

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**26 January 2018**  
**SC(18)Jan03 - Terrorism**  
**Julian Goose**  
**Vicky Hunt**  
**020 7071 5786**

## **1 ISSUE**

1.1 The Council is invited to consider proposed change to the remaining guidelines during today's meetings. Two sessions have been scheduled and it is suggested that we consider the guidelines in the following order:

### 1.2 Session one:

- Preparation of Terrorist Acts (Annex A)
- Explosive substances (Annex B)
- Failure to Disclose Information (Annex C)

### 1.3 Session two:

- Encouragement of Terrorism (Annex D)
- Collection of Terrorist information (Annex E)
- Possession for Terrorist Purposes (Annex F)

1.4 Each session will start with a brief summary of the roadtesting by the Analysis and Research team. A detailed write up of the findings can be found at Annex G.

## **2 RECOMMENDATION**

2.1 It is recommended that the Council discuss the following main issues:

- In the preparation of terrorist acts guideline: whether proximity to completing the terrorist act should play such a pivotal role in culpability
- In the preparation of terrorist acts guideline: whether harm should be linked to intention, recklessness and likelihood of causing harm
- In the preparation of terrorist acts guideline: some proposed amendments to the sentencing table and the guidance around dangerousness

- Whether the high culpability factor in the Explosive Substance guideline needs amendment
- Whether the Council want to add additional step 2 factors to the failure to disclose information guideline

### 3 CONSIDERATION

#### Preparation of Terrorist Acts

##### Culpability

3.1 Whilst many respondents agreed with the culpability factors there were a number of respondents both at consultation, and at the academic roundtable, who raised concern about the prominence given to the proximity of the act being carried out in the culpability factors.

I am not convinced that the state of advancement of the preparation should be given quite such prominence as an indicator of culpability. The man in New York hired his van 1 hour before he attacked. The problem is that the new type of attack requires very little preparation so to judge its seriousness by how far that process has got is not always the best yardstick. The question surely is what they intended and whether they had the capacity to bring it about and whether, but for intervention, it would actually have happened. The completeness of the preparation will be evidence of this state of affairs, but in all s.5 cases an intention that there should be an act of terrorism will have been proved. – **Mr Justice Edis**

Turning to culpability: whilst the extent of the completion of the plan is clearly an important factor in determining culpability, I would hesitate to say that it is the sole determining factor. It is a slightly surprising outcome that an offender sentenced for a less sophisticated and less pre-meditated offence is more likely to be determined to be of higher culpability than those engaged for perhaps many months in a complex and sophisticated plan, simply because, by definition, the unsophisticated plan is far more likely to be complete or near complete. Someone could hatch an unsophisticated plan in a matter of minutes and find themselves assessed as Culpability A whereas the offender plotting a sophisticated and devastating attack for months could be assessed as Culpability B because some parts of the plan are yet to be finalised. In the sentencing of an inchoate offence, there is a strong argument that the more sophisticated planner should be held to have a higher degree of culpability. – **Jonathan Bild (academic)**

3.2 Having looked again at the cases it does seem that even amongst the ‘sophisticated’ type cases which involve months of planning with multiple offenders; the cases that are nearer completion have always received higher sentences. For example, the plot to bomb a number of transatlantic aircraft involved multiple offenders, months of planning, purchasing of materials to build bombs, identifying relevant flights and making suicide videos. The preparations were complete and the plan was to carry out the attacks imminently. The main offenders received sentences of life minimum 40 years (after trial).

3.3 Whereas the sentences received by the offenders of the ‘fertiliser plot’ were far lower yet this was also a sophisticated plot, involving months of planning, with numerous offenders playing separate roles. In this case the group had planned to bomb a key target and had considered a variety of targets including Bluewater shopping centre and the Ministry of Sound nightclub, they had purchased 600kg of fertiliser and were storing it in a storage facility, aluminium powder had been purchased and a detonator designed and partly constructed. However, the offenders had not yet begun to assemble to bomb, and so their plan was well advanced but not complete or almost complete. The main offenders in this case got life minimum 20 years (after trial).

