expected by the team). However, a couple of judges categorised this scenario higher than expected by placing the offender in category 1 stating that the offender **directly** encouraged or assisted terrorist activity which endangers life.
- In scenario 8 (an offender who was convicted for distribution of two extremist videos, but who only had a small following on social media, see Table 5) opinion was generally divided between culpability B and C. The judges that chose to place the offender in culpability B did so because

⁴ This was not the same judge who chose the culpability category as B instead of A.

they considered the offender to be reckless as to whether others would be encouraged or assisted to engage in terrorist activity **and** published statement/disseminated publication widely. The judges who placed the offender in culpability C (as expected by the team) considered the offender to be reckless but did not perceive the publication to have been disseminated widely. One judge could not decide between B and C as they were unsure whether the publication was disseminated widely. **The variation suggests that whether an offender is placed in B or C was dependent on the judges' interpretation of the word 'widely'.**

- This scenario attracted the most variable harm responses. Half of the judges placed the offender in harm category 1, as expected by the team, with the view that the offender directly encouraged or assisted terrorist activity which endangers life. A couple of judges categorised the harm as 2, one judge because the offender directly encourages terrorist activity not endangering life and one judge because they indirectly encouraged or glorified terrorist activity which endangered life. One judge chose category 3 because the offender was indirectly encouraging or glorifying terrorist activity not endangering life.
- In Scenario 10⁵ (a female offender providing information to an undercover officer whom she believed to be a fellow extremist – see Table 6) judges unanimously categorised the culpability of the offender as A which was expected by the team. Judges' views on harm in this scenario differed from those of the team, who saw the scenario as a harm 3. Two out of the three judges categorised the harm at 2 and the remaining judge, whilst categorising the harm at 3, stated that this offender does not belong in 3 but they could not get the offender into harm category 1 or 2 on the basis of the factors presented. Of the judges' who categorised the offender as harm 2, one judge did so because of the factor 'directly encourages or assists terrorist activity not endangering life' and the other judge did so because there was no evidence to place the offender in category 1. A couple of the judges had difficulty in sentencing this scenario and were influenced by looking at the starting points. Caution should be used when using these findings as only three judges took part in sentencing this scenario.

b. Culpability and harm factors

- Based on the consistent sentencing in both s58 scenarios this suggests that there were no issues with interpreting the culpability or harm stages in the guideline. This is further supported by no issues being raised from the judges when considering the culpability section in this guideline, although one judge queried how they should gauge risk in harm: does the guideline mean any risk at all, or substantial risk? The judge suggested that this encompasses a lot of behaviour between recklessness and real intent.
- Despite the differences in judges' views on s1&2 culpability outlined only one judge commented on the content in the culpability section of this guideline. The judge queried how anyone placed in culpability C has committed an offence. They argued that if the offender is not intentional and not reckless then how can this be a s1&2 terrorism offence *"if you're not intentional and you're not reckless, the way I read the statute, you're not committing an offence. There has to be intention doesn't there?"*.

⁵ Scenario 9 was sentenced consistently and as expected by the team in road testing and therefore has not been discussed in this short paper.

- Some observations were made about harm in the s1&2 guideline; however, each of these were raised by only one judge and included:
 - Querying whether the word ‘indirectly’ applies to both ‘encourages’ and ‘glorifies’ in the first bullet point of harm category 2.
 - A view that the categorisation for a publication is not very sophisticated given that there is a whole range of terrorist publications (e.g. a slogan on a t-shirt or a fiery speech by someone with influence) and a range of what and how seriously it encourages terrorist activity. However, another judge disagreed with this, suggesting that the range can be captured in the aggravating section of the guideline.
 - One judge felt that the word ‘evidence’ and ‘directly encourages’ did not fit with the word ‘intended’ and that in these types of cases it is difficult to find evidence of intent.
 - Referring to category 2 a judge suggested that the word ‘indirectly’ is a very wide descriptor in other areas of the law and clarification on what this means would be helpful.
 - One judge felt that the harm was difficult to place (specifically in scenario 2) because there are two offences in one guideline. They did not feel that category 2 harm dealt with encouragement and queried what was meant by ‘indirectly encouraged’ (as mentioned in the above bullet as well).

