

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

17 December 2021
SC(21)DEC06 – Underage sale of knives
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1 ISSUE

1.1 At the October meeting the Council agreed to develop two guidelines for underage sale of knives, one for individuals and one for organisations. It was also agreed that we should work with Trading Standards in developing the guidelines.

1.2 In November we held a very helpful meeting with Trading Standards officers and their input has been fed into the proposals in this paper.

1.3 This meeting will cover the guideline for organisations – the guideline for individuals will be considered at the March meeting, where it is hoped both guidelines can be signed off for consultation. A draft guideline for organisations is provided at **Annex A**.

2 RECOMMENDATION

2.1 The Council is asked to consider the guideline for organisations and:

- Agree culpability factors
- Agree to having just one level of harm
- Agree sentence levels
- Agree the approach to confiscation and compensation
- Agree aggravating and mitigating factors

3 CONSIDERATION

Information from Trading Standards

3.1 The trading standards officers who joined the working group explained how prosecutions generally arise. One issue they face is that (in England and Wales) there is no system of licensing or registering retailers who sell knives so they do not always know who is selling them. This is particularly an issue for online sales. Trading standards have little or no direct information about underage sales and so rely on test purchases. Practice varies between different local authority areas but some will warn retailers 90 days in advance that they will be subject to test purchases. Prior to these taking place retailers may be visited and given advice as to the adequacy of the measures they have in place and may be offered

training. If retailers do not take up the offer of training that may lead to them being the focus of further scrutiny and test purchases. Online retailers may also be warned before test purchasing takes place. For online sales the picture is complicated by the fact that individual trading standards departments only have responsibility for businesses based within their own local authority area. Therefore, if a test purchase is carried out by one local authority, they may then have to pass the information to another to consider what action to take as a result. If a test purchase results in an underage sale a prosecution will not always follow – consideration will be given to factors such as past history and willingness to rectify procedures, training etc. In London retailers may be invited to sign up to a [responsible retailer agreement](#) and if a business does not engage with this process a prosecution is more likely to result.

Culpability

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

3.2 The proposed culpability factors are largely the same as those considered at the October meeting with the addition of ‘Falsification of documents’ as a high culpability factor. The examples that are given to assist the sentencer to identify the relevant standards cover the points made by trading standards at the working group meeting. One potential issue is that there are more factors in high culpability than medium or low. In practice a prosecution

is highly unlikely to be brought in a case that would fall into low culpability which is set as cases falling just short of the statutory defence.¹ Nevertheless there is still value in having three levels of culpability to provide context and balance to the factors in high and medium.

Question 1: Does the Council agree to consult on the culpability factors at Annex A?

Harm

3.3 As discussed at the October meeting, harm for this offence is almost always the risk of harm (as the overwhelming majority of prosecutions relate to test purchases). The Council thought that the age of the purchaser was not a relevant factor and was unsure as to what factors might be appropriate. Consideration was given by the working group to the type or size of knife or blade but, while a larger knife might be seen as capable of causing greater harm, a smaller one could be more easily concealed and may pose a greater risk for that reason. The working group came to the conclusion that there was no meaningful way of distinguishing levels of harm for this offence and therefore only one level is proposed.

3.4 Some wording will be required to explain to guideline users why there is only one level of harm. The suggestion is:

HARM

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

3.5 Any factor that could in rare cases indicate raised harm (such as subsequent use of the weapon) could be considered at step 2.

Question 2: Does the Council agree to consult on having only one level of harm? If so, is the proposed wording right?

Sentence levels

3.6 The majority of these offences are punished by way of a fine. Of 46 organisations sentenced in 2019, one was sentenced to a discharge and 45 were fined.

3.7 For organisations in 2019, the range of fine amounts was £276 to £50,000 (the mean was £5,585 and the median £2,000). All of these fine amounts are after any reduction for a guilty plea.

¹ (4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

3.8 There are three existing guidelines for organisations which may provide useful comparators ([health & safety](#), [food safety](#), [environmental](#)). As with these guidelines which apply to organisations of widely varying sizes, the suggested approach to sentence levels is to have four sentence tables: for micro, small, medium and large organisations.

