

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

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SC(19)MAR06 – Firearms paper 2
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1 ISSUE

1.1 This is the sixth meeting to consider the firearms guideline. This paper asks the Council to consider factors in steps one and two in the guideline on the transfer and manufacture of prohibited weapons at **Annex A**. Sentence levels will be developed once the culpability and harm models are agreed but the Council is also asked an initial question about parity with the possession with intent to endanger life offence.

1.2 The Council is asked to consider whether it wishes to proceed with developing a guideline for the offence of possession of articles for conversion.

1.3 Currently, there are three further meetings scheduled to discuss the firearms guideline. The aim is to sign off the consultation version at the June 2019 meeting, if possible, with consultation planned for September 2019. These timelines will continue to be monitored and amended as required.

2 RECOMMENDATION

2.1 It is recommended that the Council:

- considers the culpability model (paragraph 3.7-3.12)
- considers the harm model (paragraph 3.13-3.16)
- considers the aggravating and mitigating factors (paragraph 3.18 and 3.20)
- agrees *not* to include a factor relating to connections with a locality where gun crime is particularly serious (paragraph 3.17)
- considers the relative seriousness of this offence and possession with intent to endanger life, in terms of sentence levels (paragraph 3.22-3.23)
- agrees *not* to develop a guideline for the offence of possession of articles for conversion (S4A) (paragraph 3.24-3.25)

3 CONSIDERATION

Offences to be covered

3.1 This paper focuses on offences relating to transfer of prohibited weapons. It is proposed to cover the following offences in one guideline:

Offence	Description	Maximum penalty	Volumes (2017)
S5(2A)(a)	Manufacture any weapon or ammunition specified in section 5(1), without authority	Life	0 (4 in 2016)
S5(2A)(b)	Sell or transfer any prohibited weapon or prohibited ammunition, without authority	Life	19
S5(2A)(c)	Possess for sale or transfer any prohibited weapon or prohibited ammunition, without authority	Life	5
S5(2A)(d)	Purchase or acquire for sale or transfer any prohibited weapon or prohibited ammunition, without authority	Life	1
TOTAL			25

3.2 All the offences are indictable only. The minimum term provisions will apply in any case where the firearm concerned is a specified firearm prohibited under S5.¹ There is no data available on the proportions of these offences where the minimum term applies. However, from the sentence levels (see **Annex B**) and transcript analysis, it appears that the majority of offences involve firearms subject to the minimum term. Law enforcement were aware of a few instances of transferring or manufacturing stun guns which would generally fall under section 5(1)(b) unless disguised, and would not attract the minimum term.

3.3 There is significant overlap between the transfer offences and the possession with intent to endanger life cases that involve firearms supply, but transfer offences are much lower volume than possession with intent to endanger life offences. The transfer offence lacks an intent element so may be preferable as a charge in certain cases. The CPS have advised it is sometimes offered as a plea instead of the endanger life offence. Unlike the endanger life offence, these offences are not subject to the dangerousness provisions, which may account for some of the lower volume.

3.4 All of the manufacture and transfer offences have the same maximum penalty of life imprisonment and appear together in the same subsection of section 5. Manufacture and transfer often occur together, and the offenders will often be charged together and be part of

¹ The minimum term applies in respect of a firearm specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae) or (af), (c) or section 5(1A)(a) of the Firearms Act 1968.

the same network. The central factors around role and scale of offending are the same. These offences are also so low-volume that the evidence would be very limited when considering sentence levels across two guidelines. For these reasons they have been grouped together in one single guideline.

Question 1: Does the Council agree with the grouping for this guideline?

3.5 There is a guideline judgment for the transfer of prohibited weapons in *Attorney General's References (Nos 128-141 of 2015 and 8-10 of 2016)* [2016] EWCA Crim 54 (*R v Stephenson*) (at **Annex C**). The court reviewed 17 sentences that had been imposed on offenders for a large-scale conspiracy to transfer prohibited weapons and ammunition, increasing 16 out of 17 sentences. It was in the context of a large-scale commercial supply operation, involving a variety of weapons, across the UK. The decision is summarised in the following extract:

“[7] If a life sentence is not passed, as was made clear in *Wilkinson*, courts must impose long determinate sentences commensurate with the role played in any activity in relation to the supply of guns. Sentences must reflect the hierarchy of the supply enterprise, the role played in individual transactions and any previous convictions in relation to guns. In the present case our conclusions can be summarised as follows:

i) for the leader of the enterprise which was in the business of supplying guns and lethal ammunition, a very long determinate sentence was required. It appears to have been assumed (because the minimum term imposed on Wilkinson, the head of the enterprise in the case determined in 2009 who received a life sentence, was 11 years) that the maximum determinate sentence was 22 years for a large scale enterprise engaged in the supply of guns. No such maximum was indicated by this court in that case. In the present case, we consider that the appropriate sentence for the leader was 25 years, prior to discount for his plea. However, in the light of the mistaken view taken of *Wilkinson*, we must make clear that courts should not take this as a maximum. For example, a materially greater sentence would be appropriate if there was any previous conviction for offences involving guns. Nor can it make any difference that the criminal enterprise here was engaged in converting or acquiring guns rather than importing them; the same level of sentence is appropriate, as the essence of the criminality is the organisation of a criminal enterprise to supply guns and lethal ammunition to customers, irrespective of the source of the guns and ammunition. Those engaged in the criminal enterprise under the leader should have received sentences reflecting the sentence for the leader (before any discount for plea), depending on the role they played;

ii) in the case of those seeking to buy a gun and lethal ammunition from this criminal enterprise, we have proceeded on the basis that the purchaser must have required the gun and lethal ammunition to “kill and maim, terrorise or intimidate”; two of the customers were engaged in the supply of Class A drugs. In our judgement the appropriate sentences for the purchasers in this case should have been in the region of 15 years, significantly higher sentences than that being required in the event of any previous convictions in relation to guns; and

iii) the role played by those who assisted in these transactions varied, but as Parliament has stipulated a minimum sentence of five years for those in possession of a gun, we consider that it was inappropriate to pass sentences with a starting point of less than eight years for those who assisted in putting guns into circulation. Their criminality lay in assisting in putting guns and lethal ammunition into the hands of a purchaser. Sentences materially greater were required in cases where the assistance was significant; in the present case the sentences should have ranged from 12–8 years, depending on the role they played and any previous association with guns.

[8] Such sentences are severe but reflect the intention of Parliament to punish gun crime in a manner that will deter criminals from engaging in dealing in guns and lethal ammunition.”

3.6 From analysis of transcripts, when this decision is being applied, sentencers are considering the *relative* scale of the criminal operation, compared with the large-scale Stephenson case, and seeking to reflect that in the sentence levels. For this reason, the harm model focuses in part on the scale of the operation (see paragraph 3.15).

Culpability model

3.7 The culpability model focuses mainly on the offender’s role. Above the table, there is wording to give guidance on how to consider role. This is broadly based on the factors used in the [drug supply guideline](#) and factors from *Stephenson* although these elements also appear in other guidelines. It reads as follows:

When considering the **offender’s role**, relevant considerations may include the offender’s level in the hierarchy of the enterprise, the role played in individual transactions or manufacturing, awareness and understanding of the scale of operation, and the offender’s involvement of, links to, or influence on, others in a chain.

Question 2: Does the Council agree with this wording providing guidance on assessing the offender’s role?

3.8 **Role:** The culpability table then contains a factor under each level relating to role, expanding the factors used in possession with intent to pick up elements from *Stephenson*:

- High: ‘Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator’
- Medium: ‘Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture’
- Lower: ‘Lesser role where offending is part of a group activity including but not limited to performing a limited function under direction’

Question 3: Does the Council agree with the wording of these factors on role?

3.9 **Planning:** As with the other possession with intent guidelines, there is also a factor relating to planning at each level of culpability. This is aimed at planning activity by an individual (as opposed to the overall sophistication of the operation, which is addressed in harm). These factors are the same as the possession with intent guidelines, except with additional wording at high and medium relating to steps taken to evade detection, as this was a particular feature noted in the transfer transcripts.

3.10 **Financial or other advantage:** Each level also contains a factor related to expectation of financial or other advantage. The intention is to align the wording of these with the wording to be adopted in the revised drugs guideline.

3.11 **Other high culpability factors:**

- 'Use of business as a cover' and 'Abuse of position of trust or responsibility, for example registered firearms dealer'. The latter factor has been at step two in other firearms guidelines but it is proposed to include it at step one in this guideline as it is more central to this offending. Placement at step one is consistent with the drugs and fraud guidelines.
- 'Involves others through coercion, intimidation or exploitation'. This factor is aimed in part at county lines-type exploitation of children and young people to transfer firearms. The wording is slightly different to the new factors being introduced in the drugs guideline.

3.12 **Other lower culpability factors:**

- 'Involved through coercion, intimidation or exploitation' – in previous firearms guidelines this factor was included at step two but since the factor for the person doing the involving is at high culpability, it is appropriate to include this here to balance that factor.
- 'Firearm/ammunition not intended for criminal purpose, for example belief that purchaser is collector with no criminal associates' – this factor recognises that although the offence does not contain an intent element, the intent of the transfer may be relevant to sentencing, particularly where there is no intention that the firearm is used in crime.
- 'Firearm/ammunition not subject to minimum term' – this factor would apply in those few cases where the relevant item was not a minimum term weapon. As drafted, this

factor would capture stun guns only where not disguised. If the Council wished for disguised stun guns also to fall at lower culpability (recognising they are less serious) then a factor could be added to address these items.

Question 4: Does the Council agree with the remaining culpability factors?