3.4 In the more recent ‘three Musketeers’ case the main offenders were involved in many weeks of planning, they had a partly constructed pipe bomb, 11 shotgun cartridges, a meat cleaver with the word ‘Kaffir’ scratched on the blade, an air pistol with a magazine attached to it with gaffer tape, a separate roll of gaffer tape and a 9mm bullet. The Judge said that *an attack was imminent, albeit not necessarily immediate*. The main offenders received sentences of life minimum 20 years (after trial).

3.5 So it is clear that even sophisticated plots require the offenders to have either completed or very nearly completed their preparations in order to receive a top sentence. The real issue seems not to be that offenders involved in ‘sophisticated’ terrorist plots will get less under our new model, but rather is it right that ‘unsophisticated’ ones who take less time planning and need only arm themselves with a van and a knife, should get the highest sentences if they are caught just before taking action. Had the London Bridge attackers been caught the night before their attack should they have been looking at a sentence in the region of life minimum 40 years? If so the model should remain as it is.

3.6 Mark Rowley raised some separate concerns:

However, I do have some concerns, the most significant of which is the association between culpability and how advanced the plot may be... It is the Police view that there is a clear public policy concern that this linkage may lead to a perverse outcome. The overriding focus of the police is, of course, public safety. Public safety is promoted in part by disrupting terrorists

which, in turn, is assisted by the imposition of lengthy prison sentences for those convicted. To have a sentencing regime that encourages the police to delay a disruption and allow a plot to run on, so as to increase the eventual likelihood of a substantial sentence, runs the risk of putting public safety at risk. Given the nature of the current threat, terrorists can escalate unsophisticated plots extremely quickly, sometimes in a matter of hours. – **AC Mark Rowley**

3.7 With regard to the Assistant Commissioner's concerns, it would be a matter for the police to determine when to disrupt a terrorist plot, but clearly sufficient evidence would be needed before a section 5 charge could be brought in any event, and the court in sentencing would need to be certain that a significant terrorist act was planned before the highest sentences could be imposed. This will be the case regardless of how the guideline is drafted.

**Question 1: Does the Council want to maintain the existing top culpability level, linking the highest level to proximity alone?**

3.8 The roadtesting revealed some issues with the culpability factors. It seemed that, when testing the guideline, sentencers struggled 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').

3.9 Regarding the state of advancement; a number of sentencers questioned the difference between 'nearly complete' and 'well advanced'. They felt that they were too close and would lead to arguments in court, were the outcome could differ hugely depending on which choose the court made. The Council might instead consider keeping the phrase 'complete or nearly complete' but change 'well advanced' to 'advanced' to allow there to be a greater distinction between the two? (this is illustrated below\*)

3.10 In addition, the Council may consider the following definition which could be added to the phrase 'complete or almost complete'; 'preparations are sufficiently advanced that an attack could be carried out imminently'. (this is illustrated below\*)

**Question 2: Does the Council want to change the phrase 'well advanced' as appears in culpability B to 'advanced', and is the Council content to add the definition as proposed?**

3.11 The main concern regarding participation seems to be that, in testing lower level scenarios, many sentencers placed the cases into higher culpability categories than we had anticipated, based on the offender's role. The Council chose the phrases 'significant participant' and 'lesser participant' to describe the offender's role, over the more traditional terms such as 'leading role', 'significant role' and 'lesser role'. The Council chose these terms

as it was understood that terrorist groups might have complex structures and it may not be easy for the court to ascertain what role that offender played.

3.12 However, by linking role to participation there is a risk of sentence inflation on the basis of the results of roadtesting. When looking at case scenarios with the Judges, in scenarios where we sought to demonstrate a case of 'lesser participation' or an offender who provides 'significant' or 'lesser assistance' to others the Judges frequently placed the offenders into the higher culpability categories on the basis of level of participation. The Judges often deemed the actions of the offender significant to the terrorist plot, therefore making them a 'significant participant'. The type of case used included an offender who knew nothing about the detail of a terrorist plot but helped the group to gain access to a particular facility or assisted them to hire a van, and an offender who drove a friend to the airport so he can travel to Syria. We think that if we had listed the factors in terms of the traditional roles the sentencers would be unlikely to have put these types of offender into such a high culpability category as it would be clear that these offenders do not have the status of 'leader'.