3.9 **Annex C** contains a comparison of sentence levels across the three existing guidelines for what might be considered to be an equivalent level of offending. It is relevant to note that while the maximum fine is unlimited for all of the offences, the underage sale offence has a maximum of six months' imprisonment whereas the other three carry a maximum of two years. Based on the deemed equivalent level of offending, none of the comparator sentences would exceed the maximum of six months for individuals. The Council may feel, therefore, that sentence levels for organisations could justifiably be set at levels comparable to the other guidelines.

3.10 The lack of information about cases sentenced in magistrates' courts makes it difficult to draw conclusions from current sentencing practice. The evidence that we do have from trading standards suggests that without a guideline sentencing practice is inconsistent. One of the motivations for developing guidelines for this offence is to ensure that fines are proportionate particularly in the case of larger companies which would lead to increased fines in some cases.

3.11 The largest fine we are aware of is B&M Retail Limited which has a turnover in excess of £2 billion and was fined £480,000 following guilty pleas to three offences. Before guilty pleas the fines were: £200,000, £220,000 and £300,000, all consecutive. The sentencing remarks of District Judge (MC) Lucie are provided at **Annex B** and show that the judge assessed the offences as being at the high end of medium culpability and obtained some assistance from the [Organisations: Breach of food safety and food hygiene regulations](#) guideline in arriving at the fine levels. The overall fine after plea was subsequently reduced on appeal to £330,000 on the basis that the offending company had subsequently brought in additional measures to prevent a recurrence.

3.12 The proposed sentence levels at **Annex A** (and below) broadly reflect the sentence levels in the food safety guideline for large and medium organisations using harm level 2 from that guideline. This takes a lower level of harm than that considered by DJ(MC) Lucie but is still likely to result in higher fines overall than are currently imposed. The proposed fine levels for small and micro organisations are lower than those in the food safety guideline to reflect a penalty that is a similar proportion of turnover. The starting points for medium culpability are half that for high and the starting points for low culpability are around a quarter of that for medium. The ranges allow for some overlap between high and medium culpability.

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

Culpability		
A	B	C
Starting point £250,000	Starting point £100,000	Starting point £25,000
Category range £100,000 – £500,000	Category range £50,000 – £250,000	Category range £10,000 – £50,000

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

Culpability		
A	B	C
Starting point £100,000	Starting point £50,000	Starting point £12,000
Category range £50,000 – £250,000	Category range £25,000 – £100,000	Category range £5,000 – £25,000

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

Culpability		
A	B	C
Starting point £20,000	Starting point £10,000	Starting point £2,000
Category range £10,000 – £50,000	Category range £5,000 – £20,000	Category range £1,000 – £5,000

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

Culpability		
A	B	C
Starting point £5,000	Starting point £2,000	Starting point £500
Category range £2,000 – £20,000	Category range £1,000 – £5,000	Category range £200 – £1,000

3.13 The sentence levels should be considered in the context of step 3 – Adjustment of fine, that requires the court to check that the fine meets the objectives of the removal of all gain, appropriate additional punishment, and deterrence in a fair way taking into account the size and financial position of the offending organisation and the seriousness of the offence. This allows for considerable flexibility in the setting of the fine.

Question 3: Are the proposed sentence levels appropriate?

3.14 Another issue for consideration is whether (in common with other guidelines for offences committed by organisations) this guideline should have confiscation and compensation as steps 1 and 2 or whether any mention should be made of these orders in the guideline. Technically both are available, but in practice they are not used. It is difficult to envisage a situation where compensation would be relevant. The prosecution could apply for confiscation (and the case could then be committed to the Crown Court under section 70 of the Proceeds of Crime Act 2002) but having checked with trading standards it is not something that they consider for this offence.

3.15 As it stands, the guideline does not include any reference to compensation or confiscation (including at step 3, where in other guidelines the court is asked to consider the fine in the context of other financial orders).

Question 4: Should the guideline refer to compensation and confiscation? If so, should this be in separate steps 1 and 2 as with other guidelines for organisations?

Aggravating and mitigating factors

3.16 The aggravating and mitigating factors are those considered at the October meeting with the removal of 'falsification of documents' which is now a culpability factor and the inclusion of 'Supply causes or contributes to antisocial behaviour' which had previously been a harm factor.

Question 5: Are the aggravating and mitigating factors the right ones?

4 IMPACT AND RISKS

4.1 Offences committed by organisations are sentenced by way of a fine and so there will not be any impact on prison and probation resources from this guideline. Once the Council has agreed the sentence levels, some work can be done to estimate the likely increase in fine amounts from the guideline and this can be considered by the Council before sign off for consultation.