Harm model

3.13 The proposed harm model focuses on the scale and nature of the criminal enterprise, including the level of sophistication, and on actual harm caused. This is a departure from the approach in the intent to endanger life guideline which included large scale distribution or supply of firearms as a high culpability factor. In the endanger life offence, only some cases concerned a gun supply enterprise operating at scale, while other offences involved a specific shooting incident. In this offence, the scale and nature of the enterprise is a central factor and it is a useful proxy for the scale of harm or risk of harm caused by the offending.

3.14 There is text above the harm table providing guidance on assessing the scale and nature, again drawing on *Stephenson*:

When considering the **scale** and **nature** of the enterprise, relevant considerations may include the number, type and variety of weapons involved, the value of profits, the number of people involved, the period of time and geographic range over which the enterprise operated, and connections to organised criminal groups.

Question 5: Does the Council agree with this wording providing guidance on assessing the scale and nature of the enterprise?

3.15 The criminal enterprises involved ranged from very large scale, UK-wide industrial operations where a variety of firearms were being worked on and distributed, through to individuals operating on their own doing home-made alterations or manufacture that may be very rudimentary, such as constructing a single shotgun out of pipes. There is a factor related to scale and sophistication at each level:

- Category 1: 'Large-scale commercial and/or highly sophisticated enterprise' – the bar is set high to limit this category.
- Category 2: 'Medium-scale enterprise and/or some degree of sophistication'
- Category 3: 'Smaller-scale and/or unsophisticated enterprise'

Question 6: Does the Council agree with the wording of these factors on scale and sophistication?

3.16 Actual harm is addressed through the following factors at each level:

- Category 1: ‘Evidence firearm/ammunition used extensively to cause serious injury or death’ – again the bar is set high to prevent this factor applying to too many cases.
- Category 2: ‘Evidence firearm/ammunition used in serious criminal offending (where not at category 1)’
- Category 3: ‘Evidence firearm/ammunition not used in serious criminal offending’

Question 7: Does the Council agree with the wording of these factors on actual harm?

3.17 The *Stephenson* case also referred to one additional feature of offending: ‘any specific factors connecting the criminal enterprise to a locality where gun crime was *particularly serious*’ (at [21]). This is similar to the ‘prevalence’ factor in the drugs guideline. It is proposed not to incorporate this factor into the guideline at harm or step two. *R v Bondzie* noted that sentencing guidelines take account of collective social harm, so sentences should not be aggravated because of their harmful social effect on a community.² It is therefore considered it would be of limited value while raising a range of issues and should be omitted from the guideline.

Question 8: Does the Council agree *not* to incorporate a factor relating to connections with a locality where gun crime is particularly serious?

Aggravating factors

3.18 These factors are based on the previous guidelines. Some factors have been omitted that are now captured at step one (offence committed as part of a group; abuse of position; expectation of gain; furtherance of organised criminal activity) or are not relevant to this offence (offences taken into consideration; factors relating to imitation firearms; offence motivated by certain characteristics). Other factors have been omitted because they are common features of this offending so would be applicable in too many cases: ‘Firearm modified to make it more lethal’ (as this may be applicable in many manufacturing cases) and the factor relating to contact with criminal associates, including through drug supply.

3.19 New aggravating factors are:

² R v Marco Bondzie (Practice Note) [2016] EWCA Crim 552.

- A5 'Compatible ammunition and/or silencer(s) supplied with firearm' – In transcripts it was regarded as more serious where the transfer or manufacture involved compatible ammunition or silencers, as it makes the weapon more dangerous and ready for use. Ammunition supply featured in quite a few transcripts so it will be necessary to ensure this factor is not going to aggravate the majority of cases.
- A7 'Firearm under section 5(1)(a) (automatic weapon)' – Based on transcripts and *Stephenson*, automatic weapons are regarded as particularly dangerous so an aggravating factor is appropriate. The vast majority of weapons involved in this offence are already very serious, dangerous weapons so there is no need to broaden this factor further to include other types of prohibited weapons, and to do so would risk aggravating too many cases.
- A8 'Others put at risk of harm (where not taken into account at step 1), including by location or method of manufacture or transfer' – In transcripts, occasionally the location of the manufacture or transfer put others at particular risk, such as a property where children were present. Discussions with firearms technical experts also identified that methods of manufacture can increase the risk to the user of the weapon (for example an unskilled conversion of a weapon could make it more difficult to handle because of instability or sharp edges, or a part could blow out rather than firing properly). There are connections with the drugs guideline factor currently worded as 'Exposure of others to more than usual danger'. Although the drug guideline factor is going to be expanded to address couriers, end users and makers explicitly, it is considered the broad wording of 'others put at risk of harm' is sufficient in this case.

Mitigating factors

3.20 A factor on 'remorse' (M6) has been added as it featured in several transcripts.

3.21 The mitigating factor 'involved through coercion, intimidation or exploitation' in other firearms guidelines is now at step one rather than here. Although they are not in the possession with intent guidelines, the factors M4 'No knowledge or suspicion that item possessed was firearm/ammunition' and M5 'Unaware firearm/ammunition is prohibited' have been retained. There were some instances in transcripts where a person was involved in the transfer of a bag or container that they did not know contained a firearm, where this was treated as less serious.

Question 9: Does the Council agree with the aggravating and mitigating factors?

Relativity in sentence levels between possession with intent to endanger life and transfer/manufacture

3.22 There is a question to consider about parity of sentencing between manufacture/transfer and intent to endanger life. As noted above, there is some overlap between the two, with larger-scale supply and distribution cases often being charged under the endanger life offence. Based on pre-guilty plea ACSLs in 2017 (bearing in mind the low volumes of transfer cases), the intent to endanger life offence is the more serious, at 12 years compared with 9 years for transfer. In 2017 intent to endanger life had a similar range, going up to 27 years pre-guilty plea (estimated), compared with 26 years 6 months for transfer, but the volumes at this high end of endanger life were very low. In 2017, 6% of determinate sentences for endanger life cases had a pre-guilty plea sentence over 20 years, compared with 12% for transfer cases (although these proportions should be treated with caution due to low volumes).

3.23 The starting point for a box A1 case based on *Stephenson* might be 25 years (see extract at paragraph 3.5 above). The top box in the intent to endanger life guideline currently starts at 18 years with a range of 16-22 years (see **Annex A of paper 1, page 4**), reflecting current sentence levels. An 18 year starting point and a range going up to 22 years was selected for endanger life because only one single case went above 22 years in 2017 (an outlier at 27 years). Increasing the top of the endanger life sentences to align with *Stephenson* levels would likely inflate current sentencing levels. On the other hand, aligning the top box of both guidelines at 18 years with a 16-22 year range may seem out of step with the guidance for highest-end cases in *Stephenson*.

Question 10: Does the Council want sentence levels for the transfer/manufacture guideline to be the same as possession with intent to endanger life?

Guideline on possession of articles for conversion

3.24 At the scoping meeting in July 2018, the Council agreed to explore the viability of developing a guideline on the offence of possession of articles (S4A). A person, other than a registered firearms dealer, commits this offence if:

- (a) the person has in his or her possession or under his or her control an article that is capable of being used (whether by itself or with other articles) to convert an imitation firearm into a firearm, and
- (b) the person intends to use the article (whether by itself or with other articles) to convert an imitation firearm into a firearm.

3.25 This is a new offence that came into effect in May 2018, with a maximum penalty of 5 years. It was introduced following a recommendation by the Law Commission as part of its review of firearms law, to fill an identified gap in the law. The articles might be items such as a drill or specialised drill bit used for removing obstructions in a barrel. Thus far, no offences under this provision have shown up in available sentencing data. The CPS were aware of two cases. The consensus from the CPS and law enforcement appears to be that this offence will not be charged frequently. This is due to the intent element, the infrequency of detection of conversion operations, issues with the drafting of the offence, and preferences for other offences with a higher maximum penalty where there is evidence of conversion or transfer. It is recommended not to proceed with developing a guideline for this offence, as it is likely to be very low volume and there is currently no evidence base on which to develop a guideline. The CPS agreed there would be limited value in a guideline for this offence if it is rarely charged.

Question 11: Does the Council agree not to proceed with a guideline on the possession of articles for conversion offence?

Firearms – Manufacture and transfer

Manufacture weapon or ammunition specified in section 5(1)

Firearms Act 1968 (section 5(2A)(a))

Sell or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(b))

Possess for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(c))

Purchase or acquire for sale or transfer prohibited weapon or ammunition

Firearms Act 1968 (section 5(2A)(d))

Indictable only

Maximum: Life imprisonment

Offence range: [to come]

This offence is subject to statutory minimum sentencing provisions. See STEPS TWO AND THREE for further details.

**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.

When considering the **offender's role**, relevant considerations may include the offender's level in the hierarchy of the enterprise, the role played in individual transactions or manufacturing, awareness and understanding of the scale of operation, and the offender's involvement of, links to, or influence on, others in a chain.

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 – High culpability:

- Leading role where offending is part of a group activity, including but not limited to head of enterprise, a lead armourer or a key facilitator
- Significant planning, including but not limited to significant steps to evade detection
- Use of business as a cover
- Abuse of position of trust or responsibility, for example registered firearms dealer
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

B – Medium culpability:

- Significant role where offending is part of a group activity, including but not limited to a purchaser or a provider of significant assistance in facilitating transfer or manufacture
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage, whether or not operating alone
- Other cases falling between high and lower culpability

C – Lower culpability:

- Lesser role where offending is part of a group activity including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage
Firearm/ammunition not intended for criminal purpose, for example belief that purchaser is collector with no criminal associates
- Firearm/ammunition not subject to minimum term

Harm	
The court should consider the steps set out below to determine the level of harm caused.	
This step is assessed by reference to the scale and nature of the enterprise and any actual harm caused.	
When considering the scale and nature of the enterprise, relevant considerations may include the number, type and variety of weapons involved, the value of profits, the number of people involved, the period of time and geographic range over which the enterprise operated, and connections to organised criminal groups.	
Category 1	<ul style="list-style-type: none"> • Large-scale commercial and/or highly sophisticated enterprise • Evidence firearm/ammunition used extensively to cause serious injury or death
Category 2	<ul style="list-style-type: none"> • Medium-scale enterprise and/or some degree of sophistication • Evidence firearm/ammunition used in serious criminal offending (where not at category 1) • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • Smaller-scale and/or unsophisticated enterprise • Evidence firearm/ammunition not used in serious criminal offending

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm.

