

**Sentencing Council meeting:**

**22 October 2021**

**Paper number:**

**SC(21)OCT02 – Underage sale of knives**

**Lead Council member:**

**TBC**

**Lead official:**

**Ruth Pope**

## **1 ISSUE**

1.1 In May 2020 the Council considered a submission (attached at Annex A) on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988 and agreed to add this to the list of future guidelines.

1.2 This is the first meeting to discuss the scope of this project and to consider a proposed approach to a guideline for underage sale of knives.

## **2 RECOMMENDATION**

2.1 The Council is asked to:

- Agree to limit the scope of the project to underage sale of knives.
- Agree to seek input from trading standards professionals in the development of the guideline.

## **3 CONSIDERATION**

*Underage sales generally*

3.1 The provision of a variety of goods and services are subject to age restrictions. This may not be a definitive list, but those listed on Trading Standards websites (for example [Haringey](#)) are:

- Alcohol
- Cigarettes, tobacco, shisha and other smoking based products
- E Cigarettes and Vaping Products
- Fireworks - sparklers, party poppers, caps, cracker snaps
- Dangerous chemicals - cigarette lighter fuel, glue, aerosols
- Acids
- DVDs, Blu Rays and computer games
- Dangerous Weapons - air weapons, crossbows, knives
- Lottery tickets and scratch cards
- Petrol
- Bookmakers
- Sunbeds

3.2 The only sentencing guideline for these offences that currently exists covers [sale of alcohol to children](#). The submission at Annex A sought to persuade the Council to develop guidelines for the sale of knives to under 18s in particular and under age sales in general. We have separately in the past received representations regarding offences relating to the sale of tobacco to under 18s.

3.3 Data from the Court Proceedings Database indicates that volumes for many of these offences are low (although we have not confirmed these numbers with the prosecuting authorities).

**Number of adult offenders sentenced for age restricted sale offences, all courts, 2016-2020**

	Year					Total
	2016	2017	2018	2019	2020	
Alcohol	54	30	37	43	13	<b>100</b>
Cigarettes, tobacco, shisha and other smoking based products	19	15	12	14	9	<b>52</b>
E Cigarettes and Vaping Products	0	0	0	0	0	<b>0</b>
Fireworks - sparklers, party poppers, caps, cracker snaps	2	1	1	2	0	<b>4</b>
Dangerous chemicals - cigarette lighter fuel, glue, aerosols	0	0	1	0	0	<b>1</b>
Acids <sup>1</sup>	..	..	..	..	..	<b>0</b>
DVDs, Blu Rays and computer games	0	0	0	0	0	<b>0</b>
Dangerous Weapons <sup>2</sup>	14	5	12	27	14	<b>43</b>
Lottery tickets and scratch cards	0	0	0	0	0	<b>0</b>
Petrol	0	0	0	0	0	<b>0</b>
Bookmakers	0	0	0	0	0	<b>0</b>
Sunbeds	7	2	0	2	0	<b>6</b>

**Number of organisations sentenced for age restricted sale offences, all courts, 2016-2020**

	Year					Total
	2016	2017	2018	2019	2020	
Alcohol	6	3	8	6	1	<b>24</b>
Cigarettes, tobacco, shisha and other smoking based products	3	5	3	7	7	<b>25</b>
E Cigarettes and Vaping Products	0	0	0	0	0	<b>0</b>
Fireworks - sparklers, party poppers, caps, cracker snaps	.	.	1	1	1	<b>3</b>

<sup>1</sup> Information not available

<sup>2</sup> Includes all Criminal Justice Act 1988 s141A offences (selling to a person under age of 18 years a knife, knife blade, razor blade, axe or any other article which has a blade, that is sharply pointed and which is made or adapted for use for causing injury to the person).

Dangerous chemicals - cigarette lighter fuel, glue, aerosols	0	0	0	0	0	0
Acids <sup>1</sup>	..	..	..	..	..	0
DVDs, Blu Rays and computer games	0	0	0	0	0	0
Dangerous Weapons <sup>2</sup>	7	3	17	46	15	88
Lottery tickets and scratch cards	0	0	0	0	0	0
Petrol	0	0	0	0	0	0
Bookmakers	1	0	0	0	0	1
Sunbeds	2	2	0	0	0	4

3.4 As can be seen from the tables above, aside from alcohol and weapons, the only other type of sale that appears to be regularly prosecuted is sale of tobacco/ cigarettes.