Sale of knives etc to persons under eighteen - Organisations

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: unlimited fine

Offence range:

Use this guideline when the offender is an organisation. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – individuals** guideline.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

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

HARM

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

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Very large organisation

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

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

Culpability		
A	B	C
Starting point £250,000	Starting point £100,000	Starting point £25,000
Category range £100,000 – £500,000	Category range £50,000 – £250,000	Category range £10,000 – £50,000

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

Culpability		
A	B	C
Starting point £100,000	Starting point £50,000	Starting point £12,000
Category range £50,000 – £250,000	Category range £25,000 – £100,000	Category range £5,000 – £25,000

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

Culpability		
A	B	C
Starting point £20,000	Starting point £10,000	Starting point £2,000
Category range £10,000 – £50,000	Category range £5,000 – £20,000	Category range £1,000 – £5,000

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

Culpability		
A	B	C
Starting point £5,000	Starting point £2,000	Starting point £500
Category range £2,000 – £20,000	Category range £1,000 – £5,000	Category range £200 – £1,000

The court should then consider adjustment for any aggravating or mitigating factors. The following is 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.

Factors increasing seriousness**Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Other aggravating factors:

- Offence was a consequence of cost-cutting
- Obstruction of justice
- Failure to take up offers of training or other assistance from Trading Standards
- Supply causes or contributes to antisocial behaviour

Factors reducing seriousness or reflecting personal mitigation

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

Obtaining financial information [Dropdown box]

Step 3 – Adjustment of fine

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

- the removal of all gain
- appropriate additional punishment, and

- deterrence

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

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

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

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

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

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

Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- Impact of fine on performance of public or charitable function

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 6 – 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 [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

The court should consider whether to make any ancillary orders.

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

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

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JUDICIARY OF
ENGLAND AND WALES

District Judge (MC) Gary Lucie

IN THE BARKINGSIDE MAGISTRATES' COURT
BETWEEN:

LONDON BOROUGH OF BARKING AND DAGENHAM

&

LONDON BOROUGH OF REDBRIDGE

Prosecution

-v-

B & M RETAIL LTD

Defendant

SENTENCING
REMARKS

Hearing: 31st August 2018

P: Mr McNally

D: Mr Jessop

The charges

1. B & M Retail Ltd (“B&M”) pleaded guilty at the first opportunity to 3 offences of selling knives to persons under 18 yrs of age contrary to s 141A(1) Criminal Justice Act 1988 (as amended). The offences are summary only and carry a maximum sentence of 6 mths imprisonment or an unlimited fine or both.

The facts

2. B&M, is a company with a very large turnover and operates over 500 stores across the UK. The charges relate to two separate retail premises operated by B&M in Goodmayes and Vicarage Fields on 3 separate dates. The dates of the offences and relevant store involved are as follows:
 - (a) 19 September 2017 - Goodmayes Store in Redbridge;
 - (b) 21 September 2017 - Vicarage Fields Store in Barking;
 - (c) 18 January 2018 - Vicarage Fields Store in Barking.
3. Both stores fall within the sphere of responsibility of the same area manager, Mr Shaun Nightingale.
4. The very detailed facts of the case are to be found in full in the “Sentencing Note” prepared by Mr McNally for the prosecution. There is no dispute about those and I need not, therefore, repeat them in full or make findings of fact I will summarise each below.

19th September 2017 (Goodmayes)

5. On 19th September 2017, at about 19:55 the store at Goodmayes Retail Park was visited as part of a planned test purchase inspection programme. The test was of the sale of knives to underage persons. The inspection was police-led owing to concerns about the availability of knives, and what they considered to be the prevalence of their use in crime locally.
6. The terms of deployment for these test purchase volunteers was that they were to tell the truth if asked their ages; but if asked for identification they were to say that they do not have any.
7. In this instance the two volunteers were a male aged 15 and a female aged 14. The male was 1m 90 tall, and the female 1m 55. The two underage volunteers went into the store for about 10 minutes. They passed through the store together and one purchased a set of knives and sweets. The transaction was observed by an undercover police officer and no inquiry was made as to their

age, nor was any request made for proof of age identification. The volunteers left and surrendered the knives they had bought. The knife set was seized.