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.			
This offence may be subject to minimum sentencing provisions. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
Harm	Culpability		
	A	B	C
Category 1	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 2	Starting point	Starting point	Starting point
	Category range	Category range	Category range
Category 3	Starting point	Starting point	Starting point
	Category range	Category range	Category range

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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Commission of offence whilst under the influence of alcohol or drugs
- A4. Firearm/ammunition held with multiple weapons (See step six on totality when sentencing for more than one offence.)
- A5. Compatible ammunition and/or silencer(s) supplied with firearm
- A6. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))

- A7. Firearm under section 5(1)(a) (automatic weapon)
- A8. Others put at risk of harm (where not taken into account at step 1), including by location or method of manufacture or transfer
- A9. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A10. Failure to comply with current court orders
- A11. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- A12. Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- M3. Voluntary surrender of firearm/ammunition
- M4. No knowledge or suspicion that item possessed was firearm/ammunition
- M5. Unaware firearm/ammunition is prohibited
- M6. Remorse
- M7. Serious medical condition requiring urgent, intensive or long-term treatment
- M8. Age and/or lack of maturity
- M9. Mental disorder or learning disability
- M10. Sole or primary carer for dependent relatives
- M11. Co-operation with the police

STEP THREE
Minimum Term
[To come]

STEP FOUR
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 FIVE

Reduction for guilty pleas

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

Where a **minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required minimum term.

STEP SIX

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 SEVEN

Ancillary orders

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

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

The court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, 2014-2017^{1,2}

Guideline group	Legislation	Section	Offence	Number of adult offenders sentenced			
				2014	2015	2016	2017
Group 8	Firearms Act 1968	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968	0	0	4	0
		5(2A)(b)	Sell / transfer prohibited weapon / ammunition	0	0	10	19
		5(2A)(c)	Possess prohibited weapon / ammunition for sale / transfer	0	0	4	5
		5(2A)(d)	Purchase / acquire prohibited weapon / ammunition for sale / transfer	0	0	0	1
		TOTAL SECTION 5(2A) OFFENCES		0	0	18	25

Source: Court Proceedings Database, Ministry of Justice

Notes

1) These offences came into force on 14 July 2014.

2) Cases in 2016 may have been sentenced prior to the Stephenson judgment.

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ²	Total
Group 8	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ¹	0	0	0	0	0	4	0	4
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0	0	0	0	0	25	0	25

Source: Court Proceedings Database, Ministry of Justice

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ²	Total
Group 8	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ¹	0%	0%	0%	0%	0%	100%	0%	100%
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	0%	0%	0%	0%	0%	100%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Data shown for this offence relates to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.

2) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Sentence range (using estimated pre GP sentence lengths)
Group 8	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968 ^{4,5}	17 years 9 months	20 years 3 months	8 years - 22 years 6 months' custody
	5(2A)(b)-(d)	Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer	12 years	9 years	5 years 7 months - 26 years 6 months' custody

Source: Court Proceedings Database, Ministry of Justice

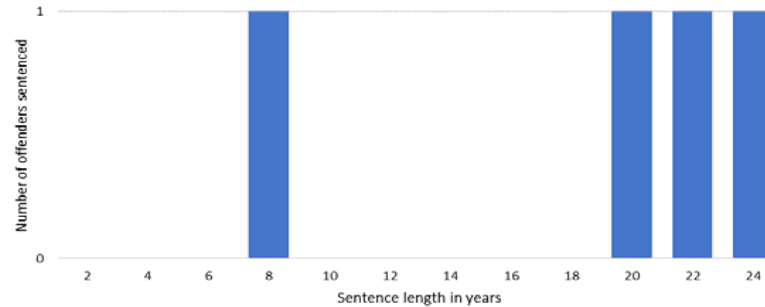
Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values.
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) The ACSLs and ranges shown for this offence relate to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.
- 5) These figures should be treated with caution, due to the low number of offenders sentenced for this offence.

Figure 1: Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea

Section 5(2A)(a) offences - Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968, 2016^{1,2}

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=2	0	0%
2-4	0	0%
4-6	0	0%
6-8	1	25%
8-10	0	0%
10-12	0	0%
12-14	0	0%
14-16	0	0%
16-18	0	0%
18-20	1	25%
20-22	1	25%
22-24	1	25%
Total	4	100%

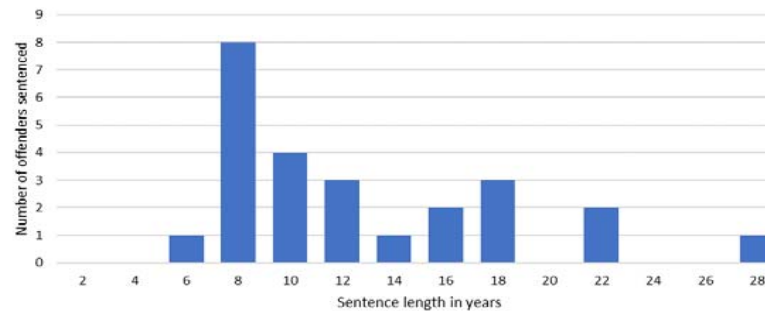


Notes:

- 1) The data shown for this offence relates to 2016 (as no offenders were sentenced in 2017), and may therefore include cases sentenced prior to the Stephenson judgment.
- 2) These proportions should be treated with caution, due to the low number of offenders sentenced for this offence.

Section 5(2A)(b)-(d) offences - Sell / transfer prohibited weapon / ammunition, Possess/purchase/acquire prohibited weapon / ammunition for sale / transfer, 2017

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=2	0	0%
2-4	0	0%
4-6	1	4%
6-8	8	32%
8-10	4	16%
10-12	3	12%
12-14	1	4%
14-16	2	8%
16-18	3	12%
18-20	0	0%
20-22	2	8%
22-24	0	0%
24-26	0	0%
26-28	1	4%
Total	25	100%



Source: Court Proceedings Database, Ministry of Justice

Notes:

Separate sentence length breakdowns for section 5(2A)(b)-(d) offences have not been shown due to low volume.

Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '<=2' includes sentence lengths less than and equal to 2 years, and '2-4' includes sentence lengths over 2 years, and up to and including 4 years.

**ATTORNEY GENERAL’S REFERENCE (NOS
128–141 OF 2015 AND 8–10 OF 2016)
(R. v STEPHENSON)**

COURT OF APPEAL (CRIMINAL DIVISION)

Lord Thomas of Cwmgiedd (The Lord Chief Justice of England and
Wales), Jeremy Baker and Carr JJ: 9 March 2016

[2016] EWCA Crim 54; [2016] 2 Cr. App. R. (S.) 12

☞ Ammunition; Conspiracy; Firearms offences; Prohibited firearms; Sentence
length; Undue leniency

H1 *Firearms—prohibited firearms—transferring prohibited firearms—sentencing
levels—guidance—conspiracy*

H2 The Lord Chief Justice gave guidance on the sentencing of those involved in
the transfer of prohibited weapons.

H3 Under the unduly lenient sentence scheme, the Attorney General referred
sentences imposed on multiple defendants following convictions or guilty pleas
to conspiracy to transfer prohibited weapons and ammunition.

H4 Over a period of approximately 10 months, six individuals were involved in a
conspiracy to supply other criminals with firearms and ammunition. In addition,
charges were brought in relation to specific incidents of supplying firearms. The
six individuals, representing various positions within the hierarchy of the conspiracy,
were sentenced as follows:

- (i) for the leader of the criminal enterprise, a starting point of 19 years six
months. For the armourer and the other four principals who were members
of the enterprise (referred to by the judge as the “key facilitators”) and
assisted in the transactions, starting points of between 17 years six months
and 11 years;
- (ii) for those who purchased guns and weapons on four specific occasions,
starting points of between 11 and seven years six months; and
- (iii) for those who assisted the purchaser on those occasions, starting points of
between 12 and five years.

H5 **Held**, that (1) the Lord Chief Justice had summarised the gravity of gun crime
in *R. v Wilkinson* [2009] EWCA Crim 1925; [2010] 1 Cr. App. R. (S.) 100 (p.628):

“The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise
and intimidate. That is why criminals want them: that is why they use them:
and that is why they organise their importation and manufacture, supply and
distribution. Sentencing courts must address the fact that too many lethal

weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community.” ([2].)

H6 (2) Offences involving the possession or use of firearms had therefore attracted increasingly severe sentences:

- (i) in 1997, in *R. v Avis* [1998] 1 Cr. App. R. 420, the Court of Appeal gave guidance on the approach to sentencing for firearms offences under the Firearms Act 1968 (the 1968 Act). Lord Bingham CJ, giving the judgment of the court, set out four questions that the court should ask itself in order to assess the seriousness of the offence;
- (ii) with effect from January 2004, a mandatory minimum term of five years for possession of a firearm was enacted in s.51A of the 1968 Act (by s.287 of the Criminal Justice Act 2003);
- (iii) in 2009, in *R. v Wilkinson* [2009] EWCA Crim 1925; [2010] 1 Cr. App. R. (S.) 100 (p.628), the court gave further guidance as to the level of sentences, principally in relation to offences under s.16 of the 1968 Act, possession with intent to endanger life, an offence that carried a maximum sentence of life imprisonment;
- (iv) at [26] of the judgment in *Wilkinson*, the court observed that the sentence for importing firearms or being in possession with intent to supply should carry a maximum penalty of life imprisonment; and
- (v) that observation was adopted when, in 2014, Parliament through the Anti-Social Behaviour, Crime and Police Act 2014 amended s.5 of the by inserting a new section, s.5(2A), amending s.51 and amending Pt 1 of Sch.6. The effect of the amendments, which came into force on 14 July 2014, was to provide for a new offence of transferring prohibited weapons and to increase the maximum penalty to life imprisonment ([3]).

