

Public Order Offences Crown Court Judges Road Testing

Introduction

Twelve interviews were conducted with Crown Court judges to test the *Violent Disorder* draft guidelines. These interviews were conducted either by telephone or face to face with judges across England and Wales. Each judge considered one scenario (details on the scenarios can be found in table 1), sentencing the scenario as if they were in court today (without the draft guideline) and then sentencing using the draft guideline. The research has provided valuable information on how the guideline might work in practice to support development of the *Public Order* guideline. However, there are limitations to the work¹, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

Table 1. Scenarios used in interviews and the number of judges sentencing each scenario

Scenario	No. of judges
<p>A, B, C, D & E were attending a demonstration in a busy city centre on a Saturday afternoon. A small number of other people were present to object to the demonstration, and the leader of this group was using a loudspeaker to voice his objections. A became very angry at the interference with the demonstration and objected to the views expressed. He threw a brick towards the opposing group, and violence quickly ensued. A number of police officers attended to deal with the situation and were attacked. The metal barriers around the demonstration area were pushed over, bricks were thrown at the police and towards passing vehicles, public property including a fountain was smashed and severely damaged and business premises attacked and shop windows smashed. Attempts were made to start a fire in a public bin, and a number of offenders concealed their faces within their clothing and threw bricks at CCTV cameras. Mounted police arrived and batons were used against those involved, which eventually caused the crowd to disperse. Children and elderly people were among the members of the public who hid in shops terrified at the violence and disorder which lasted for approximately 40 minutes. Injuries were caused to police officers and others by missiles that were thrown. One officer received a broken nose and teeth after being hit by a brick.</p> <p>All pleaded guilty to violent disorder at the PTPH.</p> <p>A – was a significant aggressor; intimidating police officers by tearing off his top and screaming ‘come on you bastards I’ll kill you’ at them, ripping up a concrete bollard from the ground, and persistently threatening violence and throwing objects including metal and bricks towards police and others. He had consumed 3 pints of lager prior to the offence, and in mitigation states he is the sole carer for his elderly mother.</p> <p>B – Acted aggressively toward police, tore down metal barriers, threw and hit police officer with wood, threw metal sign at police, chanted racially/religiously abusive slogans, threw unknown liquid and a fire extinguisher taken from a shop at police.</p> <p>C- smashed shop window, chanted, disguised himself and threw bricks at CCTV cameras causing damage, and heavily involved in damage to fountain and attempted to start fire in bin.</p> <p>D- Threw objects towards police, including empty can of coke and stones, partly disguised himself by having hood up. Defendant had a number of previous convictions for theft and disorderly behaviour, and is 23.</p>	4

¹ Limitations include: this is a small sample which is not necessarily representative; the guidelines were out for consultation at the time of the research which means judges may have seen the guideline before this exercise (biasing the ‘pre-guideline’ sentence); and the scenarios only include limited detail of the actual case, which makes comparison with the sentence given by the judge in the actual case difficult.

<p>E- Part of crowd waving flag and a placard. Threw placard and stones at the police. Threw a further missile. Was persistently involved and threw missiles on two occasions. 22 years old. In mitigation the offender pleaded he suffers with ADHD.</p>	
<p>Violent disorder 2 - L, M, N & O were on a night out to celebrate O's forthcoming nuptials and had been drinking heavily. Towards the end of the evening they entered a pub where a group objected to their use of language and raucous behaviour. L & M became aggressive, telling the customers to 'come outside and sort it out there.' The landlady intervened and asked them to leave, at which point a fight started. Weapons were used or threatened and a number of serious injuries were caused. Innocent customers had their evening ruined and were frightened for their safety during the violence. Damage was caused to furniture and glasses were smashed.</p> <p>L - assaulted a customer who objected to the behaviour. Jumped on toes like a boxer, stating he was a boxing champion and would smash his face in, then dealt a severe blow knocking the victim unconscious.</p> <p>M- brandished a snooker cue and waved it threateningly while pursuing another, although it did not actually make contact with others.</p> <p>N- encouraged others to join in and participate in violence. Punched and kicked a man on the ground causing broken teeth and bruising.</p> <p>O- Pursued a man outside. Involved in the general scuffle and kicked out at a male and threw a metal chair through a window.</p> <p>All pleaded guilty at first hearing.</p>	4
<p>Violent disorder 3 - Q, R & T visited the flat of an individual who owed R money. They were armed with baseball bats and a cosh. Upon the victim answering the door they pushed him inside and Q held him by the throat demanding the money, while R and T wielded the weapons threateningly towards the victim's head. The victim's sister and her 5-year-old son were visiting at the time and were terrified at the scene. The sister managed to lock herself and her son in the bathroom shouting that she was calling the police. This interrupted the offence and Q banged the victim's head against the wall, telling him, "You better have the fucking money tomorrow or you're dead". On leaving the flat R smashed a mirror with the baseball bat and T kicked the bathroom door telling the victim's sister, "You'd better keep your fucking mouth shut". The victim, his sister and child were extremely distressed and terrified during the incident. All pleaded not guilty and were found guilty after trial.</p>	4