3.5 The request to produce guidelines came from Trading Standards, and they were approached for views on whether the scope should be limited to offences contrary to s141A of the Criminal Justice Act 1988 (underage sale of knives) or expanded to cover other underage sales. Their view was that priority should be given to producing a guideline for underage sale of knives as this is the area of particular concern.

3.6 Although the elements of any guideline for underage sales may be similar – the underlying issue relating to the sale of knives is quite different to, for example, the sale of cigarettes. As can be seen from the submission at Annex A the impetus behind the call for a guideline is concern about the rise in knife crime and how young people having access to knives can have serious consequences.

3.7 When developing the guidelines for possession of bladed articles and offensive weapons in 2017 the Council took the decision not to include underage sales as volumes were low. While still not high, volumes have increased since then and the Council was persuaded in 2020 that development of a guideline for this offence was now justified.

3.8 The particular concern with current sentencing practice identified at Annex A relates to the sentences imposed on large organisations. The existing guideline for underage sale of alcohol is for sentencing individuals and so offers little assistance for the approach to setting fines for organisations.

#### *The scope of the project*

3.9 Four suggested options for the scope of the project are set out below (though there may be others):

**Option 1:** Do nothing. This would allow time for other high priority projects, but there is no existing guidance for underage sale of knives and there is evidence of inconsistent

sentencing and under-sentencing. The Council has already said that it would produce this guideline and some preparatory work has been done.

**Option 2:** Produce a guideline for sentencing organisations for underage sale of knives only. This would satisfy the main request made by Trading Standards and cover the majority of offenders who commit this offence, but would offer no guidance for sentencing individuals or for other under age sale offences.

**Option 3:** Produce a guideline for sentencing organisations and individuals for under age sale of knives only. This would provide comprehensive guidance for the offence of underage sale of knives, but no guidance for other under age sale offences – notably tobacco.

**Option 4:** Produce guidelines for all under age sale offences (subject to a minimum level of prosecutions). This would provide comprehensive guidance, but it would be the most time and resource intensive of the options and may be difficult to fit in around other projects. Trading Standards have asked us to prioritise the s141A offence.

3.10 The recommendation is to go with option 3 – this would meet the commitment that the Council has made, be achievable in a reasonable time frame and not be too resource intensive.

**Question 1: Does the Council agree to develop guidelines for the underage sale of knives; one for individuals and one for organisations?**

*Working with Trading Standards*

3.11 These offences are prosecuted by Trading Standards departments within local authorities and almost all prosecutions appear to be as a result of test purchases. This means that the volume of prosecutions is very closely linked to the resources that Trading Standards departments decide to devote to this aspect of their work.

3.12 Our experience of working on the Trade mark guidelines indicates that it may be useful to engage with National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) at an early stage. These offences are sentenced in magistrates' courts and therefore we are unable to obtain transcripts of sentencing remarks, but we hope that Trading Standards will be able to provide case studies as well as useful background information, data and views on relevant factors to include in guidelines.

**Question 2: Should officials involve ACTSO and National Trading Standards in the guideline development process?**

*Legislation and current sentencing practice for underage sale of knives*

3.13 Some initial information has been obtained for the underage sale of knives – if the Council decides to expand the project, similar information will be provided for other offences at a future meeting.

3.14 The relevant legislation states:

**Criminal Justice Act 1988 141A.— Sale of knives and certain articles with blade or point to persons under eighteen.**

- (1) Any person who sells to a person under the age of eighteen years an article to which this section applies shall be guilty of an offence and liable on **summary conviction** to imprisonment for a term not exceeding **six months**, or a fine not exceeding level 5 on the standard scale, or both.
- (2) Subject to subsection (3) below, this section applies to—
  - (a) any knife, knife blade or razor blade,
  - (b) any axe, and
  - (c) any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.
- (3) This section does not apply to any article described in—
  - (a) section 1 of the Restriction of Offensive Weapons Act 1959.
  - (b) an order made under section 141(2) of this Act, or
  - (c) an order made by the Secretary of State under this section.
- (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.
- (5) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

3.15 The majority of offences are punished by way of a fine. In 2019, of 27 adult offenders sentenced 24 were fined, two were made subject to a community order and one received a suspended sentence order. Of 46 organisations sentenced in 2019, one was sentenced to a discharge and 45 were fined.

3.16 Fine levels for individuals in 2019 ranged from £34 to £2,000 (the mean was £409 and the median £281). For organisations in 2019, the range 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.