8. I have seen photos of the knife set and it contains 4 very sharply pointed knives ranging in size from a small paring knife to a large carving knife and also a pair of scissors and the ticket price is £5.99.
9. The matters were investigated, and the company attended a PACE interview through Mr Shaun Nightingale, the area manager. Mr Nightingale explained his background with the company and the measures they take to avoid the commission of age-related sales offences. He identified:
 - (a) Challenge 25 (if someone looks under 25 they should be asked for ID);
 - (b) Till prompt (which must be answered yes or no by the cashier or the transaction does not progress);
 - (c) Challenge 25 signage on alcohol and in the kitchen aisle, a poster on the wall near the tills (it is supposed to be as close to the till a possible), and cards highlighting challenge on knives and blades around the store.
10. Mr Nightingale said that the company discussed its failings (and he did so in his meetings with store managers). He thought that sometimes people confused the age (18) with the age that the company should challenge to (25). Mr Nightingale was expressly conscious of the social need for such a policy stating:

“One of the things from my background, is about the understanding of confidence. I have two children myself, I have brothers that have children and what I always tell the staff is it’s about getting the reassurance from the public as well. So, mums and dads do have children coming in at 16-17 years old under the influence, especially in London we’ve got the knife crime etc and how would they feel under that situation and if you’re in the back of the queue how are you perceived if you’re not being ID’d, even if they are 21, even if you know them. I really influence my staff to ask every single person, if they know them or not.”
11. Mr Nightingale said that since the incident he had put up an additional POS and was getting the store manager to positively include it in the daily ‘huddle’ as well as reminding cashiers of Challenge 25 when assigning duties each day.

He thought it needed to be kept 'live' every day of every week even if they did the training every three months. Mr Nightingale was asked about the warning letter issued following a failed test purchase at that same store on 25 October 2016. He said that he was aware of it. He did not dispute it had happened. He stated that the Company knew the law relating to age-related sales.

21st September 2017, Vicarage Fields

12. A test-purchase was conducted at the Vicarage Fields by a sixteen-year-old male volunteer accompanied covertly by a Police Officer went into the store at about 16:15 that day. About three minutes later the volunteer exited having purchased a 3-piece knife set which was seized. (The packaging was dated and suggested an age restriction of 21 the stock may have been recycled for sale). Trading Standards Officers then entered the store and the matter was further investigated.
13. Again, I have seen photos of the knife set and it contains 3 very sharply pointed knives ranging in size from a small paring knife to a large chopping knife the ticket price is £5.99.
14. Mr Nightingale was formally interviewed in respect of this offence and he, again, set out B&M's procedures and identified what had gone wrong. He also described, in detail, how staff were trained. He also confirmed he was aware of an unlawful sale having taken place at this store in April 2016 (before he assumed responsibility for the area). The steps that were taken then would have been done by the then area manager. He (Mr Nightingale) had been a store manager and knew that the store manager needed to talk about it and reinforce the message increasing it around school holidays, around Christmas as these were the times you saw increases. He would try to keep it as 'live as possible'.

19th January 2018, Vicarage Fields

15. On 18 January 2018 a test purchase was undertaken by the London Borough of Barking and Dagenham. A 14-year-old male volunteer was deployed to conduct a test purchase of a knife. He did so at the Vicarage Fields B&M Home Store, witnessed by a plain-clothes Police Officer. During the transaction he noted that the till operator was talking to a person behind the volunteer and did not

pay him attention or ask for identification. A packet of three knives was sold to the volunteer. The knives were seized, and Trading Standards Officers entered the store shortly afterwards. It was noted that the knives bore a 'challenge 21' marking on the reverse (old stock). The knives were the same type as those bought on 29th September 2017.

16. As before, the matters were investigated and Mr Nightingale, on behalf of B&M was interviewed in February 2018. He confirmed upon sight of a picture that the volunteer appeared underage, and that the boy was in fact 14. He could produce training records etc. During this interview, Mr Nightingale was asked whether the use of secure cabinets for display of knives had been contemplated. He said it had been discussed but could not say that it was something they were looking to do. He was asked whether they had 'sale cards' (where the product is not displayed but the purchaser takes a card to the till and is given the product from behind the counter). He said no but confirmed some high value items, like fragrances, were kept in cabinets.
17. Mr Nightingale said that he was looking to improve the training programme and materials. He had also asked Head Office suggesting that they instigate a third-party test purchase programme. They had not got back to him.