H7 (3) The instant court did not reconsider the use of the statutory life sentence for crimes involving lethal weapons, whether under s.225 of the CJA 2003 or under provisions specifying a maximum sentence of life imprisonment (as summarised in *Attorney General's Reference (No.27 of 2013) (R. v Burinskas)* [2014] EWCA Crim 334; [2014] 1 W.L.R. 4209). The sentencing judge was of the view that the instant case was not an appropriate one for a sentence being imposed on the principal offender under s.225 of the CJA 2003 as he was not dangerous within the meaning of the CJA 2003 given that there was no significant risk of him committing serious crimes in the future. The judge took the same view in relation to the other offenders. He did not consider whether or not a life sentence should have been imposed under other statutory provisions. The court was, however, not persuaded that this issue should be revisited. Nonetheless, criminals who were prepared to deal in lethal weapons invariably represented a serious public danger and therefore a sentence of life imprisonment always arose for consideration and had to expressly be considered by the judge ([6]).

H8 (4) If a life sentence was not passed, the courts had to impose long determinate sentences commensurate with the role played in any activity in relation to the supply of guns. Sentences had to reflect the hierarchy of the supply enterprise, the role played in individual transactions and any previous convictions in relation to

guns. Disposing of the individual references, the following propositions could be identified:

- (i) for the leader of the enterprise that was in the business of supplying guns and lethal ammunition, a very long determinate sentence was required. It appeared to have been assumed (because the minimum term imposed on *Wilkinson*, the head of the enterprise in the case determined in 2009, who received a life sentence, was 11 years) that the maximum determinate sentence was 22 years for a large-scale enterprise engaged in the supply of guns. No such maximum was indicated by the court in that case. In the instant case, the appropriate sentence for the leader was 25 years, prior to discount for his plea. However, in the light of the mistaken view taken of *Wilkinson*, it had to be made clear that the courts should not take that figure as a maximum. For example, a materially greater sentence would be appropriate if there was any previous conviction for offences involving guns. Nor could it make any difference that the criminal enterprise in the instant case was engaged in converting or acquiring guns rather than importing them; the same level of sentence was appropriate as the essence of the criminality was the organisation of a criminal enterprise to supply guns and lethal ammunition to customers irrespective of the source of the guns and ammunition. Those engaged in the criminal enterprise under the leader should have received sentences reflecting the sentence imposed on the leader (before any discount for plea) and depending on the role that they played;
- (ii) in the case of those seeking to buy a gun and lethal ammunition from the criminal enterprise in the instant case, the court proceeded on the basis that the purchaser had to have required the gun and lethal ammunition to “kill and maim, terrorise or intimidate”; two of the customers were engaged in the supply of Class A drugs. The appropriate sentences for the purchasers in the instant case should have been in the region of 15 years, with significantly higher sentences being required in the event of any previous convictions in relation to guns; and
- (iii) the role played by those who assisted in those transactions varied but, as Parliament had stipulated a minimum sentence of five years for those in possession of a gun, it was inappropriate to pass sentences with a starting point of less than eight years for those who assisted in putting guns in circulation. Their criminality lay in assisting in the putting of guns and lethal ammunition into the hands of a purchaser. Sentences materially greater were required in cases where the assistance was significant. In the present case, the sentences should have ranged from 12 to eight years, depending on the role that each of the offenders had played and on whether or not there had been any previous association with guns ([7]).

H9 **Per curiam.** (1) A particular difficulty that the sentencing judge faced was that he was not put in a position where he could sentence all of the offenders on the same occasion and in order of their culpability. Listing officers must, for the future, ensure that, in a complex case of the instant kind, a date was set for sentencing as soon as possible after the conclusion of the trials and that all the defendants and their counsel were present on the same occasion. If there were any possible difficulties in ensuring that happened, the Resident or Presiding Judge had to be

consulted and had to direct that arrangements were made to enable all to be sentenced together ([11]).

H10 (2) The increasing danger posed by criminals putting antique firearms into working order and providing ammunition to fit the firearms was a matter that should be considered by the Home Office and by Parliament with a view to a re-examination of the exemption provided for in the Firearms Act 1968 s.58(2) ([16]).

H11 **Editorial note:** the individual sentences were all increased, save in the case of the respondent, Mattu. See the judgment at [9]–[64] for the individual disposals.

H12 **Cases cited:**

Attorney General's Reference (No.27 of 2013) (R. v Burinskas) [2014] EWCA Crim 334; [2014] 1 W.L.R. 4209

R. v Avis [1998] 2 Cr. App. R. (S.) 178

R. v Newton (1982) 77 Cr. App. R. 13

R. v Wilkinson [2009] EWCA Crim 1925; [2010] 1 Cr. App. R. (S.) 100 (p.628)

R. v Wiwczaryk [1980] 2 Cr. App. R. (S.) 309

H13 **References:** *Current Sentencing Practice*, B3-3.2.

H14 *R. Buckland QC MP* (Solicitor General), *T. Cray* and *T. Kenning* for the Attorney General.

A.N. Bajwa QC for Stephenson and Miah.

B. Singh for Nazran and Hussain (Usman).

H. Kubik for McDermott.

R. Butcher for Wiggan.

M. Graffius for Gul.

N.M. Smith for Ducram.

R. Lallie for Mattu.

C. Jutla for Ghalib.

J. Anders for Abdin.

P. Brunt for Hussain (Ifra).

T. Rashid for Fedar.

S. Kolodynski for Mohammed.

S. Rashid for Officer.

S. Wallace for Smith.

S. Reiz for Mentore.

JUDGMENT

LORD THOMAS OF CWMGIEDD CJ:

- The Solicitor General has referred to the court under s.36 of the Criminal Justice Act 1988, the sentences passed on 17 offenders by HH Judge Burbidge QC on 27 November 2015 (*AG Refs 128–141 of 2015*) and 22 January 2016 (*AG Refs 8–10 of 2016*). All the offenders had pleaded guilty or were convicted of conspiracy to transfer prohibited weapons and ammunition. We grant leave in respect of all the offenders.

Introduction

- 2 Lord Judge CJ in *R. v Wilkinson* [2009] EWCA Crim 1925, [2010] 1 Cr. App. R. (S.) 100 summarised the gravity of gun crime:

“The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them: and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community.”

- 3 Offences involving the possession or use of firearms have therefore attracted increasingly severe sentences:

- i) in 1997 in *R. v Avis* [1998] 1 Cr. App. R. 420; [1998] 2 Cr. App. R. (S.) 178 this court gave guidance on the approach to sentencing for firearms offences under the Firearms Act 1968 (the 1968 Act). Lord Bingham CJ in giving the judgment of the court set out four questions the court should ask itself to assess the seriousness of the offence;
- ii) with effect from January 2004, a mandatory minimum term of five years for possession of a firearm was enacted in s.51A of the 1968 Act (by s.287 of the Criminal Justice Act 2003);
- iii) in 2009, in *R. v Wilkinson* [2009] EWCA Crim 1925; [2010] 1 Cr. App. R. (S.) 100 this court gave further guidance as to the level of sentences principally in relation to offence under s.16 of the 1968 Act, possession with intent to endanger life, an offence that carried a maximum sentence of life imprisonment;
- iv) at [26] of the judgment in *Wilkinson* the court observed that the sentence for importing firearms or being in possession with intent to supply should carry a maximum penalty of life imprisonment; and
- v) this observation was adopted when in 2014 Parliament through the Anti-Social Behaviour, Crime and Police Act 2014 amended s.5 of the 1968 Act by inserting a new section, s.5(2A), amending s.51 and amending Pt 1 of Sch.6. The effect of the amendments which came into force on 14 July 2014 was to provide for a new offence of transferring prohibited weapons and increase the maximum penalty to life imprisonment.

- 4 In these references and appeals we are concerned with:

- i) a criminal enterprise of six persons that dealt in the supply of handguns and lethal ammunition manufactured for use in the guns supplied. This was charged as Count 1 in the indictment;
- ii) those who on a specific occasion bought guns and lethal ammunition from the criminal enterprise. These occasions were the subject of Counts 2, 3 4 and 6 of the indictment; and
- iii) those who assisted in one of the specific transactions.

- 5 The judge sentenced them as follows:

- i) the leader of the criminal enterprise, the armourer and the other four principals who were members of the enterprise (referred to by the judge as

the key facilitators) and assisted in the transactions. The judge set the sentence he would have passed on the leader at 19-and-a-half years (before the discount for plea) and passed on the others sentences of between 17-and-a-half years and 11 years, before a discount for plea;

- ii) those who purchased guns and weapons on four specific occasions. The judge set the sentence he would have passed on the purchasers at between 11 and seven-and-a-half years, before a discount for plea; and
- iii) those who assisted the purchaser on those occasions. The judge set the sentence he would have passed at between 12 and five years (on those who assisted the purchasers) before a discount for plea.

6 In these references we did not reconsider the use of the statutory life sentence for crimes involving lethal weapons, whether under s.225 of the CJA 2003 or under provisions specifying a maximum sentence of life imprisonment (as summarised at [6(ii)] of the judgment in *R. v Burinskas* [2014] EWCA Crim 334; [2014] 1 W.L.R. 4209; [2014] 2 Cr. App. R. (S.) 45 (p.359). The judge was of the view that this was not an appropriate case for a sentence on the principal offender under s.225 of the CJA 2003, as he was not dangerous within the meaning of the CJA 2003 as there was no significant risk of him committing serious crimes in the future; he took the same view in relation to the other offenders. He did not consider whether a life sentence should have been imposed under other statutory provisions. We are, however, not persuaded that we should revisit the decisions not to impose a life sentence. Nonetheless, as was pointed out in *Wilkinson* at [27] (at a time where the court had available not only a sentence of life imprisonment but also a sentence of imprisonment for public protection), criminals who are prepared to deal in lethal weapons invariably represent a serious public danger and therefore a sentence of life imprisonment always arises for consideration and therefore must expressly be considered by the judge.

7 If a life sentence is not passed, as was made clear in *Wilkinson*, courts must impose long determinate sentences commensurate with the role played in any activity in relation to the supply of guns. Sentences must reflect the hierarchy of the supply enterprise, the role played in individual transactions and any previous convictions in relation to guns. In the present case our conclusions can be summarised as follows:

- i) for the leader of the enterprise which was in the business of supplying guns and lethal ammunition, a very long determinate sentence was required. It appears to have been assumed (because the minimum term imposed on *Wilkinson*, the head of the enterprise in the case determined in 2009 who received a life sentence, was 11 years) that the maximum determinate sentence was 22 years for a large scale enterprise engaged in the supply of guns. No such maximum was indicated by this court in that case. In the present case, we consider that the appropriate sentence for the leader was 25 years, prior to discount for his plea. However, in the light of the mistaken view taken of *Wilkinson*, we must make clear that courts should not take this as a maximum. For example, a materially greater sentence would be appropriate if there was any previous conviction for offences involving guns. Nor can it make any difference that the criminal enterprise here was engaged in converting or acquiring guns rather than importing them; the same level of sentence is appropriate, as the essence of the criminality is

the organisation of a criminal enterprise to supply guns and lethal ammunition to customers, irrespective of the source of the guns and ammunition. Those engaged in the criminal enterprise under the leader should have received sentences reflecting the sentence for the leader (before any discount for plea), depending on the role they played;

- ii) in the case of those seeking to buy a gun and lethal ammunition from this criminal enterprise, we have proceeded on the basis that the purchaser must have required the gun and lethal ammunition to “kill and maim, terrorise or intimidate”; two of the customers were engaged in the supply of Class A drugs. In our judgement the appropriate sentences for the purchasers in this case should have been in the region of 15 years, significantly higher sentences than that being required in the event of any previous convictions in relation to guns; and
 - iii) the role played by those who assisted in these transactions varied, but as Parliament has stipulated a minimum sentence of five years for those in possession of a gun, we consider that it was inappropriate to pass sentences with a starting point of less than eight years for those who assisted in putting guns into circulation. Their criminality lay in assisting in putting guns and lethal ammunition into the hands of a purchaser. Sentences materially greater were required in cases where the assistance was significant; in the present case the sentences should have ranged from 12–8 years, depending on the role they played and any previous association with guns.
- 8 Such sentences are severe but reflect the intention of Parliament to punish gun crime in a manner that will deter criminals from engaging in dealing in guns and lethal ammunition.

Count 1: the overall conspiracy to manufacture and supply guns and lethal ammunition

- 9 There was based in Birmingham between March 2014 and January 2015 a sophisticated criminal enterprise which supplied firearms and lethal ammunition to other criminals in the West Midlands and elsewhere in the UK. Six individuals who played a role in this enterprise were identified and indicted as a result of intense and careful surveillance by the West Midlands Police. The two principals were:

- i) Nosakhere Stephenson, aged 41, was the head of this enterprise. He was the person to whom criminals in the Midlands would turn when they wished to purchase a gun and lethal ammunition. He pleaded guilty on a basis of plea on 3 November 2015, the second day of the trial. That basis of plea accepted that he was involved in the supply by the enterprise of five guns, the subject of the other five counts. The judge took the starting point for his sentence as 19-and-a-half years, reducing it to 16-and-a-half years years imprisonment, giving a 10% discount for the guilty plea, and then adding six months for the impact that the plea had on others; and
- ii) Sundish Nazran, aged 32, was the second in command and the enterprise’s chief armourer. He entered his plea at a case management hearing on 3 August 2015. There was no agreed basis of plea, a matter to which we draw special attention and return to at [26]–[27] below. He was sentenced to 13

years' imprisonment, a 25% reduction from the starting point of 17-and-a-half years years, on the basis of his involvement in the enterprise and the specific transactions in Counts 2, 4, 5 and 6.

- 10 They were supported by four who were described as “key facilitators”:
- i) Louis McDermott, aged 36, pleaded guilty at a plea and case management hearing on 5 June 2015; there was no basis of plea. The judge sentenced him, on the basis that he was involved in the criminal enterprise and in the transactions charged as Counts 2, 3 and 4, to nine years and four months imprisonment, a 33% reduction from the starting point of 14 years;
 - ii) Theodore Wiggan, aged 28, pleaded guilty at the plea and case management hearing; there was no basis of plea. He was sentenced by the judge on the basis of his involvement in the criminal enterprise and Counts 2, 4 and 5, to 10 years' imprisonment, a 33% reduction from the starting point of 15 years;
 - iii) Rowan Gul, aged 33 years, pleaded guilty on the second day of the trial on a written basis of plea which accepted his involvement in the criminal enterprise and in the supply set out in respect of Counts 3 and 6 and a limited involvement in 4. He was sentenced to imprisonment for 12 years three months, a 10% reduction from the starting point of 14-and-a-half years years and an additional nine months because of understandable delay in his plea; and
 - iv) Fitzroy Ducram, aged 50, pleaded guilty at the plea and case management hearing on 15 June 2015. He was sentenced by the judge, on the basis of his involvement in the criminal enterprise and his specific involvement in Count 4, to seven years four months' imprisonment, a reduction of 33% from the starting point of 11 years.

(i) The scale and nature of the enterprise

- 11 Although, as is apparent, we have taken a different view to that of the judge as to the level of sentences required, we wish to pay tribute to the meticulous and careful way in which he dealt with this complex matter. A particular difficulty he faced was that he was not put in a position where he could sentence all the offenders on the same occasion and in the order of their culpability. Listing officers must for the future ensure that in a complex case of this kind, a date is set for sentencing as soon as possible after the conclusion of the trials and all the defendants and their counsel are present on the same occasion. If there are any possible difficulties in ensuring this happens, the resident judge or presiding judge must be consulted and must direct that arrangements are made to enable all to be sentenced together.
- 12 The judge assessed the criminal enterprise as conduct of the utmost gravity. In our judgement that cannot be doubted. The criminal enterprise was in the business of obtaining and, where necessary, putting guns into working order and supplying them with lethal ammunition. There can be only one purpose of acquiring a gun and ammunition—to kill or injure—and those supplying guns plainly knew this. As the judge stated, the supplier and purchaser knew of the intended use and that must have been to endanger life.
- 13 The city of Birmingham, like some other cities, has seen the effect of the use of guns. The judge pointed to the drive-by shooting which killed two young women

in 2003, an attempted murder on the doorstep of Selfridges and the Barton Arms shooting at the police in 2011.

- 14 There can be no doubt that in respect of the first three questions posed in *Avis*, the enterprise was engaged in the supply of weapons with ammunition specifically made so as to enable the guns to be used to kill or injure and that the supply was made in the knowledge that they were being acquired for that purpose and were likely to be used for that purpose. The fourth question relating to the record of the individual offender falls to be taken into account when considering each offender.
- 15 Many of the weapons in which they dealt were antique firearms; these can generally be held legally without a licence if possessed as a curiosity or ornament (see s.58(2) of the 1968 Act). We were told by the Solicitor General (as subsequently set out in a report prepared for this court) that criminals obtain such weapons, put them into working order and acquire ammunition for them; at least four fatal shootings have involved the use of antique firearms. It is apparent from the information supplied to us that an increasing and significant number of obsolete antique firearms have been recovered by the police; in 52% of these recoveries, ammunition has also been recovered. We were also provided with a statement by Mr David Dyson, a forensic practitioner in the field of firearms.
- 16 The increasing danger posed by criminals putting antique firearms into working order and providing ammunition to fit them is a matter that should be considered by the Home Office and by Parliament with a view to a re-examination of the exemption in s.58(2).
- 17 The criminal enterprise put these guns into working order and manufactured, or sourced the manufacture of, ammunition for them, thus making them lethal so that they could be used to kill or injure. Even though the ammunition was of various calibres, forensic examination suggested all came from a common source.
- 18 Each of the six had full knowledge of the nature of the criminal enterprise charged in Count 1 of the indictment. That included the continuing need for secrecy in sourcing, collecting and storing firearms and ammunition and in the eventual sale of the weapons and realisation of the proceeds. We have already noted their use of antique firearms and the use made of these by criminals; in the present case, on the evidence available to us, we do not treat this as an aggravating factor. The scale of the conspiracy over the period of nine months from March 2014 to January 2015 is shown by the fact that the police recovered eight firearms—a Mach 10 machine pistol, six handguns and a sawn-off shotgun, together with 492 live rounds of ammunition of various calibres, including commonly manufactured ammunition. All the weapons recovered were test fired and found to be in working order.
- 19 Throughout the period of activity of the conspirators, they were aware of police investigative techniques and tried to defeat those techniques by the use of various stratagems and devices. The participants in the enterprise used the usual measures to try and escape detection, including the use of cheap unregistered mobile phones, the use of intermediaries and hired cars.

(ii) The leader: Nosakhare Stephenson

- 20 He was the leader and had an involvement in each of the transactions. He had a previous conviction for perverting the course of justice in 2002 for which he received a sentence of three months' imprisonment. He was described by the judge as a "family man", in the light of the testimonials provided which spoke of the

guidance he had given others and the help he had given to his family who looked up to him. The judge drew attention to the fact that he had spent five years in custody in respect of a count of murder of which he was acquitted, but rightly did not take that into account in accordance with the decision of this court in *R. v Wiwczaryk* (1980) 2 Cr. App. R. (S.) 309.

- 21 As we have made clear, there is nothing in the decision in *Wilkinson* or the other fact specific cases that indicates that a court should consider a sentence of 22 years as the top of the range. A court must assess the entire factual circumstances, including the number and type of weapons in which the members of the criminal enterprise dealt, the provision of lethal ammunition, the period of time over which the criminal enterprise operated, the level of sophistication employed, the geographic range over which the criminal enterprise operated and any specific factors connecting the criminal enterprise to a locality where gun crime was particularly serious.
- 22 In the present case we have assessed the seriousness of the criminality by considering the factors we have outlined. Although the fact that Stephenson was a family man can count for little, we do take into account the fact that Stephenson only had one previous conviction. In those circumstances we consider the judge should have taken 25 years as the appropriate sentence before a discount for plea and that the sentence of 19-and-a-half years taken by the judge resulted in a sentence which was unduly lenient. We consider that the judge was right to allow a discount of 10% and six months because of the circumstances in which the plea was made. We therefore quash the sentence of 16-and-a-half years and impose a sentence of 22 years.

(iii) The armourer: Nazran

- 23 Nazran was a supplier of the antique guns and the ammunition, in short, the armourer to the criminal enterprise where he played the second most important role. He was involved specifically in the matters the subject of Count 2 (where his involvement was limited to two of the three guns), Counts 4 and 5 (where the judge sentenced him on the basis that he had supplied factory manufactured ammunition) and Count 6 (where he was extensively involved in the arrangements to supply the weapon).
- 24 He had a conviction for a previous offence which was not relevant. He was also described by the judge as a “family man” who had acted legitimately in business. He was a member of the West Midlands Shooting Club and held other weapons and ammunition legally. The judge rightly considered his culpability as extremely high because of his role in the enterprise and his use of his position in holding weapons legitimately to facilitate the supply by the criminal enterprise.
- 25 We agree with the judge’s assessment of his culpability only being a little less than that of Stephenson; for the reasons we have explained, the sentence for Stephenson was too low and therefore that for Nazran should have been 23 years before any discount for plea. On this basis, allowing the same discount (25%) for a guilty plea as the judge, the sentence was unduly lenient. We therefore quash the sentence of 13 years and substitute a sentence of 17 years and three months.
- 26 As we have observed, we have considerable concern about the way in which the basis on which Nazran was to be sentenced was dealt with. Although he pleaded guilty in August 2015, there was then no basis of plea. We were told by Mr Balbir

Singh that that was because the papers had not all been served and he therefore asked and was granted time to put forward a basis of plea. It appears that there was still an argument about the basis of plea at the time of this very complex sentencing hearing. The prosecution had refused to accept what was put forward.

- 27 This should not have happened. The basis of plea should have been put forward at the time the plea was entered and, if not accepted by the prosecution, arrangements should have been made then and there for a *Newton* hearing. As this court has repeatedly made clear, a defendant does not need prosecution papers to enable him to set out his involvement in the crime to which he pleaded guilty. It is clear that Nazran was attempting to claim credit for an early guilty plea and prevaricating as to his role. He should not have been allowed to do that as it significantly interfered with the proper procedure at the time of sentence. The judge was exceptionally generous in allowing a discount of 25%. We do not seek on this occasion to go behind that, but what was done in this case should not be done again; if it is, then a court should not hesitate in disallowing any discount or allowing only a nominal discount.

(iv) The other members of the criminal enterprise

- 28 The judge ranked the order of culpability of the other members of the criminal enterprise as follows:

29 Wiggan

- i) He was a key facilitator in the criminal enterprise, playing the highly trusted role of storing the guns and ammunition, as illustrated by Count 5 when he was apprehended taking a selection of bullets out of the store to show to others to solicit a purchase. His involvement in the specific offence charged in Count 2 was minding the firearms and in Count 4 delivering the firearm to Ducram, another facilitator. He had also hired cars.
- ii) He had the trappings of outward respectability as he was a barber and was secretary of a football club and participated in other community organisations.
- iii) His culpability in the judge's view was high as he had supplied key services to the criminal enterprise making use of his apparent respectability in the community.
- iv) He had some previous convictions which the judge rightly held did not aggravate his sentence. Of the main participants, he was the only participant against whom the prosecution did not seek a serious crime prevention order, a matter relied on by him in this court.
- v) The judge had before him a letter expressing remorse and testimonials as to his community work. He was using his time in prison constructively.
- vi) As we have indicated, the appropriate sentence for the others engaged in the enterprise should have reflected the sentence of 25 years we have set out for the leader. In our judgement the appropriate sentence for Wiggan, before any discount for plea, should have been 20 years. On this basis, applying the discount of 33% which the judge applied, the sentence was unduly lenient. We therefore quash the sentence of 10 years and impose a sentence of 13 years and four months.

30 Gul

- i) He was also a key facilitator and was known on the streets as someone who had direct contacts with those who could source firearms and was trusted by the leader. His involvement in the specific offences was set out in the basis of plea to which we have referred at [10.iii)] above. He was a significant link in the criminal enterprise being directly involved in the transfer of the firearm in Count 6. He was not at the highest level of culpability.
- ii) He had 70 previous convictions, including one for armed robbery in 2006 and possession of a firearm with intent for which he received a sentence of five years' imprisonment; this involved the robbery of a jewellery shop where a shotgun was discharged. He was acting as the driver. The judge rightly concluded that this aggravated his criminality as he had again become involved with guns.
- iii) The judge sentenced him on the basis that he came from a troubled background, that he was susceptible of being led by others and that he was remorseful.
- iv) His culpability in view of his previous conviction was only marginally less than that of Wiggan. In our judgement the appropriate sentence should have been 19-and-a-half years, before any discount for plea. On this basis, applying the discount of 10% which the judge applied and the further nine months, the sentence was unduly lenient. We therefore quash the sentence of 12 years and three months and impose a sentence of 16 years and nine months.

31 McDermott

- i) He was a key facilitator in the criminal enterprise and was involved in the specific transactions charged as Count 2, 3 and 4. He was trusted by Stephenson.
- ii) He had some previous convictions, including a sentence passed in 2002 of eight years for importing class A drugs. He had written to the judge accepting full responsibility and was seeking to make good use of his time in prison. Testimonials were put before the judge. The judge took account of the fact he had a young son and his expressed remorse.
- iii) His culpability was only a little less than that of Wiggan. In our judgement the appropriate sentence should have been 19 years, before any discount for plea. On this basis, applying the discount of 33% which the judge applied, the sentence was unduly lenient. We therefore quash the sentence of nine years and four months and impose a sentence of 12 years and eight months.

32 Ducram

- i) He was engaged in the criminal enterprise and highly trusted by the other members. He was specifically involved in Count 4, storing the gun overnight and then delivering it to the customer.
- ii) He had three previous convictions, but the judge rightly considered that they were not aggravating factors. The judge described him as a family man. He was remorseful and putting his time in prison to good use.
- iii) His culpability in view of his previous conviction was less than that of Wiggan. In our judgement the appropriate sentence should have been 16

years, before any discount for his plea. On this basis, applying the discount of 33% which the judge applied, the sentence was unduly lenient. We therefore quash the sentence of seven years and four months and impose a sentence of 10 years and eight months.

Count 2: The supply of a revolver and ammunition on 7/8 April 2014

- 33 This count involved the supply of a revolver and ammunition to Joga Mattu, aged 31, as an intermediary storing guns on one occasion for the criminal enterprise or a customer. He pleaded guilty with no basis of plea on 14 July 2014 to a count that was treated as the equivalent to Count 2 and was sentenced to five years imprisonment, a discount of 33% from the sentence of seven-and-a-half years which the judge considered appropriate. Nazran was the principal member of the criminal enterprise engaged in this supply.
- 34 The evidence was that on the afternoon of 8 April 2014 Mattu arrived at Nazran's house. After an hour he left, followed by Nazran in his car. They went towards Mattu's house where they were stopped by armed police. Mattu ran off and threw away the bag he was carrying. It contained a Munts Amsterdam Dutch police revolver and 51 rounds of .41 ammunition. The ammunition had been adapted so it could be fired from the revolver.
- 35 Nazran was arrested at the same time. Both houses were searched. At Mattu's house and in the boot of his car the police found a Walther PPK pistol capable of firing .32 calibre ammunition. At Nazran's house, hidden under his shed they found a US Colt "New Police" revolver manufactured after 1926. It was in working order and capable of firing .32 calibre ammunition. Even though there was no basis of plea, the judge agreed to sentence Nazran on the basis that someone else had hidden the Colt New Revolver under the shed.
- 36 Analysis of mobile phones recovered showed phone traffic between the members of the criminal enterprise (Stephenson, Nazran, Wiggan, McDermott and Gul) which indicated that Mattu was being used to store guns before they were supplied to a customer. It also showed that the main conspirators were making arrangements for the storing and imminent supply of a gun to a customer on 8 April 2014.
- 37 Nazran was released on bail in May 2014 and resumed his role as one of the principal members of the criminal enterprise.
- 38 Mattu
- i) He was involved in one transaction when he stored the guns to which we have referred for Nazran for a fee.
 - ii) The offence was committed when the maximum penalty was 10 years, as the prosecution did not charge him with the offence that then carried a sentence of life imprisonment, though the judge thought that they could have.
 - iii) He worked as a part time care worker and the judge was provided with testimonials as to his work. He had minor previous convictions.
 - iv) If Mattu had been charged with the offence with which he should have been charged or if the offence had been committed after July 2014, the sentence he would have received would have been significantly greater. However in view of the offence with which he was charged and the then maximum

sentence, the sentence passed by the judge was within the range which the judge was entitled to pass.

- v) Although we grant leave, we do not alter his sentence.