*Draft guideline for organisations*

3.17 A first (very preliminary) draft of a guideline for organisations is provided at **Annex B**. The approach is based on that in the [health and safety guideline for organisations](#) as there are some similarities in that these are offences that organisations generally commit by failing to have or enforce adequate measures. As can be seen above, s141A(4) provides a defence of 'all reasonable precautions' having been taken and so the lowest level of culpability represents a position just short of that.

3.18 The culpability factors are designed to apply to both in store and online sales and to guide the sentencer as to what the relevant standards are – this is an area where input from Trading Standards would be really helpful. Experience from the trade mark guidelines indicates that sentencers would be helped by a guideline that sets out the features of each level of culpability.

3.19 Harm in these cases is almost always the risk of harm (as most prosecutions relate to test purchases) and so two of the suggested harm factors relate to the age of the child or the number of items sold. These are very similar to the factors in the [underage sale of alcohol](#) guideline. Again, input from Trading Standards would be helpful to determine if different or additional factors should be included.

3.20 As with the Health and Safety guideline, the suggested approach to sentence levels is to have four sentence tables: for micro, small, medium and large organisations. The sentence levels in the table are illustrative only – work would need to be done to set appropriate levels. To do this we would need to look at sentenced cases with reference to the size of the organisation. The Council will then be invited to consider whether current sentencing practice takes sufficient account of the means of the offending organisation and sentencing levels can be set accordingly.

3.21 The aggravating and mitigating factors are based loosely on those in the health and safety guideline and again, these could be reviewed in the light of information about real cases from Trading Standards.

**Question 3: Does the Council agree with the general approach proposed for a guideline for underage sale of knives for organisations?**

*Next steps*

3.22 The aim is to have two further meetings to develop draft guidelines for consultation (currently scheduled for November and January) and then to consult in spring 2022. This timetable will depend on the scope of the project agreed today – if more guidelines are to be included more time will be needed.

**4 IMPACT AND RISKS**

4.1 There are risks associated with the decision made regarding the scope of this project. In particular, there is a clear demand from Trading Standards for the underage sale of knives to be prioritised, but there have also been requests in the past for guidelines relating to tobacco products.

4.2 As has been noted above, the majority of these offences are sentenced by way of a fine and so there is unlikely to be any impact on prison and probation resources from a guideline for underage sale of knives.

## **5 EQUALITY AND DIVERSITY**

5.1 These are low volume offences the majority of which are committed by organisations and it is therefore unlikely that the data will provide any meaningful demographic trends for offenders. There may be wider considerations relating to those affected by this offending: knife crime may have a disproportionate impact on certain communities and certain demographic groups. As pointed out in Annex A, a young person who purchases a knife is liable to prosecution for possessing it and the prosecution and sentencing for that offence may be subject to disparities.

5.2 It could be argued that guidelines that provide organisations with a clear indication of an appropriate level of sentencing for the offence of underage sale of knives could help to ensure that all the necessary steps are put in place to avoid offending.

**Question 4: Are there any issues relating to equality and diversity that should be explored in the development of the guidelines?**

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**Submission to the Sentencing Council by the London Borough of Barking and Dagenham**

**Re: the need for a sentencing guideline for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988**

**1. Proposal**

1.1. Having regard to the principles adhered to by the Sentencing Council in determining which areas warrant the provision of a Definitive Sentencing Guideline (“Guideline”), we seek to invite the Council to draft and consult on a Guideline for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988, as amended.

1.2. We consider that sentencing tribunals in the magistrates’ court would be greatly assisted by a Guideline for this offence (and more generally for all offences concerning age-restricted sales), which would ensure greater clarity and consistency in the sentencing process.

1.3. Whilst this submission is drafted by the London Borough of Barking and Dagenham, it enjoys the support of the Trading Standards Community, from lawyers practising in this area of law and other stakeholders.