Key findings

- In most cases, judges using the new draft guideline categorised offences in the way expected by policy, and in the majority of instances judges gave the same sentence pre and post guideline. There were mixed findings regarding how judges felt about their final sentences, with some feeling content and others believing they were too low. Some judges who gave an A1 and B1 categorisation felt their sentences were too low, and were keen to have a higher starting point for A1 (this is discussed in more detail below).
- There were a few issues raised, which Council may wish to consider:
 - Across all three violent disorder scenarios all but one judge categorised each offender as A1 or B1 or A1/B1. Those who placed an offender in A1 largely did so using the factor, 'Offender was a ringleader or carried a leading role'. *"If you could spot that, who is the ring leader then that's a jolly good reason to weight it on the ring leader, who takes a heavy responsibility for it and reduce it for the others who positively weren't the ring leader."*

However, the road testing further identified that use of this factor depends on how judges perceive a ringleader role/his or her actions and this can lead to discrepancies in categorisation. This occurred for offenders A and B in scenario 1 and offenders L and N in scenario 2. The quotes below illustrate two judges' opposing perceptions of offender A in scenario 1, with the first judge appearing to have a higher threshold for considering an offender as a ringleader compared to the second:

"Well we call him a significant aggressor, but I'm not sure he's a ringleader or leading role really, on the facts, so I'm not sure he gets into A".

"Significant aggressor. He threw missiles. He threw a missile I think. He threw missiles. He escalated the [inaudible] violence. It takes place in a busy, well, he started it basically. He is, let's look at the culpability. He is a ring leader or carried out a leading role. That's why he is in culpability A

The road testing suggests that judges who did not see the offender as being 'a ring leader or carried a leading role' tended not to see the offender having 'led' others even though they were a significant aggressor.

- For the offenders in scenario 3 (three offenders) only one judge categorised the offender as A1 based on the factor, 'Targeting of individual(s) by a group'. Other judges saw this factor as relevant but categorised the offender as on the cusp of A1/B1, however, policy expected judges to use this factor to categorise the offender as culpability A. The quote below illustrates that even though the judge felt that the factor 'Targeting of individual (s) by a group' was relevant, it still left them on the cusp of culpability B as opposed to culpability A.

"I cannot find he is a ring leader.... In this instance we do have a targeting of an individual by a group. And there is also some evidence from B, this is a persistent activity, there must have been planning. There isn't serious violence but there is very clearly a threat of serious violence, so that brings me, broadly speaking in the cusp of a B".

- Judges unanimously categorised all 12 offenders, across the three scenarios, as harm 1.
- In a few instances B1 categorisation led to higher sentences than A1 categorisation for the same offender. The biggest difference was for an offender in scenario 2 where one judge gave 3-3.5 years (categorised as B1) and one judge gave 2 years (categorised as A1). The judge who categorised the offender as B1 applied several aggravating factors to increase the sentence from the starting point of 2 years to 3-3.5 years including 'Incident occurred in busy public area', 'Use of significant physical violence', 'Offender used weapon', Commission of offence whilst under the influence of alcohol or

drugs' and also cited serious acts of group violence as a factor. Considering that the judge applied 'Offender participated in incident involving serious acts of violence' as the culpability factor, there is a potential that the judge was double counting. The judge who categorised the offender as A1 felt that they were able to mitigate the sentence, and they reduced it by 1 year from the starting point of 3 years, although their reason for this was not captured. This happened on several more occasions however, there is not enough information to understand why this is.

- A third of judges said that they would want A1 to be higher than it currently is, with a starting point of 4 years. There was a general feeling that 3 years' custody starting point was not enough for some of the more serious cases. In particular a couple of judges mentioned that the current starting point was too low for cases including a petrol bomb or incendiary device. Some judges also felt that the middle category (B1) would need to follow suit and be increased as well.