Count 3: supply of an automatic sub machine pistol and ammunition in early August 2014

39 This count involved the supply by the principal members of the enterprise, particularly Stephenson, to the following:

- i) Mohammed Miah, 24 years old, was found by the judge to be the primary person who sought the supply of a Mach 10 sub-machine pistol and ammunition. He pleaded guilty on the second day of the trial on 2 November 2015; his basis of plea was rejected. He also pleaded guilty to an indictment charging conspiracy to supply heroin, based on drugs recovered at the same time. He was sentenced to nine years for the firearms conspiracy (being a 10% reduction from a sentence of 10 years) with consecutive sentences of three years and one year's imprisonment for two counts of supplying heroin, making a total of 13 years.
- ii) Joynal Abdin, aged 26 years. He played the role of a junior partner of Miah in the acquisition of the gun. He was convicted on Count 3 on 24 November 2015 and sentenced to seven years three months imprisonment.
- iii) Amar Ghalib, 32 years of age, played the role of an intermediary in the transaction. He pleaded guilty on the second day of the trial on 3 November 2015 on a basis of plea that, as he was a drugs user, he was told by his supplier to convey messages to Stephenson as an intermediary; he knew of the transfer of a gun for use on the street. He was sentenced to four years and 11 months imprisonment, a 10% discount on a sentence of five-and-a-half years.

40 The supply was arranged as follows:

- i) On the late evening of 31 July 2014 two friends of Abdin were shot at by a passing car in Aston, Birmingham. The likelihood is that this shooting was precipitated by a dispute over drugs. Immediately thereafter Miah contacted Abdin and then Miah made attempts to call Ghalib who was believed to be able to source firearms through his contacts.
- ii) The judge concluded that weapons were sought by Miah to retaliate or to use for protection in the criminal purposes in which Miah was engaged, probably drug dealing. Abdin was his junior partner in the transaction.
- iii) On 3 August 2014 Ghalib contacted Miah and an hour later Ghalib called Stephenson to pass on the order for firearms. After further phone calls, the deal to supply firearms was set up on the morning of 4 August 2014 between Stephenson, Gul and Ghalib who reported back to Miah what he had arranged for him. Gul then met Miah and was called by Stephenson while he was with Miah. The sequence of telephone calls was entirely consistent with making and confirming the arrangements for the transfer of a weapon or weapons.
- iv) Following that meeting, there were no calls between the members of the criminal enterprise or between them and Miah and Ghalib.

- v) The transfer of the guns must have taken place between 4 and 10 August 2014. It was not observed by the police.

41 After the delivery:

- i) It is clear that Mohamed Ullah, a young man of 18 who subsequently pleaded guilty to the charge of possession of the prohibited weapon, was asked to store the guns acquired as a custodian for Miah.
- ii) On 10 August 2014 armed officers attended at Ullah's address. Buried in the garden the police recovered a Mach 10 sub-machine pistol with live ammunition. The Mach 10 is a modern weapon capable of automatic fire. There was a 9mm round in the chamber, nine found in the magazine and four x 9mm rounds in the bag. They also recovered a sawn-off pump action shotgun (a Berretta) and four shotgun cartridges. A single 9mm round was found in Ullah's car.
- iii) At the commencement of the raid Ullah attempted to call Miah; this was consistent with Ullah informing him of the police raid. After the raid both Miah and Stephenson stopped using the mobile phones which had been used to make the arrangements.
- iv) In the car, 11 bags each containing one ounce of heroin with a purity of 50% were found which had Miah's fingerprints on them; the evidence before the court indicated that this was mid-market dealing with a street value of just under £30,000.

42 Subsequently on 17 September 2014 he was arrested when in possession of approximately half a kilo of heroin of high purity with a street value of £48,700 and at his house cash was found.

43 Stephenson accepted in his basis of plea that he had acted as a broker for the supply of the a Mach 10 sub-machine pistol (but not the sawn off shotgun), but said he did not know of the precise details of the gun supplied. Gul accepted in his basis of plea that he introduced the purchaser to the seller, but said he was not aware of the precise nature of the gun and ammunition.

44 We turn to consider the three offenders who were charged specifically on Count 3 in the order of their culpability:

45 Miah:

- i) It is clear he was the customer who sought out the purchase of the gun in question to use for the purpose of using in the criminal purposes in which Miah was engaged, probably the protection of his drug dealing area in Aston. He knew that it was a machine pistol capable of automatic fire and would be supplied with a quantity of ammunition.
- ii) The judge expressed the view that the sentences he imposed for the drugs offences for which he took a starting point of four-and-a-half years were "generous". He reduced each by 33% to reflect the early pleas and the second offence to 12 months for totality.
- iii) He had no relevant previous convictions. He had held down employment, he was relatively young, had expressed remorse and was making good use of his time in prison.
- iv) In our judgement, the appropriate sentence for the firearms offence should have been 15 years as not only was he the person who sought out the purchase of the firearm and ammunition for use in his criminal business,

but also the firearm was a particularly dangerous weapon capable of automatic fire. On this basis, applying the discount of 10% which the judge applied, the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of nine years and impose a sentence of 13 years and six months for the firearms offence. The sentence for the drugs offences remains as passed, making a total sentence of 17 years five months.

- v) Miah sought leave to appeal against the sentences for the firearms offence on the grounds of disparity. The application is refused. He was the prime mover on this count and, as adjusted, there is no disparity.

46 Abdin

- i) The judge who heard the trial found that Abdin was the junior partner to Miah; it was likely that he had envisaged someone being shot at with the weapon to be acquired. He did not know that the gun was an automatic weapon.
- ii) He had 52 previous convictions. Many of them were for possession of class A drugs, but including a sentence of nine months imprisonment for affray. The judge considered that his wife and family would suffer as a result of his conviction.
- iii) In our judgement, the appropriate sentence for the firearms offence should have been 12 years as he was the junior partner to the person who sought out the purchase of the firearm and ammunition for use in his criminal business, but he did not know that the firearm was a particularly dangerous weapon capable of automatic fire. On this basis the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of seven years and three months and impose a sentence of 12 years.

47 Ghalib

- i) Ghalib was used to convey instructions, knowing that he was involved in a transaction that would put a gun on the street.
- ii) He had 44 previous convictions, including a sentence of three-and-a-half years in 2007 for supplying class A drugs.
- iii) In our judgement, the appropriate sentence for the firearms offence should have been eight years as he was knowingly involved in a transaction that would put a gun on the street, though he did not know that the firearm was a particularly dangerous weapon capable of automatic fire and played a limited role. On this basis, applying the discount of 10% the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of four years and 11 months and impose a sentence of seven years and two months.

Count 4: 17 August 2014—supply of a revolver and ammunition

48 This count involved the supply of a revolver and ammunition to three persons:

- i) Clinton Officer, 32 years old, was the customer for the supply of a WW Super Revolver and ammunition. He was convicted on 26 August 2015 and sentenced on 22 January 2016 to 11 years' imprisonment.

- ii) Darren Mentore, 35 years old, was an intermediary. He was convicted on 26 August 2015. He was sentenced to 12 years' imprisonment on 22 January 2016.
- iii) Jamal Smith, 34 years old, was another intermediary. He had pleaded guilty on 5 June 2015 and was treated as pleading to Count 4 on a basis of plea that he was the driver to carry the cash and, although he initially thought the cash was for drugs, he realised it was for the purchase of a gun when he was driving. He was sentenced on 22 January 2016 to six years' imprisonment, receiving approximately a 33% discount from a sentence of nine years.

49 The supply of the revolver and ammunition was organised as follows:

- i) It appears that on 10 August 2014 Officer, who lived in west London, wanted to acquire a gun. He discussed this with his friend Mentore who made contact with Jamal Smith, an old friend who had moved back to Birmingham. He thought Smith could supply him with a gun as Smith was a friend and relative of McDermott, a trusted key facilitator in the criminal enterprise.
- ii) On 15 August 2014 Mentore went to Birmingham to make arrangements for the purchase. It appears from contacts between Smith and McDermott on Saturday, 16 August 2014 and between McDermott and other members of the criminal enterprise, the terms of the deal were discussed and arrangements made for the supply of the gun to Officer and Mentore on 18 August 2014.
- iii) The night before the supply, various arrangements, phone calls and movements took place between Stephenson, Gul, McDermott, Ducram and Wiggan. The gun was brought by Wiggan from a place which the police subsequently discovered was used as a store by the enterprise in Great Barr, Birmingham to Ducram's house at Raglan Road, Handsworth for safekeeping by Ducram until the next day when it was due to be handed over. Gul and Stephenson were present at or after the time the revolver arrived.
- iv) On Monday 18 August 2014 Officer drove to Birmingham. After phone calls between Ducram and McDermott, Ducram left his house with the gun at 17.48 and drove to the rendezvous in Birmingham. At the rendezvous Ducram got into the car driven by Officer; in the car were Mentore, McDermott and Smith. Ducram handed over the gun and ammunition and got out of the car. Officer then handed over half of the money to McDermott whilst Mentore checked the gun over and started loading it with bullets.
- v) The police then swooped and arrested those present. On searching the car they found a WW Super Revolver, five rounds of .41 calibre ammunition loaded into the chamber and a further 20 rounds in the bag in the car. The gun was in working order. The ammunition had been modified by a similar process to the ammunition recovered under Count 2. £1,500 cash was found in the car and £1,500 on McDermott, it being clear that £3,000 was paid for the gun.
- vi) Within minutes of the arrest Stephenson was in contact with other members of the conspiracy. He dumped the phones he had been using. He accepted in his basis of plea his role in the supply of the revolver and ammunition.

Gul accepted from his presence on 17 August 2014 that he knew of the transfer.

50 We turn to consider the three offenders who were charged specifically on Count
4 in the order of their culpability.

51 Officer

- i) He was the customer who wanted a firearm and ammunition and was prepared to pay for them. Although the judge was not able to find the precise purpose for which the gun and ammunition were bought, it was not bought for show and, if used, it would have put lives in danger.
- ii) He had a previous conviction for the supply of class A drugs in 2002 for which he received a sentence of three-and-a-half years with two less serious convictions thereafter.
- iii) In his application for leave to appeal against sentence he contended that the sentence was too long as the judge erred in attributing a particular intent to him. The point is unarguable. It is clear that Officer wanted a gun with lethal ammunition; he can only have wanted it for the purpose of killing, terrorising intimidating or maiming. Leave to appeal is refused.
- iv) In our judgement the appropriate starting point for Officer as the purchaser for this type of gun was 14 years. On this basis the sentence of 11 years was unduly lenient and we therefore quash it and substitute a sentence of 14 years.

52 Mentore

- i) He was a go-between, closely associated with the purchaser and present when the gun and ammunition were handed over.
- ii) He had previous convictions for robbery in 2004 for which he received a sentence of nine years and, in 2010, for the supply of Class A drugs for which he received a sentence of seven years.
- iii) In our view, Mentore as an intermediary actually involved in the handover to the extent of loading the gun and with a significant criminal record fell to be sentenced at the top end of the range of sentences for intermediaries. In our judgement the appropriate sentence for him was 14 years. On this basis the sentence of 12 years was unduly lenient. We therefore quash the sentence of 12 years and substitute a sentence of 14 years.

53 Smith

- i) He was one of the go-betweens who arranged the supply and we are satisfied that he was present when the gun and ammunition were handed over.
- ii) Photographs of firearms and ammunition were found on his phone.
- iii) He had a previous conviction in 2001 for possession of a firearm with intent and wounding with intent arising out of an incident when he shot two people for which he received a sentence of nine years.
- iv) In our view, Smith as an intermediary actually involved in the handover and with a conviction for gun crime (even though many years before) fell to be sentenced at the top end of the range of sentences for intermediaries. In our judgement the appropriate sentence for him was also 12 years. On this basis the sentence of six-and-a-half years was unduly lenient, taking into account a discount 33%. We therefore quash the sentence of

six-and-a-half years and substitute a sentence of eight years, giving him the full 33% discount.

Count 5: discovery of a cache on 19 November 2014

- 54 This count related to the discovery of a NSW police revolver and a cache of ammunition on 19 November 2014; it was the prosecution case that Wiggan was in possession of live rounds of different calibres which he had obtained from a cache and was taking to show potential customers or to check which ammunition fitted a particular gun
- i) On 19 November 2014 Wiggan was seen going into a lock-up garage in Great Barr, Birmingham. He was stopped by officers and found to be in possession of three bullets.
 - ii) A search was conducted of the lock-up garage where a rucksack was discovered which contained a .45 calibre NSW police revolver. About 400 rounds of ammunition were also recovered of varying calibres including ammunition capable of being fired from the revolver. The other ammunition was capable of being fired from other .41 calibre revolvers, .32 calibre pistols and 9mm automatic or semi-automatic weapons. All the ammunition had been specially made or adapted.
- 55 When his phone was seized, phone records show that he kept in regular contact with the leader of the conspiracy, Stephenson. Stephenson specifically accepted his involvement in this court.
- 56 No persons other than those engaged in the main criminal enterprise were involved.

Count 6: the supply of a revolver and ammunition 14–16 January 2015

- 57 This count involved the supply of a revolver and ammunition to the following four:
- i) Ifran Hussain, 25 years of age and brother to Usman. He was, with his brother, the customer for a revolver and ammunition. He pleaded guilty on 5 June 2015. He also pleaded guilty to conspiracy to supply heroin, cocaine and possession of criminal property. He was sentenced to seven-and-a-half years on Count 6 (receiving a discount of 25% from a sentence of 10 years), and a consecutive sentence of three years four months for the drugs offences, making a total sentence of 10 years and 10 months;
 - ii) Usman Hussain, 31 years old, was found by the judge to be the person who assisted his brother Ifran in the purchase of a revolver and ammunition. He pleaded guilty at the plea and case management hearing on 5 June 2015 and was sentenced to five years' imprisonment, receiving a 33% discount from a sentence of seven-and-a-half years;
 - iii) Mohammed Fedar, 27 years of age, assisted the Hussain brothers. He pleaded guilty on 5 June 2015 and was sentenced to four years four months' imprisonment, receiving a discount of 33% from a sentence of six years and six months; and
 - iv) Janed Mohammed, 21 years of age, assisted the Hussain brothers. He pleaded guilty on the first day of the trial on 10 August 2014 on a written basis of

plea. He was sentenced to four years and six months imprisonment, receiving a 10% discount from a sentence of five years.

58 The supply was organised as follows:

- i) Ifran Hussain wanted to obtain a gun and ammunition. He discussed this with his brother Usman. Usman Hussain asked Gul to source a gun for Ifran;
- ii) after speaking to Stephenson on 14 January 2015 Gul downloaded a series of images of pistols and revolvers onto his phone;
- iii) on the following day, arrangements were underway for the supply and collection of the gun on 16 January 2015. Ifran made plans with Fedar and Mohammed to meet up with Usman to go and collect the weapon from Gul. On 15 January 2015 there were numerous calls from Ifran to Usman, from Usman to Gul and Gul to Stephenson and Nazran to make arrangements for the handover the following day. Stephenson and Nazran met;
- iv) on the morning of 16 January 2015 Mohammed, Fedar and Gul met at Usman Hussain's address; Mohammed brought a bag containing cash which had been given to him by Fedar. The four then set off in two cars just before midday. Gul collected Stephenson. They followed a complex series of manoeuvres and phone calls which were designed to try and shake off any police surveillance. At 13.22 Mohammed's car was stopped and he, Usman Hussain and Fedar, were arrested. A bag was found on the back seat containing a French 1873 St Etienne revolver and 12 rounds of 11mm calibre ammunition. The ammunition had been adapted and could be fired from the gun;
- v) Gul drove Stephenson back to his home where Stephenson was arrested; and
- vi) police searched a flat connected to Ifran Hussain and found 82.2g of heroin and 116.26g of crack cocaine, together with £7,000 in cash. The drugs were arranged into wraps for sale to users. The value of the drugs was £19,360. He was charged with possession with intent to supply and possession of criminal property.

59 Stephenson accepted his involvement in the supply of this revolver and ammunition. Gul accepted he delivered the revolver to Usman Hussain.

60 We turn to consider the three offenders who were charged specifically on Count 6 in the order of their culpability:

61 Ifran Hussain

- i) The judge found that he was a customer for a gun and ammunition who employed his brother Usman to source it for him. The judge inferred that he wanted the gun for use in connection with his trade in Class A drugs.
- ii) He had been sentenced in 2007 as a juvenile to an eight months detention and training order for assault occasioning actual bodily harm, blackmail and intimidation of a witness.
- iii) The judge expressed the view that the drug dealing was Category 3 and he had a significant role rather than a leading role. He imposed a sentence of three years four months for the drugs offence after a discount of 33% for the early plea; a concurrent sentence of eight months was imposed for the possession of criminal property.

- iv) He sought leave to appeal against sentence on the basis that the judge had not expressly applied the principle of totality and on the basis of disparity with the sentence passed on Miah, as the judge had taken the same starting point for the firearms offence, despite the nature of the weapon which Miah had sought (the gun capable of automatic fire). We accept that there is force in the comparison with Miah and have approached the matter on that basis. The sentence for the drugs offence sufficiently reflects the principle of totality. We therefore refuse leave.
- v) In our judgement, the appropriate sentence for the firearms offence should have been 14 years as he was the person who sought out the purchase of the firearm and ammunition for use in his criminal business; we have taken into account the fact that it was not an automatic weapon and therefore reflected this in the view we have taken. On this basis, applying the discount of 25% which the judge applied, the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of seven-and-a-half years and impose a sentence of 10-and-a-half years for the firearms offence. The sentence for the drugs offences remains as passed, making a total sentence of 13 years 10 months.

62 Usman Hussain

- i) The judge found that he sought out the gun and ammunition, was present when it was delivered and knew it was to be used in the drugs trade.
- ii) He had 25 previous convictions for offences of dishonesty, disobedience to court orders and for drugs. However he had not received a custodial sentence. The judge considered he was a family man and he would feel imprisonment and the separation from his children keenly. He was making good use of custody.
- iii) In our judgement, the appropriate sentence for the firearms offence should have been 12 years as he was the person who sought out the weapon and ammunition knowing it was for use in his brother's criminal business and was present on its delivery. On this basis the sentence, applying the discount of 33%, the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of five years and impose a sentence of eight years.

63 Fedar

- i) The judge found that he aided Usman Hussain to take the cash and was present at the exchange of the cash for the gun. His home had been fortified and the judge was in no doubt that he tried to assist in lawlessness in a significant way.
- ii) He had no previous convictions, he was remorseful and was putting his time in prison to good use
- iii) In our judgement, the appropriate sentence for the firearms offence should have been 10 years as he accompanied Usman Hussain with a bag of cash and was present at the delivery of the firearm. On this basis the sentence, applying the discount of 33%, was unduly lenient. We therefore quash the sentence of four years and four months and impose a sentence of six years and eight months.

64 Mohammed

- i) His role was to drive Fedar with cash knowing it was to be used for something illegal. He originally believed it was for drugs, but learnt once embarked on the journey that it was for a gun.
- ii) He had no previous convictions, was 20 at the time of the offence. He was remorseful and found custody difficult, but was making good use of it.
- iii) In our judgement, the appropriate sentence for the firearms offence should have been six years as he was driving someone who had cash which he discovered in the course of the journey was for the purchase of the firearm and ammunition, but an allowance should be made for his youth and previous good character. On this basis, applying the discount of 10% the sentence for the firearms offence was unduly lenient. We therefore quash the sentence of four years and six months and impose a sentence of five years and five months.