1.4. In June 2019, the Mayor of London Office for Policing and Crime (“MOPAC”) wrote to the Lord Chief Justice, Lord Burnett, and members of the Sentencing Council inviting the development of sentencing guidance for the ‘illegal sale of knives’. In that letter, MOPAC expressed the following concern:

*“Relatively few retailers are prosecuted but for those convicted, the sentence needs to send a clear message that selling knives to children will have significant consequences and not just a limited financial penalty that can be absorbed as an operating cost.”*

1.5 We have appended the outcomes of several prosecutions that have taken place in London.

## 2. Legislative Background

- 2.1. Section 6 of the Offensive Weapons Act 1996 amended the Criminal Justice Act 1988 (“the Act”) to insert section 141A. By the new s.141A, it became a criminal offence to sell a knife to a person under the age of sixteen.
- 2.2. Parliament legislated following a series of high-profile murders by young persons, including the notorious murder of the headmaster, Philip Lawrence, who was stabbed to death as he intervened during a fight outside his school’s gates<sup>1</sup>. The complex causes of knife crime were reflected in the parliamentary and public debates at the time, including the then much quoted comment by Frances Lawrence, the widow of Philip Lawrence, that *"A knife is an inanimate object, and it needs a human being to invest it with murderous properties."*
- 2.3. The Offensive Weapons Act 1996 was not originally intended to introduce age restrictions on sales of knives, but rather to increase penalties for carrying weapons in public and to introduce an offence of having a blade on school premises. However, it was stated that although weapons could still be found by young persons in kitchen drawers, the introduction of a ban would be a deterrent to some people and would send *"...a powerful message of disapproval of such weapons"*<sup>2</sup>.
- 2.4. Furthermore, it was reported there were calls by retailers at the time for a clear ban on sales to young persons as it removed the need for retailers to make on the spot assessments of the reason for purchase<sup>3</sup>. Parliament decided, therefore, to introduce an amendment to the Bill to restrict the age of sales of knives<sup>4</sup>.

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<sup>1</sup> [http://news.bbc.co.uk/onthisday/hi/dates/stories/december/8/newsid\\_2536000/2536661.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/december/8/newsid_2536000/2536661.stm)

<sup>2</sup> Lady Olga Maitland Hansard HC Deb 26 January 1996 vol 270 para 591 - <https://api.parliament.uk/historic-hansard/commons/1996/jan/26/offensive-weapons>

<sup>3</sup> Lady Olga Maitland Hansard HC Deb 26 January 1996 vol 270 para 594 - <https://api.parliament.uk/historic-hansard/commons/1996/jan/26/offensive-weapons>

<sup>4</sup> Hansard Lords 5<sup>th</sup> June 1996 column 1346 - <https://publications.parliament.uk/pa/ld199596/ldhansrd/vo960605/text/60605-11.htm>

- 2.5. Commentators on the Offensive Weapons Act 1996 provisions have referred to them as a form of preventative justice<sup>5</sup>.
- 2.6. The primary purpose of more recent changes to knife sales age restriction legislation appears to have been to assuage public concerns. During the second reading of the Violent Crime Reduction Bill in October 2006, then Home Office Minister, Greg Clark, stated:
- “Comprehensive legislation is in place to deal with knives and other offensive weapons, but public concern remains, so we intend to raise the age limit of who can be sold a knife from 16 to 18 to limit the distribution of knives among young people.”*<sup>6</sup>
- 2.7. More recently, in the debate on the Offensive Weapons Act 2019, Victoria Atkins, the Minister for Crime, Safeguarding and Vulnerability, stated that the purpose of introducing measures to restrict online sales of knives to young persons was:
- “...to address the concern expressed to us by charities, the police and others about the ability of young people to get hold of knives.”*<sup>7</sup>
- 2.8. As discussed below, the Offensive Weapons Act 2019 has introduced a number of new offences relating to the sale of knives.
- 2.9. It is apparent that there are powerful public policy considerations underpinning the motivation for age restricting the purchase of knives, the fact of which is not reflected in any guidance the courts are required to have regard to. As such, these are considerations which can remain unspoken at the sentencing stage or, of more concern, not acknowledged.

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<sup>5</sup> Judith Rowbotham, Kim Stevenson *Behaving Badly: Social Panic and Moral Outrage - Victorian and Modern Parallels*, Routledge 2003

<sup>6</sup> Hansard Commons 20 Jun 2005: Column 557 <https://bit.ly/2pShjtH>

<sup>7</sup> Hansard Commons 2018-11-28 <http://bit.ly/30SIS3U>

### **3. Rise in Knife Crime**

- 3.1 It is uncontroversial to observe that the endemic problems with knife crime in London and across England and Wales remain prominent and well-documented.
- 3.2 Since the year ending March 2011, there has been a volume increase of 44% in the number of recorded offences involving a knife or sharp instrument<sup>8</sup>. In the year ending June 2019, there was a 7% volume rise to 44,076 offences.
- 3.3 The above figures do not include the simple offence of ‘possession of an article with a blade or point’, in respect of which during the same period there was a 5% increase in the number of offences dealt with by the Criminal Justice System<sup>9</sup>.
- 3.4 The total number of 22,306 offences concerning possession of an offensive weapon or knife is the highest in the last ten years, and is driven by possession of an article with a blade or point offences. Nearly a quarter of those offences were committed by offenders between the age of 10 and 17.
- 3.5 Whilst there are Guidelines for the court to follow in sentencing youths caught carrying, or worse, using a knife or bladed article, there is no Guideline for sentencing those that might have sold the knife.

### **4. Absence of a Definitive Guideline**

- 4.1 The absence of a Guideline creates an anomaly in sentencing practice, which, it is respectfully submitted, is inimicable to the interests of justice, for the reason that its absence leads to the occurrence of inconsistent and arbitrary outcomes<sup>10</sup>.

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<sup>8</sup> Office of National Statistics Report on ‘Crime in England and Wales: year ending June 2019’

<sup>9</sup> Ministry Of Justice Report on Knife and Weapon Sentencing Statistics, England and Wales, published 24 October 2019

<sup>10</sup> See Appendix A

- 4.2 Our research demonstrates, with one notable exception, that fines are disproportionately low having regard not only to the public interest factors referred to at paragraph 2 above, but also having regard to the size of the organisation before the court; a factor upon which modern sentencing practice has come to place substantial emphasis.
- 4.3 It should be observed that there is a gulf between the highest fine imposed and the next highest fine imposed for the s.141A offence, which could not be attributable solely to the difference between the turnovers of the respective defendant companies. We address this in further detail at paragraph 6 below.
- 4.4 The Sentencing Council's consultation on the Health & Safety Guideline in November 2014 followed a review of sentencing practice across the UK that revealed inconsistencies in the way sentencing decisions were being reached. In addition, the Food Standards Agency had conveyed concerns to the Sentencing Council that penalties being imposed were not reflecting the seriousness of the matters before the court, and that fines being passed on corporate offenders in particular were too low.
- 4.5 The vast majority of defendants in prosecutions for offences contrary to s.141A are corporate bodies. This is true of most age restricted sales and product safety prosecutions by Trading Standards Services. Although the only disposal available to the court is a financial penalty, there is no scale to follow in setting the size of that penalty. In consequence, the same inconsistencies revealed by the review into sentencing practice in health and safety cases pervade sentencing practice in this area too.
- 4.6 In the absence of a Guideline, there is little more than comment that might be put before a sentencing tribunal to assist in determining the relevant factors they might wish to have regard to. As such, the sentence is dependent to a certain degree not just on the extent of any assistance provided to the court by the prosecution, either by way of submission or evidence, but also on the willingness of the court to accept and reflect such matters in the sentence passed.

4.7 We would submit that the interests of justice are not served if sentencing practice is reliant on the assiduousness of the prosecutor and the willingness of lay magistrates to adopt analogous guidelines.

5. **Analogous Offences?**

5.1 We recognise that the recently published ‘General Guideline: Overarching Principles’ enjoins the court in the absence of an offence specific Guideline to have regard to guidelines for analogous offences, but it is our experience that courts are reluctant to have regard to the tables showing appropriate starting points and brackets for fines dependent on the size of the offending organisation.

5.2 In our opinion, this is not surprising. The common refrain from magistrates’ courts is that it would not be appropriate to have regard to the tables in other guidelines as the offences are not truly analogous.

5.3 Even if it is accepted that it is possible to extrapolate general principles from guidelines for roughly analogous offences, there is no table of fines to apply those principles to. This artificialises the process of drawing parallels.

5.4 After all, the sole purpose of determining levels of culpability and harm is to categorise the offence for the purpose of placing it within the table of fines at Step Two.

5.5 Undoubtedly, there are some culpability factors in the Definitive Guideline for the Sentencing of Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences (“the Health and Safety Guideline”) that might readily be thought capable of applying to an assessment of the culpability of a business that has sold a knife to a child, but unless the court is prepared to have regard to the tables as well, the mere recognition of such factors provides limited guidance for reaching the appropriate fine.

- 5.6 It is our opinion that it is by no means guaranteed that a sentencing tribunal will accept that other current guidelines are sufficiently analogous that they should be applied to the s.141A offence.
- 5.7 We acknowledge that the Health and Safety Guideline concerns a range of offences which share some characteristics with those restricting the sale of knives to young persons, namely (i) assessing the extent to which the reasonable precautions taken, and due diligence exercised, by the offender fell short of expected standards and (ii) there is a risk of harm from the s.141A offence that does not equate to direct evidence of harm.
- 5.8 However, there are several other (non-exhaustive) factors relevant to the s.141A offence, which do not apply to health and safety or food offences, such as:
- i) The underlying public policy for age restricted sales
  - ii) The age or putative vulnerability of the purchaser
  - iii) The serious, often fatal, harm that can be caused by the criminal use of a knife
  - iv) The risk to the purchasing youth of being prosecuted for mere possession of the knife
  - v) The extent of the due diligence systems in place which are unique to age restricted sales e.g. signage, refusals registers, being signatories to voluntary codes, training of staff, till prompts etc.
- 5.9 As to the (iii) above, with the exception of one notorious prosecution<sup>11</sup>, we are aware only of prosecutions for the sale of knives to young persons which have been the result of test purchases rather than the purchase of a knife by a young person which has been used in an act of violence.
- 5.10 That notorious exception concerns a prosecution by the Trading Standards Service at Islington of a shop manager and the company which owned the

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<sup>11</sup> Islington v City Supermarket (UK) Ltd (2015), Highbury Magistrates' Court - see <https://www.islington.media/news/shopkeeper-fined-for-selling-knife-to-stab-crime-teenager>

business. The defendants had sold two knives to a 17-year old who used them minutes later to stab another young person seven times in a near fatal attack. Having been convicted after a trial, the company was fined £750 and the manager £500.

- 5.11 The primary harm detected by underage knife test purchases is the risk of harm which arises from a retailer failing to have sufficient correctly implemented precautions in place to prevent knives being placed in the hands of young persons. It is one step removed from the risks which arise when a young person goes out with a knife in their pocket or bag, facing not only the risk of being in a potentially deadly confrontation but also of being subject to criminal proceedings for knife possession<sup>12</sup>, as set out at point (iv) above.
- 5.12 In this regard, it is unfortunate that current sentencing practices routinely fail to acknowledge the harm, or risk of harm, identified by Trading Standards test purchases, despite young persons facing custodial sentences (in some cases with minimum terms) when caught in possession of knives without lawful excuse<sup>13</sup>. This lack of acknowledgment is in the face of sentencing guidelines for bladed articles and offensive weapons referring explicitly to quantifiable harm as including the risk of harm<sup>14</sup>.

## **6. Sentencing in Practice**

- 6.1 We have carried out extensive research into how the s.141A offence is being sentenced across London, where the issue of knife crime remains a substantial unabated problem, which has revealed both inconsistency and a lack of understanding by magistrates as to the issues that might, or should, properly be taken into account when passing sentence.

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<sup>12</sup> Referred to by District Judge Lucie when sentencing *LBBB v B&M Retail Ltd* at Barkingside Magistrates Court (see below)

<sup>13</sup> Criminal Justice Act 1988 s.139 (1)

<sup>14</sup> Sentencing Council *Bladed Articles and Offensive Weapons Possession Definitive Guideline*  
<https://www.sentencingcouncil.org.uk/offences/crown-court/item/bladed-articles-and-offensive-weapons-possession/>



- 6.2 The genesis of this submission emanates from the sentences passed against two high street retailers (both very large organisations for the purposes of existing guidelines) that were convicted, upon their own pleas, of s.141A offences.
- 6.3 On 13/03/18, Decathlon UK Limited was fined £20,000 for a single offence, having entered a guilty plea at the first opportunity. Decathlon UK Limited is a substantial business with a turnover in excess of £250 million. Their parent company, Decathlon SA has an annual turnover of \$12 billion.
- 6.4 Six months later, on 22/09/18, B&M Retail Limited was fined £480,000 following guilty pleas to three offences. B&M has a turnover in excess of £2 billion. The fine was subsequently reduced on appeal to £330,000.
- 6.5 Since the sentencing of Decathlon and B&M, there have been a number of other prosecutions for s.141A offences which have resulted in the range of fines set out at Appendix A.
- 6.6 The most recent prosecutions in the last month (which are not included at Appendix A) have resulted in further inconsistency.
- 6.7 On 26/02/20, Shop Direct Home Shopping Limited (which trades as ‘Very’ and is said to be the largest exclusively online retailer in the UK) was convicted after trial at Croydon Magistrates’ Court of one offence contrary to s.141A, having sold a three-piece knife set to a 13-year-old test purchaser.
- 6.8 Shop Direct Home Shopping Limited had an average turnover during the relevant period of approximately £1.5 billion. The company acknowledged that it has specifically considered the risk of knives being purchased by children but decided that such an event was unlikely. It had no age verification measures in place to guard against the risk. The company was fined £20,000.

- 6.9 On 06/03/20, Today Tech LLP was convicted after trial at Lavender Hill Magistrates' Court of one offence contrary to s.141A, having sold a retractable craft knife to a 13-year-old test purchaser.
- 6.10 It was accepted between the parties that the LLP had failed to have any regard to its obligation not to sell knives to children, having failed even to identify knives as age-restricted products on its website. The LLP had a turnover during the relevant period of approximately £2 million but was not a profitable organisation. The LLP was fined £1000.
- 6.11 Both Shop Direct Home Shopping Limited and Today Tech LLP had been warned in advance of the test purchases that they would be taking place.
- 6.12 At the sentencing stage of each case, DJ Dean and DDJ Gladwell, respectively, invited assistance from the parties as to how they should approach sentence, both having expressed uncertainty about how they should do so.

## **7. Offensive Weapons Act 2019**

- 7.1 Part 3 of the Offensive Weapons Act 2019 has created several new offences concerning the sale and delivery of knives to persons under the age of eighteen.
- 7.2 It is anticipated that Trading Standards Services (and presumably Police Services) will be engaged in testing compliance with the new legislation and active enforcement of the relevant provisions, which it should be assumed will lead to prosecutions, the sentencing of which has no Guideline.

## **8. Options**

- 8.1. We would respectfully submit that the current Guideline for the sentencing of 'Bladed articles and offensive weapons' could be augmented to provide guidance on sentencing the s.141A offence.

- 8.2. If the Sentencing Council is of the view that it would consider issuing a Guideline for the s.141A offence, but only as part of a Guideline grouping similar offences, we would welcome the opportunity to make further submissions on which other offences might be grouped together.
- 8.3. The London Borough of Barking and Dagenham are well-placed, and willing, to conduct a wider study into sentencing decisions for prosecutions of all age-restricted products and product safety offences.
- 8.4. Similar factors of risk of harm, corporate culpability, and the availability to sentencing magistrates of unlimited fines apply to a wide range of offences enforced by Trading Standards Services.
- 8.5. In consequence, it is our experience that a similar level of disparity exists across the spectrum of Trading Standards work, for which the absence of any Guidelines is in part accountable.
- 8.6. This disparity is likely to persist unless the Sentencing Council takes steps to address it. Age restricted sales remain a focus for Trading Standards Services.
- 8.7. Between September 2018 and September 2019, Trading Standards Services in London attempted 1,051 test purchases of knives, leading to 119 sales. In addition, Croydon Trading Standards (leading a Home Office funded operation) made 100 online attempts to purchase knives from UK-based retailers, leading to 41 sales<sup>15</sup>.
- 8.8. The volume of offences prosecuted is greater than other offences for which there are guidelines.
- 8.9. The enactment of the Offensive Weapons Act 2019 will serve only to increase the already burgeoning number of prosecutions taken each year for, or related to,

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<sup>15</sup> <https://www.tradingstandards.uk/news-policy/news-room/2019/london-retailer-agreement-launched-to-crackdown-on-underage-knife-sales>

the s.141A offence. This fact, together with the overwhelming public interest in curbing knife crime involving young persons, is sufficient justification, in our respectful submission, for the Sentencing Council to prioritise the drafting of a Guideline.

**For and on behalf of the London Borough of Barking and Dagenham**

**April 2020**

*This submission has the full support of the following organisations:*

- *Association of Chief Trading Standards Officers*
- *National Trading Standards*
- *East of England Trading Standards Association*
- *Local Government Association*
- *London Councils (representing London's 32 borough councils and the City of London)*
- *London Trading Standards (representing 33 Local Authority Trading Standards services in the London region)*

## **Appendix A**

### **Preamble**

- a. In September 2019, Trading Standards Services in London were asked to provide details of recent sentencing decisions for prosecutions arising from the sales of knives to children. Results were obtained from nine Boroughs for sentences handed down by seven magistrates' courts and one Crown Court (on appeal).
- b. The results show a significant disparity of sentence. Of the thirty-four fines imposed, six are £500 or less, and ten are £1000 or less. The range of fines is from £0 to £120,000.
- c. In prosecutions taken by London Borough of Croydon during the Autumn of 2019 as part of a Home Office funded online test purchasing project, fines in the region of £8000 have been imposed apart from one case where a fine of £5000 was imposed upon conviction following a trial.
- d. Further disparities can be seen in that after a not guilty plea and trial, and having been convicted in 2016 for the same offence, Poundstretcher Ltd were fined £50,000, whereas on appeal B&M Retail Ltd had two £90,000 fines and one £120,000 fine imposed after guilty pleas and significant co-operation with the investigation.