Mitigation

18. Mr Jessop provided a detailed note regarding mitigation which he supplemented with submissions before me. I was also supplied with a written statement of Simon Arora who is the CEO of B&M, a position he has held since 2004, and a bundle of documents setting out the revised training material given to staff and amended packaging re-enforcing the "Challenge 25" policy. In that he explained that B&M has been trading since 1978 and there are now 569 stores the UK. The company sells 20,000 different products at any one time with 4 million shoppers served on average per week or 208 million shoppers per year.
19. Mr Arora says, "I am conscious about how serious an issue knife crime is at present, particularly in London and the South East". He goes on to explain the procedures in place to avoid underage sales including training, Challenge 25, signage, till prompts, daily huddles etc. He also explains how the company co-operates with local authorities and what subsequent action has been taken to

prevent underage sales. He highlights the fact that the company has passed other test-purchases in other areas (including in Northants in February 2018) and says the company is very regretful. Finally, he invites the court to conclude that, “...the issues identified were specific to these stores and not an indication of the position across the entire B&M estate.”)

20. I have, of course, taken into account Mr Jessop’s submissions and the statement of Mr Arora and bundle of materials in determining the sentence in this case.

Approach to sentence

21. There are no definitive guidelines for these offences. Nor are there any reported cases of any higher courts. P invited me to use the Health & Safety etc Guideline but B&M objected to this citing the case of ***Price v Cheshire East BC [2012] EWHC 2927 (Admin)*** in which it was held that where there were no definitive guidelines specific to the offence in question, it would only be appropriate to have regard to guidelines for other offences if they were truly analogous or of a similar level of seriousness. In this case, Mr Jessop pointed out that most of health and safety / food hygiene offences were “either way” whereas the instant offences are summary only.

22. Whilst I accept that I should not use the starting points set out in the guidelines both P and B&M agreed that I should adopt the same general *approach* in the guidelines to sentencing by reference to culpability, harm and the aims of sentencing set out within them.

23. Mr Jessop referred me to a number of first instance decisions where the highest fine imposed was £20,000 at Lavender Hill Mags Ct in March 2018. I indicated that they were clearly not binding on this court and I am not bound by them. I do not have the reasoning of any of those courts in any event. The LCJ in ***R v Kenneth Thelwall [2016] EWCA Crim 1755*** said it was impermissible for advocates to refer to newspaper or other media reports dealing with similar cases at first instance. I have not, therefore, taken any of those cases into account in setting the fines in this case.

Culpability

24. By reference to the guideline P submits that the appropriate category is “medium” culpability whereas B&M submits that culpability is at the “lower end of the spectrum”.
25. I have decided that culpability is properly assessed as the top end of medium. Clearly, these offences were not deliberate nor were there serious or systemic failures within the organisation regarding the underage sales of knives. However, it appears to me that whilst systems were in place they were deficient and not sufficiently adhered to or implemented at these stores. The volunteers were as young as 14 which is a long way short of 18 and substantially less than B&M’s own Challenge 25 policy. In each case there were inadequacies in the training and refresher training of staff and other faults with labelling and signage.
26. One of the most concerning failures is that B&M did not consider and implement further measures for these stores in what it accepts are high risk areas. These could have involved putting knives in cabinets and/or using a card system of the type described above. This puts the knives beyond the reach of anyone and, in my view, (and that of P) make the process of challenging age much more effective. If it can be done for expensive items such as perfume it can equally be done for knives. I asked why this was what not done at these stores and was told that this would now be considered.
27. Furthermore, these failings could not be properly considered as minor nor isolated – there were 3 offences in a 5-month period at 2 different stores. There had also been a sale at the of a knife to an under 18 at the Vicarage Fields Store relatively recently on 24th April 2016 for which B&M was cautioned. I consider B&M fell short of the appropriate standard in a way that falls between low and high culpability and, as I stated above, I have therefore concluded that culpability is at the top end of medium.

Harm

28. The assessment of risk is more difficult and does not fall neatly within the guideline. P and B&M submit that the connection between the offence and the risk of harm is more remote than in health & safety cases. B&M points out that all the sales were to test purchasers and so the actual risk was very low (in fact it was zero). That, however, ignores the fact that sales were made to underage

buyers and B&M's employees clearly had no idea that this was a test purchase. Whilst there is no direct evidence of sales of knives to genuine purchasers, the real question is, what if they had been? What was the risk of harm if these were not test-purchasers?