c. Views of starting points and ranges

- In s58 most judges expressed that they were comfortable with the starting points. However, one judge was particularly concerned about lower level terrorism offences and the risk that over sentencing may lead to further radicalisation and felt that this needs to be acknowledged somewhere in the guideline. In scenario 5 (the offender found 10 minutes from a soldier’s house) a couple of judges felt that this sentence was too low. However, comments from the judges suggest that concerns over the starting point being too low were based on the interpretation that the offender was not charged, in their estimation, under the correct offence (this scenario felt very much like a preparation offence to them).
- In s1&2 the majority of judges stated that they were comfortable with the starting points. On a few occasions judges suggested that the sentences felt too high or too low, however, in all but one case words like ‘little’, ‘bit’ and ‘slightly’ were used to describe how much higher/lower the sentences were compared to what the judge was comfortable with. This suggests that even when the sentence was higher/lower than the judge anticipated, this was not by a big margin.
- Only one judge had a strong view about a sentence being too low: this was the female offender who assisted with giving an undercover officer information about a potential route to Syria, and the judge suggested that the sentence was not comparable/proportionate to what an offender would get if they had been charged with a fairly similar s5 offence (e.g. the driver who takes his brother to the airport to go and fight).
- Some other observations were made about the ranges in s1&2. A couple of judges queried the use of suspended sentences for terrorism offences and whether they were appropriate, one of the judges suggested putting advice on whether suspended sentences can be used in the guideline (although the sentencing of s58 scenarios showed that judges were considering

suspending for the lowest level offences). One judge felt that the range for category B1 was too high in cases where culpability was based on recklessness. There was a view by another judge that ‘bunching’ happens at the top of the range, suggesting that there is not enough scope at the top and that there is a greater range at the bottom end. In particular this judge felt that there needed to be sufficient range in the top category so that it covers the worst imaginable offence.

d. Aggravating and mitigating factors

- As discussed previously this road testing exercise did not explore aggravating and mitigating factors in detail, although some observations⁶ were made when discussing the s1&2 guideline. These included: having the corollary of the aggravating factor ‘significant volume of terrorist publications published or disseminated’ in the mitigating factor section e.g. one publication; adding disseminating this to youths as an aggravating factor; considering the role of agent provocateur in the mitigating factor section (in some cases the offender’s culpability may be exaggerated if they are playing up to the undercover person); and adding a lower threshold for change of mindset, something to show the offender is showing signs of engagement which may lead to a change in mind e.g. being open to rehabilitation.

5. Deterrent sentencing

- As discussed judges generally felt that the Council was taking sentencing higher, continuing a trend that began with Kahar. Judges saw one of the Council’s aims as deterrence and some also mentioned reassurance to the public. Most judges seemed to feel that there was a place for deterrence at the lower end of seriousness for this type of crime and in lower level offences (s1 and 2 and s58), although they did not think it carried any weight for those propelled by a strong ideology and bent on committing terrorist acts. Some noted the danger with long sentences of making martyrs and risking deeper radicalisation through the prison experience and because of general disaffection with authority. However, generally, there seemed to be a feeling that deterrence can and should play a part in countering the draw of terrorism for some people and in some communities.

⁶ Each of these was mentioned by one judge only.

Table 1: Sentencing Table for Scenario 1 (s5)

Offender A was a 19 year old builder's apprentice of previous good character who communicated with radicalised individuals in chat rooms and was aware that one of his contacts was plotting a terrorist attack. A was never entrusted with the details of the plan but he bragged about the forthcoming attack and agreed to supply the group with a van on the weekend of the attack, agreeing to meet them with it at 9pm on the Saturday night. He was arrested on the Saturday morning.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	B	Lesser participant, preparations are almost complete	1	Endangerment of life	Life, minimum term 20 years		
Judge 2	B	Lesser participant, preparations almost complete	1	Endangerment of life	Life, minimum 20 years	Content, 'given the level of carnage that was about to be caused'.	Judge would probably have given a long determinate sentence if defendant came before him now.
Judge 3	B	Lesser participant, preparations almost complete	1	Endangerment of life	Life, minimum 18 years	Sentence felt too high.	Judge would want to mitigate on basis of youth.
Judge 4	B	Lesser participant, preparations almost complete	1	Endangerment of life	Determinate sentence of 30 years	Judge initially felt sentence was too high, then reconsidered and felt it acceptable given potential loss of life	
Judge 6	B	Lesser participant, preparations almost complete	1	Endangerment of life	Life, minimum 20 years	Judge considered sentence high, but to deter sentences need to be as high as	Judge would probably have given a long determinate sentence if defendant came before him now.