Table 1: Recent fines and costs totalled for underage sale of knife prosecutions at different Magistrates Courts within London.

## 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.

<b>CULPABILITY</b>
<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Offender fell far short of the appropriate standard for example, by:                             <ul style="list-style-type: none"> <li>○ failing to put in place standard measures to prevent underage sales                                     <ul style="list-style-type: none"> <li>▪ For in store sales this would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts</li> <li>▪ For online sales this would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.</li> </ul> </li> <li>○ Failing to act on concerns raised by employees or others;</li> <li>○ failing to make appropriate changes following prior incident(s);</li> </ul> </li> </ul>
<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories</li> <li>• Systems were in place but these were not sufficiently adhered to or implemented</li> </ul>
<p><b>Low</b></p> <ul style="list-style-type: none"> <li>• Offender made significant efforts to prevent underage sales falling short of a defence</li> </ul>

<b>HARM</b>
<b>Factors indicating greater harm</b> <ul style="list-style-type: none"> <li>• Supply to younger child/children</li> <li>• Supply causes or contributes to antisocial behaviour</li> <li>• Two or more prohibited items supplied to a single purchaser</li> </ul>
<b>Factors indicating lesser harm</b> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## 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 - Turnover or equivalent: £50 million and over

Harm	Culpability		
	A	B	C
Greater harm	Starting point £500,000	Starting point £250,000	Starting point £125,000
	Category range £750,000 – £450,000	Category range £150,000 – £450,000	Category range £75,000 – £200,000
Lesser harm	Starting point £250,000	Starting point £125,000	Starting point £50,000
	Category range £150,000 – £450,000	Category range £75,000 – £200,000	Category range 25,000 – £100,000

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

Harm	Culpability		
	A	B	C
Greater harm	Starting point £250,000	Starting point £125,000	Starting point £50,000
	Category range £150,000 – £450,000	Category range £75,000 – £200,000	Category range 25,000 – £100,000



	<b>Starting point</b> £150,000	<b>Starting point</b> £75,000	<b>Starting point</b> £30,000
<b>Lesser harm</b>	<b>Category range</b> £90,000 – £250,000	<b>Category range</b> 25,000 – £125,000	<b>Category range</b> £15,000 – £50,000

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

		<b>Culpability</b>	
<b>Harm</b>	<b>A</b>	<b>B</b>	<b>C</b>
	<b>Starting point</b> £150,000	<b>Starting point</b> £75,000	<b>Starting point</b> £30,000
<b>Greater harm</b>	<b>Category range</b> £90,000 – £250,000	<b>Category range</b> 25,000 – £125,000	<b>Category range</b> £15,000 – £50,000
	<b>Starting point</b> £50,000	<b>Starting point</b> £30,000	<b>Starting point</b> £10,000
<b>Lesser harm</b>	<b>Category range</b> £25,000 – £100,000	<b>Category range</b> £15,000 – £50,000	<b>Category range</b> £5,000 – £25,000

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

		<b>Culpability</b>	
<b>Harm</b>	<b>A</b>	<b>B</b>	<b>C</b>
	<b>Starting point</b> £50,000	<b>Starting point</b> £30,000	<b>Starting point</b> £10,000
<b>Greater harm</b>	<b>Category range</b> £25,000 – £100,000	<b>Category range</b> £15,000 – £50,000	<b>Category range</b> £5,000 – £25,000
	<b>Starting point</b> £25,000	<b>Starting point</b> £10,000	<b>Starting point</b> £5,000
<b>Lesser harm</b>	<b>Category range</b> £15,000 - £50,000	<b>Category range</b> £5,000 - £25,000	<b>Category range</b> £2,000 - £10,000

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 respond to warnings or advice from Trading Standards
- Falsification of documentation or licences

**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

**Step 3 – 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 4 – 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 5 – 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 6 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other [ancillary orders](#).

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

**Step 7 – Reasons**

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