29. The stark fact is that knife crime is at record levels across the country, particularly in London. A briefing paper by the House of Commons Library entitled, "Knife crime in England and Wales" (number SN4304, 25 June 2018) provides a summary of widely available and uncontroversial statistics regarding crimes recorded involving the use of a knife or other blade. The summary is sobering:

- (a) Recorded crime: In the year ending March 2017 there were 34,700 (selected) offences involving a knife or sharp instrument in E & W. The highest in 7 yrs. [Note: The Office for National Statistics published the most recent data showing that in the year ending March 2018 this figure had risen to 40,147 a further rise of 16%];
- (b) Homicide: In 2016/17 there were 215 homicides currently recorded using a sharp instrument, including knives and broken bottles, accounting for 30% of all homicides;
- (c) Knife crime by police force: London recorded the highest rate of 137 offences involving a knife per 100,000 population in 2016/17, an increase of 23 offences from 2015/16. Surrey had the lowest rate at 4 offences per 100,000 individuals (down 2 from 2015/16). [Later in the report, at Tab A4b, Redbridge is shown as having the 15th highest rate of knife crime of the London Boroughs (32 in all) and Barking and Dagenham as the 17th in 2016/17];
- (d) Proven offences and offenders: In the year ending March 2018, there were 21,044 disposals given for the possession of a knife or other offensive weapon. Juveniles (ages 10-17) accounted for 21% of cases;
- (e) Hospital admissions: There were 4,434 finished consultant episodes recorded in English hospitals in 2016/17 due to assault by a sharp object. An increase of 7.6% compared to 2015/16 and 21.7% higher than 2014/15.

30. Whilst B&M cannot, of course, be held responsible for those offences the statistics reinforce the policy behind the prohibition of sales to persons under 18. Whilst it might be argued that offenders can obtain knives easily (e.g. from the kitchen drawer at home) that, in my view, is not to the point. Retail premises are a source of knives to which Parliament clearly intended juveniles should not have access. Further, it made the punishment for the offence serious by making it both imprisonable and/or attracting an unlimited fine.
31. The offences are, in my view, very serious. The gravamen of the offence appears to me to be that the sale of knives to under 18s facilitates the commission of offences by them. Not just the obvious offences regarding the use or threatened use of the knife but also if a juvenile buys a knife for an unlawful purpose then the moment he leaves the shop he commits an offence under s139(1) of the Criminal Justice Act 1988 exposing him to a maximum penalty in the Youth Court of up to 2 years detention and training (4 yrs for an adult). The starting point for a youth aged 15 in these circumstances is a “custodial sentence” (in reality, a minimum sentence of a 4 mths detention - see Bladed Articles and Offensive Weapons Definitive Guideline).
32. The potential “harm” is therefore not just the risk that the knife would be used in a crime but to the young purchaser of a knife who will be at risk of a custodial sentence having left the shop unless he could prove he had the knife with him for a “good reason or with lawful authority”. Young people themselves are particularly vulnerable and should simply not have access to knives from shops, not just for the protection and safety of society at large but for their own.
33. For these reasons, I take the view that the selling of a knife to a juvenile will inevitably involve a high risk of harm.

Starting point

34. Without a definitive guideline it is necessary to apply some basic principles when approaching the starting point for a fine in a case like this. S 164 Criminal Justice Act 2003 requires the court, when fixing the amount of a fine, to:
- (a) Enquire into the financial circumstances of the offender;
 - (b) Consider the seriousness of the offence;

- (c) Take into account the financial circumstances of the offender in deciding whether to increase or reduce the amount of the fine.
35. The fine must also meet the objectives of punishment, the reduction of offending through deterrence and removal of gain derived through the commission of the offence. In relation to an organisation the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law.
36. I was provided with accounts covering 2015 to 2017. I am somewhat surprised that the most recent accounts filed on 2nd August 2018 were not brought to my attention at the sentencing hearing. No doubt this was inadvertent but as they are public documents I have had regard to the latest accounts in assessing the financial means of B&M.
37. In those accounts, to 31 March 2018, the revenue of the company (turnover) was just over £2.6 billion with profit for the period being approx. £195 million. The total comprehensive income for the period was just over £181 million (a weekly net profit of £3.48 million). Healthy dividends were paid in March 2018 of £55 million and in November 2017 of £23 million. All figures were up on the year ending March 2017.
38. If I were applying the definitive guideline B&M would be a “very large organisation” because it’s turnover very greatly exceeds the threshold for large organisations (£50 million) and it “may be necessary to move outside the suggested range to achieve a proportionate sentence”.
39. Mr Jessop urged me not to focus too heavily on the finances of the company but to bear in mind that I am required to consider seriousness and proportionality in setting the fines. Whilst I accept those submissions, I take the view that these are serious offences and I must also have regard to the other aims of sentencing that are particularly relevant to organisations. The fine must bring home to this company and others that they must ensure that the systems they have in place are robust and effective. The “weakest link” in any system is clearly the person who ultimately sells the knife at the till. It is, therefore, incumbent on companies to ensure that they do everything possible to train and assist those staff to recognise the issue and to be confident about asking for identification and refusing sales where necessary. That was clearly