						those who fulfil plan.	
Judge 17	B	Lesser participant, preparations almost complete	1	Endangerment of life	Life, minimum 20 years	Judge would see this as Kahar level 2 and give life with 18 year minimum.	
Judge 16	B	Significant participant, preparations well advanced	1	Endangerment of life	Life, minimum 20 years	Judge would see this as Kahar level 2 and give 21-30 years.	
Judge 13	B	Significant participant, preparations well advanced	1	Endangerment of life	Life, minimum 20 years	Judge would prefer a higher sentence.	Judge noted that the difference in starting points at A and B is high, given <i>'there is so little to choose between A and B'</i> .
Judge 15	B	Lesser participant, preparations almost complete	1	Endangerment of life	Life, minimum 12 years		Judge thought he might give a <i>'hefty determinate'</i> sentence if offender came before him today. Judge would want to mitigate on basis of youth.

Table 2: Sentencing Table for Scenario 4 (s5)

Offender A, an electrician at an electricity substation in London, was a member of a proscribed organisation and had a number of contacts with those involved in terrorist acts. One of these contacts told him he was preparing a terrorist attack across London which would cause major disruption to the power supply. The contact said he would not tell A the details of the plan, but asked him to help him gain access to the relevant area of the substation. On the night of the attack A met an unknown male outside the substation. He held the door to the substation open, handed him a plan of it and walked away. They were under surveillance and were arrested at the scene.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	C	Acts of significant assistance or encouragement to others	2	Substantial impact on civic infrastructure	15 years' custody		
Judge 5	B	Lesser participant, preparations complete or almost complete	2	Substantial impact on civic infrastructure	Life, minimum 15 years	Found this sentence high for holding a door open.	Judge would probably have given a similar sentence if defendant came before him now.
Judge 7	C	One of the first two bullets	2 (possibly 3)	Either bullet	15 years' custody	Sentence felt too high.	Sentence felt high compared with other criminal activity.
Judge 8	B	Lesser participant, preparations are complete or almost complete	2	Either bullet	20 years' custody	Judge saw this as Kahar level 1.	Judge would give the same sentence if it came before him today.
Judge 9	C	Judge felt that this could be 'reasoned' into B as well, but actions were not equivalent to other bullet points in B	2	Widespread and serious damage to property or economic interests	15 years' custody	Judge would give a sentence of 8-12 years currently.	

ANNEX G

Judge 10	B	Judge debated A or B but decided on B on basis of 'lesser participant, complete or almost complete'	2	Substantial impact on civic infrastructure	25 years' custody	Judge felt sentence was too high.	Judge found it difficult to decide whether participation was significant or lesser. Judge felt sentences were very high for offences not risking loss of life.
Judge 11	C	Lesser participant in activity where plans are well advanced and act of significant assistance to others	2	Both bullets	15 years' custody	Saw this as Kahar level 4, so attracting exactly the same sentence	Judge felt that it was not appropriate to have the same starting point sentence for just one life compared to many.
Judge 12	C	Acts of significant assistance or encouragement to others	2	Both bullets	15 years' custody	Judge felt sentence was high, but reflected that this was a terrorist offence	
Judge 14	A	Significant participant in terrorism activity where preparations are complete or almost complete	2	Widespread economic and civic interests	Life, minimum 25 years	Judge found sentence ' <i>surprisingly high</i> ' but felt this could be his lack of being 'in tune' with sentencing in cases like this.	Judge found it difficult to differentiate between the two bullets in harm 2.
Judge 18	B	Significant participant in terrorism activity where preparations are well advanced	1 or 2	Endangerment of life or substantial impact on civic infrastructure	15 years' custody (or so)	Quite high	Judge would have given a lower sentence had it come before him today

Table 3: Sentencing Table for Scenario 3 (s5)