3.13 The Council may, therefore, want to amend the factors 'significant participant' and 'lesser participant' to 'leading role' and 'significant role' (this is illustrated below\*). These terms are more readily understood by sentencers, and whilst it may be difficult to determine an offender's role in a terrorist plot, arguably it can be equally difficult to do so in a complex drugs or fraud cases yet sentencers seem able to do so.

3.14 By changing these two factors to link them more clearly to role than participation, the factors in category C; 'act(s) of significant assistance or encouragement to other(s) (where not falling within A or B)', and category D; 'Act(s) of limited assistance or encouragement to other(s)', are likely to be better understood. It should now be clearer that the offender's falling into these categories are not playing leading or significant roles, they are on the periphery, but their actions aid those who are in key roles.

**Question 3: Does the Council want to amend the terms 'significant participant' and 'lesser participant' to 'leading role' and 'significant role'?**

3.15 A couple of the sentencers at roadtesting and one of the academics at the round table queried the inclusion of the factors 'offender travels abroad for terrorist purposes' and 'determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)'. These are factors similar to those referred to in Kahar. Without these factors, it would be very difficult to place an offender who had travelled abroad for terrorist purposes under the current model.

3.16 However, those that commented felt the factors were very specific and clearly aimed at those travelling to Syria. The Council has been careful to ensure that the guideline is not

specifically aimed at any one type of terrorism, and has tested the guideline against different types of cases including cases of right wing extremism, however it is difficult to think of a scenario where this factor might apply outside of Islamist terrorism.

3.17 One Judge also raised concern that this factor seemed to elevate the importance of acting or intending to act abroad, compared to acting domestically, which is clearly not the intention.

**Question 4: Does the Council want to maintain the factors ‘Offender travels abroad for terrorist purposes’ and ‘Determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)’.**

3.18 A couple of further minor changes are proposed to hopefully alleviate some other issues raised at roadtesting. The first is the addition of the words ‘offender makes’ to the start of the factor ‘determined attempt(s) to travel abroad...’ (should this factor remain). There were some testers who, when working through a case study which concerned an offender who had assisted another by driving them to the airport to travel to Syria, placed the offender in this category. Perhaps if it was clearer that this factor applies only when the offender themselves attempts to travel abroad, it may be more obvious that the type of offender described in the case study should be placed in either of the factors; ‘acts of limited assistance’, or ‘acts of significant assistance’.

3.19 A further minor change is to the factor ‘act(s) of limited assistance...’ it is proposed that this is changed to ‘act(s) of lesser assistance’. The reason for this proposal is that with just the two factors; ‘acts of significant assistance’ in category C and ‘acts of limited assistance’ in category D, sentencers may feel that there are a number of scenarios that would fall in the middle and may be unsure what factor best applies. I would suggest that if the act(s) did not amount to significant assistance the case should fall into culpability D, even if it appears that the assistance is greater than ‘limited’. It may make it clearer then if the term ‘lesser’ is used as it suggests less than something else, and in this case, it would mean less than significant.

**Question 5: Does the Council agree to these two minor changes?**

\*Illustration showing proposed changes (paras 3.5 – 3.16)

<b>Culpability demonstrated by one or more of the following:</b>	
A	<ul style="list-style-type: none"> <li>Acting alone, or leading role in terrorist activity where preparations are complete or almost complete*</li> </ul>
B	<ul style="list-style-type: none"> <li>Acting alone, or leading role in terrorist activity where preparations are advanced but <b>not</b> complete or almost complete*</li> <li>Significant role in terrorist activity where preparations are complete or almost complete*</li> <li>Offender travels abroad for terrorist purposes</li> </ul>

	<ul style="list-style-type: none"> <li>Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)</li> </ul>
C	<ul style="list-style-type: none"> <li>Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B)</li> <li>Offender makes determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)</li> </ul>
D	<ul style="list-style-type: none"> <li>Offender has engaged in very limited preparation of terrorist activity</li> <li>Act(s) of lesser assistance or encouragement to other(s)</li> </ul>

\* preparations are sufficiently advanced that an attack could be carried out imminently'

### Harm

3.20 Again, most respondents were content with the harm factors, however there were some significant comments. The main concern was that the top harm factor 'endangerment of life' is too broad and that almost any act of terrorism could ultimately lead to endangerment of life. This was particularly apparent in the road testing where sentencers frequently placed offenders into harm category one in cases where we had expected a far lower finding. For example, an offender who is planning a cyber-attack bringing down computers affecting public services.; this may endanger lives where it impacts the NHS or the emergency services, but this was not the intention. Or an offender who plans a black-out across London (this was one of the case scenarios). We would intend his case to fall into harm category 2 but some sentencers placed it into harm 1 as they felt life would be endangered.