what went wrong on these 3 occasions. The use of cabinets or display cards are measures that may well have helped prevent these sales.

40. I must have regard to the fact that these offences are summary only. However, it seems to me that I should set fines that will bring home to the management and shareholders of B&M of the need to comply with the law and to ensure that there is no recurrence. On one analysis, I could consider a Band C fine (150% of relevant weekly income). That would produce a fine of over £5 million but this is clearly not how the Sentencing Guidelines Council has approached the sentencing of organisations.
41. Whilst I cannot use the definitive guidelines I think I am entitled to look at the range of sentences within them to get a steer on what might be an appropriate starting point. The food safety guideline seems more appropriate in terms of being more akin to these offences. In which case, for a medium culpability offence for a large company, the starting point for harm category 1 would be £200k. That would require an appropriate uplift to reflect the fact that B&M is a very large organisation by moving to the top of the range (£500k) or beyond.
42. In my view, an appropriate starting point for each offence, considering the very large size of the organisation, top end of medium culpability, high risk of harm and so as to ensure that it fulfils the objectives of sentencing is £300k. That is just a starting figure and must be adjusted to take account of the aggravating and mitigating features identified below.
43. The following factors amount to aggravating features:
 - (a) Previous relevant conviction albeit of some age: Aug 2008 – Knowsley Mags Ct – sale of knife to juvenile - fined £1000 with £500 costs (note prior to 12th March 2015 the maximum sentence was £5000);
 - (b) Formal caution for selling knife to juvenile at Vicarage Fields store on 24th April 2016;
 - (c) Not isolated incident. 3 offences within 5 months, 2 at the same store, all within East London (although in terms of the national picture the number of proven failures is low).

44. The following matters reduce seriousness or reflect mitigation:

- (a) Significant procedures in place to prevent the sale of underage sales;
- (b) Proactive response and the taking of steps to prevent further underage sales occurring. Not a case of a company ignoring or failing to respond;
- (c) Full and active co-operation with P including voluntary attendance at PACE interviews;
- (d) Review of existing procedures at Board level.
- (e) Remorse in the way of an acceptance of and apology for the offending;
- (f) Evidence of successfully passing test-purchases at other stores.

The appropriate fines

45. Applying the Offences Taken into Consideration and Totality Definitive Guideline it appears to me that this is a case where consecutive fines ought to be imposed because the offences took place at separate times, at different stores and because of different failings at each store. Taking account of the aggravating and mitigating features identified above the appropriate fines are:

- (a) 19th September 2017 at Goodmayes – £200k - to reflect the substantial mitigation but also to reflect the previous conviction and more recent caution;
- (b) 21st September 2017 at Vicarage Fields – £220k – increased to reflect that this was committed only two days after the offence at Goodmayes and B&M should have been acutely alert to the issue but also reflecting that B&M had little chance to change systemic procedures during that time;
- (c) 18th January 2018 at Vicarage Fields – £300k - this offence is substantially aggravated by the commission of the previous two offences and has been increased accordingly to reflect that B&M had time to reflect and consider other options, including the use of cabinets or cards by the time this offence had been committed.

Guilty pleas

46. The guilty pleas were entered at the very first opportunity and B&M is entitled to full credit of 1/3rd and so the total fine will be reduced from a total of £720k to £480k.

Totality

47. I am obliged to consider totality. That is, whether the total sentence is one that is just and proportionate to the offending in accordance with the Offences Taken into Consideration and Totality Definitive Guideline. I am satisfied that the overall fine of £480k is just and proportionate in the circumstances. Whilst the overall fine may seem high it is well within B&M's ability to pay it and meets the seriousness of the case and the sentencing objectives set out above. It is approx. 1 days net profit for the company and as I have said, is well within its ability to pay it.