Offender E, a member of a group that supported terrorism, drove a fellow member, F, to the airport from where F intended to travel abroad to the base of the proscribed organisation to take part in training and support for their cause. E and F were both arrested at the airport. Materials were recovered from E's home that showed his support for terrorism and for the proscribed organisation. E was convicted after trial.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	D	Act(s) of limited assistance	3	Other cases where characteristics for 1 and 2 not present	4 years' custody		
Judge 2	C/D	Judge unsure whether they would say limited or significant assistance	1	Endangerment of life	15 years' custody	Initial reaction was that this sounds high, but would be true to the guideline.	Judge felt guideline should differentiate between direct and indirect endangerment of life.
Judge 3	D	Act(s) of limited assistance	1	Endangerment of life	10 years' custody	Sentence felt too high so judge chose starting point at lowest end.	Judge felt a starting point sentence of 4 years is about what he would give, and he felt this was high.
Judge 4	C	Determine attempt to travel abroad to engage in terrorist activity	3	Other cases where characteristics for 1 and 2 not present	7-8 years	Judge felt this starting point was about right.	Level 5 of Kahar.
Judge 6	C	Act(s) of significant assistance	3	Other cases where characteristics for 1 and 2 not present	8-9 years	Judge would have given a lower sentence – 5 or 6 years.	Judge would probably have given a long determinate sentence if defendant came before him now.

ANNEX G

Judge 17	C	Determined attempt to travel abroad to engage in terrorist activity	2	(Not given)	12 years	Judge reduced the starting point	Level 5 in Kahar (5 to 10 year range).
Judge 16	C or D	Act(s) of limited or significant assistance	3 (Judge gave some consideration to 1)	Other cases where characteristics for 1 and 2 not present	4 years		
Judge 13	D	Act(s) of limited assistance	3	Other cases where characteristics for 1 and 2 not present	3 years	Judge would take a slightly lower starting point than the guideline.	Level 5 in Kahar (5 to 10 year range).
Judge 15	C	Act(s) of significant assistance	1	Endangerment of life		Judge did not give a starting point as C1 starting point felt too high.	Judge would feel more comfortable with 8 year starting point for C3, but did not feel they could ' <i>make that fit</i> '.

Table 4: Sentencing Table for Scenario 7 (s1&2)

G 'glorified' the murder of a British soldier who had been killed in an act of terrorism in the UK. He posted videos on social media that were "offensive in the extreme". The court heard the first of the three videos was made on the day the soldier was murdered, with G hailing it as a "brilliant" day. It was edited with graphic images and posted on social media the following day. The second video contained the same edited images and included G ranting about how British troops would be killed in London. In a follow-up video, G mocked the outpouring of public grief, laughing as he drove past floral tributes. G had 2500 followers on his social media account.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	B	Reckless as to whether others would be encouraged or assisted to engage in terrorist activity and published statement/disseminated publication widely	2		3 years' custody		
Judge 3	C	Other cases where characteristics for categories A or B are not present	2	Indirectly encourages or glorifies terrorist activity which endangers life.	3 years	Judge was comfortable with the starting point.	Judge was unsure if the word 'indirectly' applies to the word 'glorifies' in the first bullet of harm category two. Sentenced on the basis that it does not apply.
Judge 4	B	Reckless as to whether others would be encouraged...	2	Not stated.	3 years	Judge was comfortable with the starting point.	If sentenced today the judge may go slightly lighter – 2.5 years.
Judge 5	A	Intended to encourage others	1	Not stated.	5 years	Judge was comfortable with this starting point.	The judge would sentence the same if sentencing today.

Judge 6	A	Intended to encourage others	1	Directly encouraging.	5 years	Judge was comfortable with this starting point.	The judge was not entirely certain on the harm category.
Judge 9	B	Reckless as to whether others would be encouraged...	2	Indirectly encourages or glorifies	3 years	Judge feels this sentence is to light.	The judge would have gone to 4 years if sentenced today.
Judge 10	B (but battle between B and A)	Not stated	2	Indirectly encourages or glorifies	3 years	Judge was comfortable with this sentence.	The judge would have sentenced the same if sentencing today.

Table 5: Sentencing Table for Scenario 8 (s1&2)

On 16th Dec 2014 police seized H's computer. It contained 40 videos that appeared to be extremist. The jury convicted in respect of 2 of those videos. H posted these two separate videos on social media where they were publicly accessible through the internet. In doing so he was reckless as to whether they would encourage the commission, preparation or instigation of acts of terrorism. The first video encouraged 'martyrdom' and the second encouraged violence and fighting. The distribution was via social media, but H had a very small number of followers.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	C	Other cases where characteristics for categories A or B are not present	1	Directly encourages terrorist activity which endangers life	3 years		
Judge 3	C	Same as above (reckless but isn't wide dissemination)	2	Directly encourages terrorist activity (more martyrdom)	18 months	Judge is comfortable with this starting point.	This is slightly lower than the given starting point in the guideline.
Judge 4	C	Same as above	3	Indirectly encourages or glorifies terrorist activity not engendering life	1 year	Judge is comfortable with this starting point.	Judge suggests that guidance on suspended sentences should be included in the guideline so that judges know that they can suspend terrorism offences.
Judge 5	B	Reckless as to whether others would be encouraged...	1	Directly encourages or glorifies terrorist activity which endangers life	5 years	Judge feels this starting point is a little high.	
Judge 6	B	Reckless as to whether others would be encouraged...	1	Same as above	5 years	Judge suggests this is an area they are not familiar with.	

Judge 9	B	Reckless as to whether others would be encouraged...	1	Same as above	4 years	Judge is comfortable with this starting point.	The Judge would have sentenced the same if sentencing today.
Judge 10	B or C	Unsure whether it was 'disseminated widely'	2	Indirectly encourages or assists terrorist activity which endangers life	2 years	Judge is comfortable with this starting point	If it was B2 this starting point would be slightly lower than in the guideline.

Table 6: Sentencing Table for Scenario 10 (s1&2)

Female offender, J held extremist beliefs. This was evidenced by her online activity. In 2016 an undercover officer, posing as a fellow extremist, made contact with her via social media. He said he was looking to travel abroad to join a proscribed organisation. She told him she knew people who had gone and that when he was ready he should let her know. He did not say what his intentions were in joining the group.

A week later he got back in touch and said he had funds and was now ready to go. J messaged him a screen shot of a conversation she had had with another male who had taken the same trip the month before. The screenshot showed the route that that male had taken and provided information about how to join up with the proscribed organisation.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	A	Intended to provide assistance?	3	Other cases where characteristics for categories 1 or 2 are not present?	3 years		
Judge 2	A	Could argue both intended to encourage and intended to provide assistance	2	Directly encourages or assists...not endangering life.	4 years	Judge was happy with this starting point	Judge would have given the same sentence if sentencing today
Judge 7	A	Intended to provide assistance	2	No evidence that it was intended or encouraged	4 years	Judge thought this was too low.	Judge feels that the word 'evidence' does not fit with 'intended to be caused' in harm.
Judge 8	A	Intended to provide assistance	3	Nobody has actually acted on or been assisted.	3 years	Judge was happy with this starting point	Judge felt that harm was difficult to decide because of having two offences in the same guideline.

Table 7: Sentencing Table for Scenario 6 (s58)

K was residing at a voluntary drug rehabilitation clinic and whilst there used the communal printer to print off a document about detonators. The police were called and on searching his room found a manual instructing its readers on how to use the internet whilst avoiding surveillance by the authorities. At the clinic he had conducted internet searches for detonators, conspiracy theories and anarchist theories. It was accepted that the offender did not belong to any terrorist organisation. He claimed, and it was accepted, that he was simply curious, and was researching purely out of interest. He pleaded guilty.

Judge	Culpability level	Culpability factors	Harm level	Harm factors	Starting point	View of starting point	Judges' observations
Expected	C	The offender had no terrorist connections or motivation and had no intention to use or share the information.	1		1 year		
Judge 2	C	Same as above	2 (but could be justified as 1)	All other cases	1 year	Judge was comfortable with this.	Judge would have gone slightly higher if sentencing today but still within suspended sentence range.
Judge 3	C	Same as above	2	All other cases	1 year	Not stated.	Judge would have sentenced about the same if sentencing today.
Judge 4	C (could justify it as B)	Same as above	2	All other cases	1 year	Judge was comfortable with this.	Judge queries the difference between Cat C and the last point in Cat B.
Judge 5	C	Same as above	2	Not stated	1 year	Judge was comfortable with this.	Judge was unsure about how they should gauge risk.
Judge 6	C	Same as above	2	All other cases	9 months	Not stated.	Judge found the lower range harder. There is a risk that over sentencing may lead to further radicalisation. This

							may not need to be built into the figures but acknowledged somewhere in the guideline.
Judge 7	C	Same as above	2	All other cases	1 year	Judge was comfortable with this.	Judge would be slightly higher if sentencing today but still with the potential to suspend.
Judge 8	C	Not stated	2	Not stated	6 months	Judge was comfortable with the sentence they wanted to give.	Judge would have sentenced about the same if sentencing today.
Judge 9	C	Not stated	1	Not stated	2 years	Judge was comfortable with this.	Judge would have sentenced about the same if sentencing today.

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