3.21 A couple of the academic respondents proposed linking harm to whether the offender intended or was reckless as to whether harm would be caused. It could also be linked to the likelihood of harm being caused:

If the Council want to retain reference to 'harm' in how they structure the seriousness of these offences, the approach in the Guidelines could be improved through reference to the likelihood of harm occurring. An incidence of a pre-inchoate offence seems more serious if it is substantially more likely to lead to harm than an otherwise similar incidence of the offence. Yet the guideline does not allow for these more serious incidences to be recognised when harm is assessed. By way of example, Terrorist A intends to cause serious loss of life and has prepared a plan that will almost certainly cause this result if it is executed. Terrorist B, with the same intent, has created a plan that may or may not be actionable, and if actioned it is unlikely to cause a loss of life. If harm is to be assessed by intended harm only, then the guidelines could not distinguish between Terrorists A and B. – **Rory Kelly (academic)**

3.22 The benefit of considering likelihood of harm is that it gives the sentencer a way to reduce a sentence for an offender who may have fallen into a high category of culpability on the basis that he had a clear intention and had embarked on a terrorist plan, but the reality is

that he is not capable or his plans are not credible and the likelihood of him successfully carrying out an attack is very small.

3.23 To create a harm model that considers the intended harm, the type of harm, and the likelihood of harm we could adopt a model similar to that used in the health and safety guideline, which involves two stages: -

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- A: - Offender intended to cause loss of life
  - B: - Offender was reckless as to whether lives would be lost or endangered
    - Offender intended to cause widespread and serious damage to property or economic interests
    - Offender intended to cause a substantial impact upon civic infrastructure
  - C: - All other cases not falling into A or B

**When considering the likelihood of harm the court should consider the viability of the plan**

	<b>A</b>	<b>B</b>	<b>C</b>
<b>High likelihood of harm</b>	Harm category 1	Harm category 2	Harm category 3
<b>Low likelihood of harm</b>	Harm category 2	Harm category 3	Harm category 3

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**Question 6: Does the Council want to change the harm factors? And if so does Council agree with the changes proposed above?**

Sentencing Table

3.24 The consultation paper stated that the preparation guideline was likely to increase sentencing practice for those offenders who fall in the lesser serious bracket. Whilst most respondents were content with the sentence levels across the board there were some who were concerned about the justification for such an increase. This concern is linked to the purpose of sentencing that was discussed at the December meeting and will perhaps be alleviated by clarification of the purpose within the response document.

3.25 The Parole Board raised a concern about the sentencing table where an extended sentence is included:

... A prisoner serving an EDS is only eligible for release after he has served two thirds of the sentence. While some allowance seems to have been made for this, on the present ranges there could be injustice. For example, .... 1B gives a range of life imprisonment with a minimum



term of 15 – 25 years or an extended sentence of 30 to 40 years. The actual term that has to be served by the prisoner serving EDS before he is eligible for release is 20 – 26.7 years. That is longer than the person sentenced to Life Imprisonment.

3.26 Currently the guideline states.... *Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered.*

3.27 Perhaps this should be changed to read:

*\*.... Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. If a dangerousness finding is made but an Extended Determinate Sentence is imposed rather than a life sentence, a sentence approximately one and a half times the minimum term should be imposed, OR a sentence equivalent to the determinate term found in the table below plus an extended licence period of up to 5 years.*

**Question 7: Does the Council want to amend the guidance text as proposed above?**

3.28 The figures in the table below have been amended to address the Parole Board’s valid concerns.

3.29 In addition, a number of sentencers at roadtesting felt that EDS should not appear in the sentencing table at all and that this should be left entirely to the judge. If the Council agrees the sentencing table would look like this:

Harm	Culpability			
	A	B	C	D
1	<p><b>Starting point</b> Life imprisonment with a minimum term of 35 years*</p> <p><b>Category range</b> Life imprisonment with minimum term of 30 – 40 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 20 years*</p> <p><b>Category range</b> Life imprisonment with a minimum term 15 - 25 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 15 years*</p> <p><b>Category range</b> Life imprisonment with minimum term 10 – 20 years*</p>	<p><b>Starting point</b> 15 years’ custody*</p> <p><b>Category range</b> 10-20 years*</p>
2	<p><b>Starting point</b> 25 years’ custody*</p> <p><b>Category range</b> 20 – 30 years’ custody*</p>	<p><b>Starting point</b> 20 years’ custody*</p> <p><b>Category range</b> 15-25 years’ custody*</p>	<p><b>Starting point</b> 15 years’ custody*</p> <p><b>Category range</b> 10-20 years’ custody*</p>	<p><b>Starting point</b> 8 years’ custody</p> <p><b>Category range</b> 6-10 years’ custody</p>

<b>3</b>	<b>Starting point</b> 16 years' custody  <b>Category range</b> 12 – 20 years' custody	<b>Starting point</b> 12 years' custody  <b>Category range</b> 8- 16 years' custody	<b>Starting point</b> 8 years' custody  <b>Category range</b> 6 - 10 years' custody	<b>Starting point</b> 4 years' custody  <b>Category range</b> 3 years – 6 years' custody
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**Question 8: Does the Council wish to adopt the above sentencing table?**

3.30 Mr Justice Edis made the following comment about the sentencing table:

*... the Draft Guideline suggests that a dangerousness assessment should only be conducted in cases at the upper half of the s.5 2006 Act/Explosive Substances Act Tables. I think that the assessment should be done in all cases where an offender is convicted of a specified offence.*

3.31 This was not the intention of the guidance and the wording toward the end states “*This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.*” However, this is perhaps not clear enough so the wording could be amended as follows:

*“\*Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences [and/ or extended sentences]. However, the court should consider the dangerousness provisions in all cases, having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 in order to make the appropriate determinations.”*

**Question 9: Does the Council want to amend the guidance text as proposed above?**

Explosive Substances

3.32 Many of the decisions and discussions above will also apply to the Explosive Substances guideline as they are so similar. Any changes that the Council agree will be replicated for this guideline where relevant. The only issue specific to this guideline concerns the first culpability factor:

- Offender caused an explosion or used, developed or was in possession of a viable explosive device

3.33 A couple of respondents were concerned about including both those who actually cause an explosion and those who are ready to cause an explosion in the same level of culpability. The comparison was drawn with the preparation guideline where emphasis is placed on proximity to the offence, the respondents felt unclear as to why that same principal should not apply to these factors.

3.34 However, the top culpability factor in the preparation guideline (and the second factor in the explosive substance guideline) is for those cases where the preparations are ‘complete or almost complete’, arguably being in possession of a viable explosive device is the equivalent to ‘almost completion’ and so treating it the same as one that is complete seems to be consistent?

**Question 10: Does the Council want to amend this culpability factor or keep it as it is?**

Failure to Disclose Information

3.35 The Council started to look at this guideline at the December meeting but due to lack of time agreed to return to it this month.

3.36 One academic was concerned that the current draft does not distinguish between degrees of likelihood that the information could have been useful. *“Saying that the information “could have” prevented an act of terrorism or enabled an arrest to be made seems to me to be too broad”*. He suggests that culpability A and B could be divided into three categories each, one where the information would have been useful, one where it is likely that it would have been useful, and one where it might have been useful.

3.37 Section 38B provides that where a person has information which he knows or believes might be of material assistance in either preventing the commission by another person of an act of terrorism, or in securing the apprehension, prosecution or conviction of another person, in the UK, for an offence involving the commission, preparation or instigation of an act of terrorism he commits an offence if he does not disclose the information as soon as reasonably practicable. Therefore, by the point of conviction it will have been determined that the information is at least of material assistance, i.e. useful.

3.38 An academic at the roundtable event said that there is also the issue of what the person actually knew or believed, *“For example, an offender who has seen his brother looking at websites on bombmaking, compared with case study 11 in the consultation paper where the offender knew that his brother was planning a major terrorist attack. The latter is obviously much more significant, but no differentiation is made by the guideline.”*

3.39 The harm categories have attempted to capture this by ensuring that those who have information relating to activities which would endanger life would fall into category 1. If we build in additional factors about how much the person knew about the act this would mean either creating an extra level of harm or rephrasing the current category one to capture the worst examples, such as that described in the consultation case study. The difficulty of either of these options is that the statutory maximum is just 5 years and currently an A1 case goes up to the statutory maximum at the top of the range. If we reserve this category for just those

cases where the offender knew the full details of an imminent terrorist attack (or something equally as serious), then other cases would have to be downgraded and the Council may feel that the sentences received would be insufficient.

3.40 The Council might instead want to consider adding an aggravating factor along the lines of 'offender knew significant details of terrorist activity'. This would have the benefit of ensuring that a case, such as that described in the case study of the consultation paper, would still fall in A1 but would likely move to the top of the range; which seems the most appropriate outcome for this type of case. Whereas an offender who, for example, knew that their brother had been exploring terrorist material online and had started to build an explosive device, but did not know if this device would actually be used and if so what it might be used for or when, would still fall into A1 but his case would not be aggravated for this reason, resulting in a 4-year sentence.

**Question 11: Does the Council want to add a factor regarding what the offender knew? And if so should it be a step 1 or 2 factor?**

3.41 As was already raised under legitimacy in the December paper, some respondents expressed concern that the mitigating factors are too narrowly stated in terms of pressure or coercion.

*A significant portion of these cases has arisen in the context of family relations. Thus, one should recognise also the possibility of family or relational loyalties, especially where intensified by cultural traditions or gender imbalances. – Clive Walker (academic)*

**Question 12: Does the Council want to expand on the mitigating factor 'offender was pressured or coerced into concealing the information'.**

3.42 A significant minority of the judges at road testing also felt that sentence levels in the guideline were uncomfortably high at the lower end (in one judge's words, 'we've got to be careful not to over-sentence the minnows'). There were no comments or criticism of the sentencing starting points or ranges from consultee respondents, however it was suggested by the academics at the roundtable event that the lowest sentence in the guideline (i.e. the bottom of the range in B2) could include a sentence of high level community order as this might be the type of case where rehabilitation might be appropriate.

3.43 Amending this sentence might also assist with any potential concerns regarding legitimacy as the type of person likely to fall into this sentencing range will be one who had information that would have been of assistance in apprehending a person associated with terrorism where the terrorist act did not involve the endangerment of life or serious injury, or

involve substantial impact to economic interests. It could, therefore, be a woman who knows her son has joined a proscribed organisation, but has not notified the police. Her case might be further mitigated by being a primary carer for others, or by pressure or coercion. The Council may feel that a high-level community order might be appropriate in such a case.

**Question 13: Does the Council want to amend the B2 to include a high level community order within the range?**

#### **4 IMPACT**

4.1 The Analysis and Research team will be working on a final resource assessment over the coming weeks once we have progressed further with our revisions to the guidelines.

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## Preparation of Terrorist Acts

Terrorism Act 2006 (section 5)

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

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Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older

**STEP ONE****Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

<b>Culpability</b> demonstrated by one or more of the following:	
A	<ul style="list-style-type: none"> <li>Acting alone, or significant participant, in terrorist activity where preparations are complete or almost complete</li> </ul>
B	<ul style="list-style-type: none"> <li>Acting alone, or significant participant, in terrorist activity where preparations are well-advanced but not complete or almost complete</li> <li>Lesser participant in terrorist activity where preparations are complete or almost complete</li> <li>Offender travels abroad for terrorist purposes</li> <li>Offender coordinates others to take part in terrorist activity in the UK or abroad (where not falling within A)</li> </ul>
C	<ul style="list-style-type: none"> <li>Lesser participant in terrorist activity where preparations are well-advanced but not complete or almost complete</li> <li>Act(s) of significant assistance or encouragement to other(s) (where not falling within A or B)</li> <li>Determined attempt(s) to travel abroad to engage in terrorist activity (whether in the UK or elsewhere)</li> </ul>
D	<ul style="list-style-type: none"> <li>Offender has engaged in very limited preparation of terrorist activity</li> <li>Act(s) of limited assistance or encouragement to other(s)</li> </ul>

<b>Harm</b>	
The court should consider the factors set out below to determine the level of harm that has been <b>caused or was intended</b> to be caused.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Endangerment of life</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Widespread and serious damage to property or economic interests</li> <li>Substantial impact upon civic infrastructure</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>Other cases where characteristics for categories 1 or 2 are not present</li> </ul>



**STEP TWO – Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page. **\*Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences and/ or extended sentences. The court must however have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination before imposing such sentences. (See step FIVE below). Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.**

Harm	Culpability			
	A	B	C	D
<b>1</b>	<p><b>Starting point</b> Life imprisonment with a minimum term of 35 years*</p> <p><b>Category range</b> Life imprisonment with minimum term of 30 – 40 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 20 years*</p> <p><b>Category range</b> Life imprisonment with a minimum term 15 - 25 years. Or a determinate sentence of 30- 40 years with an extension period of 5 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years*</p> <p><b>Category range</b> Life imprisonment with minimum term 10 – 20 years. Or a determinate sentence of 20-30 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 15 years' custody with an extension period of 5 years*</p> <p><b>Category range</b> 10-20 years with an extension period of 5 years*</p>
<b>2</b>	<p><b>Starting point</b> 25 years with an extension period of 5 years*</p> <p><b>Category range</b> 20 - 30 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 20 years with an extension period of 5 years*</p> <p><b>Category range</b> 15- 25 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 15 years' custody with an extension period of 5 years*</p> <p><b>Category range</b> 10- 20 years' custody with an extension period of 5 years*</p>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 6-10 years custody</p>
<b>3</b>	<p><b>Starting point</b> 16 years' custody</p> <p><b>Category range</b> 12 – 20 years</p>	<p><b>Starting point</b> 12 years' custody</p> <p><b>Category range</b> 8- 16 years' custody</p>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 6 - 10 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 3 years – 6 years' custody</p>

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- 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
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Many lives endangered
- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/ or avoid or impede detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Taking or preparing to take equipment abroad to be used in violent action
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failed to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or Post Sentence Supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

**STEP THREE****Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

**STEP SEVEN****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

**STEP EIGHT****Ancillary orders**

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

**STEP NINE****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP TEN****Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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## **Explosive Substances (Terrorism only)**

**Causing explosion likely to endanger life or property - Explosive Substances Act 1883 (section 2)**

**Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property - Explosive Substances Act 1883 (section 3)**

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003.

This is an offence listed in Part 1 of Schedule 15B for the purposes of sections 224A (life sentence for second listed offence) of the Criminal Justice Act 2003.

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

This is an offence listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

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Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

This guideline applies only to offenders aged 18 and older

**STEP ONE**  
**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> <li>• Offender caused an explosion or used, developed or was in possession of a viable explosive device</li> <li>• Acting alone or significant participant in terrorist activity involving explosives, where preparations are complete or almost complete</li> </ul>
B	<ul style="list-style-type: none"> <li>• Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device</li> <li>• Acting alone or significant participant in terrorist activity involving explosives where preparations are well-advanced but not complete or almost complete</li> <li>• Lesser participant in terrorist activity involving explosives where preparations are complete or almost complete</li> </ul>
C	<ul style="list-style-type: none"> <li>• Lesser participant in terrorist activity operation involving explosives where preparations are well-advanced but not complete or almost complete</li> <li>• Act(s) of significant assistance or encouragement to another/ others involved in causing, developing or possessing an explosive device (where not falling within A or B)</li> </ul>
D	<ul style="list-style-type: none"> <li>• Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device</li> <li>• Offender has engaged in very limited preparation of terrorist activity involving explosives</li> <li>• Act(s) of limited assistance or encouragement to other(s)</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Endangerment of life</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Widespread and serious damage to property or economic interests</li> <li>• Substantial impact upon civic infrastructure</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Other cases where characteristics for categories 1 or 2 are not present</li> </ul>

**STEP TWO – Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page. **\*Offenders committing offences at the upper end of seriousness are likely to be found dangerous and so the table below includes options for life sentences and/ or extended sentences. The court must, however have regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 to make the appropriate determination before imposing such sentences. (See step FIVE below). Where a dangerousness finding is not made a determinate sentence approximately twice the length of the minimum term should be imposed, and section 236A Criminal Justice Act 2003 should be considered. This guidance does not intend to restrict a court from imposing such sentences in any case where it is appropriate to do so.**

Harm	Culpability			
	A	B	C	D
<b>1</b>	<p><b>Starting point</b> Life imprisonment with a minimum term of 35 years*</p> <p><b>Category range</b> Life imprisonment with minimum term of 30 – 40 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 20 years*</p> <p><b>Category range</b> Life imprisonment with a minimum term 15 - 25 years. Or a determinate sentence of 30- 40 years with an extension period of 5 years*</p>	<p><b>Starting point</b> Life imprisonment with minimum term of 15 years or a determinate sentence of 25 years with an extension period of 5 years*</p> <p><b>Category range</b> Life imprisonment with minimum term 10 – 20 years. Or a determinate sentence of 20-30 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 15 years' custody with an extension period of 5 years*</p> <p><b>Category range</b> 10-20 years with an extension period of 5 years*</p>
<b>2</b>	<p><b>Starting point</b> 25 years with an extension period of 5 years*</p> <p><b>Category range</b> 20 - 30 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 20 years with an extension period of 5 years*</p> <p><b>Category range</b> 15- 25 years with an extension period of 5 years*</p>	<p><b>Starting point</b> 15 years' custody with an extension period of 5 years*</p> <p><b>Category range</b> 10- 20 years' custody with an extension period of 5 years*</p>	<p><b>Starting point</b> 7 years' custody</p> <p><b>Category range</b> 5-10 years' custody</p>
<b>3</b>	<p><b>Starting point</b> 16 years' custody</p> <p><b>Category range</b> 12 – 20 years' custody</p>	<p><b>Starting point</b> 12 years' custody</p> <p><b>Category range</b> 8- 16 years' custody</p>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 6 - 10 years' custody</p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 3 years – 6 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- 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
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Many lives endangered
- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies in order to facilitate the commission of the offence and/ or avoid or impede detection
- Indoctrinated or encouraged others
- Failed to respond to warnings
- Failure to comply with court orders
- Offence committed on licence or Post Sentence Supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender coerced
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability

### **STEP THREE**

#### **Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.



**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Special custodial sentence for certain offenders of particular concern (section 236A)**

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

**STEP SEVEN****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

**STEP EIGHT****Ancillary orders**

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

**STEP NINE****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP TEN****Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Failure to Disclose Information about Acts of Terrorism

Terrorism Act 2000 (section 38B)

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Triable either way  
Maximum: 5 years' custody

Offence range: 6 months' – 5 years' custody

This guideline applies only to offenders aged 18 and older

**STEP ONE**  
**Determining the offence category**

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Culpability** demonstrated by one or more of the following:

A	<ul style="list-style-type: none"> <li>Failed to pass on information which could have prevented an act of terrorism</li> </ul>
B	<ul style="list-style-type: none"> <li>Failed to pass on information which could have secured the apprehension, prosecution or conviction of a person associated with terrorism</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been **caused or was intended** to be caused.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Information related to a terrorist act involving the endangering of life or serious injury</li> <li>Information related to a terrorist act involving substantial impact to economic interests or civic infrastructure</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>All other cases</li> </ul>

**STEP TWO**  
**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Harm	Culpability	
	A	B
<b>Category 1</b>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 3 -5 years' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2-4 years' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2-4 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 6 months -3 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- 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
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

#### **Other aggravating factors:**

- Many lives endangered
- Lengthy period of time over which offender held the information
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character
- Offender was pressured or coerced into concealing the information
- Offender discloses information but not as soon as was reasonably practicable
- Offender's responsibility substantially reduced by mental disorder or learning disability

**STEP THREE**

**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR**

**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE**

**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

**STEP SIX**

**Ancillary orders**

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

**STEP SEVEN**

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

**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 17<sup>1</sup> 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.<sup>2</sup>

### **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

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<sup>1</sup> One interview involved two judges participating.

<sup>2</sup> 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’.<sup>3</sup>
- **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).

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<sup>3</sup> 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 judge<sup>4</sup> 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

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<sup>4</sup> 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 10<sup>5</sup> (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?"*.

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<sup>5</sup> 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 observations<sup>6</sup> 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.

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<sup>6</sup> 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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