48. I hope that this fine will bring home to the management and shareholders of B&M and other retailers of knives of the need to ensure that none of their premises sell knives to youths. Had it not been for the substantial mitigation in this case, the relatively good record of the company and the early guilty pleas the fines would have been very much greater.

Costs

49. B&M indicated that it would not oppose the making of an order for costs in favour of P in the sum of £12,428.53.

Total financial penalty

50. I must apply the statutory surcharge of £170 and so the total financial penalty is, therefore, £492,598.53.

Application for criminal behaviour order

51. P applied for a criminal behaviour order and set out the reasons in its opening note (**paras 93 – 104**). This application was opposed by B&M for the reasons set out in the Mitigation Note (**paras 45 – 51**). I prefer the arguments of B&M.

On the evidence before me I cannot be satisfied beyond reasonable doubt that B&M has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person. I am not satisfied that P have identified any person that was caused or was likely to be caused harassment etc. The suggestion that the Area Manager could be such a person because of what he said in interview cannot, in my view, be used to support the application, it is far too remote. The first condition is not satisfied and so I refuse to make a CBO.

52. Even if I took the view that the first condition was satisfied I would not consider that the making of the order would help the offender from engaging in such behaviour. These are strict liability offences (subject to the statutory defence) and B&M has shown it is aware of its responsibilities under the law, has procedures in place and is considering adopting further measures sought voluntarily at these stores.
53. I decline, therefore, to impose a CBO in the terms sought or at all.

**District Judge (MC) Lucie
21st September 2018**

Equivalent levels in other guidelines**Health & Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently followed

Low = did not fall far short of the appropriate standard

Harm: 3 = low likelihood of death OR medium likelihood of serious injury

Food Safety

Culp: High = fell far short of standard

Med = systems in place but not sufficiently implemented

Low = did not fall far short of the appropriate standard

Harm: 2 = med risk of some harm OR low risk or serious harm

Environmental

Culp: High = reckless failure to put in place and enforce systems

Med = negligent failure to put in place and enforce systems

Low = offence committed with little or no fault

Harm: 2 = risk of high harm

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

Guideline	High	Med	Low
Health & Safety	£540,000 £250,000 – £1,450,000	£300,000 £130,000 – £750,000	£35,000 £10,000 – £140,000
Food Safety	£230,000 £90,000 – £600,000	£90,000 £35,000 – £220,000	£18,000 £9,000 – £50,000
Environmental	£250,000 £100,000 – £650,000	£140,000 £60,000 – £350,000	£25,000 £14,000 – £70,000

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

Guideline	High	Med	Low
Health & Safety	£210,000 £100,000 – £550,000	£100,000 £50,000 – £300,000	£14,000 £3,000 - £60,000
Food Safety	£90,000 £35,000 – £220,000	£35,000 £14,000 – £90,000	£7,000 £3,500 – £18,000
Environmental	£100,000 £40,000 – £250,000	£55,000 £25,000 – £140,000	£10,000 £5,500 – £25,000

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

Guideline	High	Med	Low
Health & Safety	£54,000 £25,000 – £210,000	£24,000 £12,000 – £100,000	£3,000 £700 – £14,000
Food Safety	£24,000 £8,000 – £90,000	£8,000 £3,000 – £35,000	£1,400 £700 – £7,000
Environmental	£24,000 £10,000 – £100,000	£13,000 £6,000 – £55,000	£2,500 £1,000 – £10,000

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

Guideline	High	Med	Low
Health & Safety	£30,000 £12,000 – £54,000	£14,000 £6,000 – £25,000	£1,200 £200 - £7,000
Food Safety	£12,000 £4,000 – £22,000	£4,000 £1,400 – £8,000	£500 £200 – £1,400
Environmental	£12,000 £1,500 – £24,000	£6,500 £1,000 – £13,000	£1,000 £350 – £2,400

Individuals

Guideline	High	Med	Low
Health & Safety	Band F fine Band E fine – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine
Food Safety	Band E fine Band D fine – 26 weeks' custody	Band D fine Band C fine – Band E fine	Band B fine Band A fine – Band B fine
Environmental	Band F fine Band E fine or medium level community order – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine