

Terrorism road testing summary report

Introduction

In June and July 2021, the Council agreed amendments, consulted on October 2021 to January 2022, to the [Preparation of terrorist acts](#) (Terrorism Act 2006, s.5) guideline to reflect Government changes introduced in the [Counter-Terrorism and Sentencing Act 2021](#):

- Adding **‘Notes for culpability and harm’** on how to approach cases where, due to the involvement of undercover law enforcement agents (LEAs), there is no/minimal likelihood of the terrorist act being committed, including whether to apply a downward adjustment on the basis of the harm intended and viability of the plan;
- Amending the sentence in C1 in the sentencing table to ensure the minimum term range does not go below 14 years; and,
- Adding **‘Step 3 – Minimum Terms, Serious Terrorism Sentences and exceptional circumstances’**, where some sentences may need adjustment if the criteria for a ‘serious terrorism sentence’ are met, or if a life sentence of below 14 years is imposed in a ‘serious terrorism case’, as the act brought in new statutory minimum sentences, which increased previous minimum sentences to 14 years.

Methodology

This paper focuses on the scenario related specifically to the addition of Step 3; the May Council paper covers other changes.

To examine how the proposed guidance is interpreted and impacts on sentencing practice, small-scale qualitative road testing took place September to October 2021, with 11 judges ticketed for terrorism offences, identified through the Research Pool and a sample of 2019 terrorism case transcripts. Two hypothetical scenarios were developed, each testing different elements of the draft amended guideline. One week prior to interview, participants were sent the existing and draft amended guidelines, with amendments clearly flagged on the draft amended one, and both scenarios, to allow judges time to consider them, due to the complexity of terrorism cases and the likelihood they would not have sentenced a terrorism case since the law changed on 29th June 2021.

Testing the new ‘Step 3 – Minimum Terms, Serious Terrorism Sentences, and exceptional circumstances’.

The scenario was designed to test the new ‘Step 3’: whether sentencers adjust a sentence to bring it up to the new minimum statutory sentence, or whether they apply exceptional circumstances to keep the sentence below 14 years. To note: Where a serious terrorism sentence is imposed, any guilty plea reduction must not reduce the sentence to less than 80 per cent of the 14 year statutory minimum.

Three offenders (A, B and C) are charged with carrying out acts in preparation for the commission of an act of terrorism (section 5 Terrorism Act 2006). Two of those offenders (A and B) pleaded not guilty and were convicted at trial. The third offender (C) pleaded guilty. Only offender C is due to be sentenced today.

During the investigation the police attended the three offenders' separate residences. From offender A's residence they recovered a large amount of explosive material and the offender's mobile telephone. From an examination of the mobile device, it is clear that the offender had become wedded to an extremist ideology and was preparing to take action to give effect to those views. He was in communication with a number of other known terrorists. In addition, he had carried out searches such as 'largest office building in London', 'busiest workday', 'most powerful explosives'. He had also engaged in conversations using an encrypted chat service where he had sought advice and information from others on the best method for making a bomb.

The materials found in A's residence were, according to an expert, sufficient to carry out a large explosion that, if carried out in a populated area, would certainly have caused a high number of deaths. Offender A also had a background in chemistry, and it was believed that he was capable of putting together a viable device.

The search of B's residence revealed blueprints of a large office building in central London. The offender's mobile telephone was also seized and searched. It revealed that he too had become wedded to extremist ideology and had established contact with known terrorists. He had also spoken on an encrypted chat service with others as well as with offender A. Within those conversations it was clear that offender B had carried out reconnaissance of the building for which he had the blueprints, and was making attempts to make contact with someone who worked within the building.

From the search of offender C's residence, the police recovered a mobile telephone. This mobile telephone showed that offender A had befriended offender C through a chat room over the course of about a month. In the most recent conversations offender A had spoken in vague terms about a plot to carry out some form of terrorist attack that would result in mass fatalities. Offender C was encouraging of offender A's comments and said he would offer assistance if he could. Offender A asked if offender C had a car and would he be able to pick up some materials (unspecified in nature) the following week. Offender C agreed and said he would be able to use his mother's car.

Offender C is a 19-year-old student living with his mother and three siblings. He has no previous convictions. Examination of his mobile device indicated that around the same time that he was communicating in the chat room, he was also accessing extremist material. He explains that he started using the chat room on his mobile phone as a friend at college had recommended it. He claims that he did not know the details of offender A's plan but accepts, through his admission of guilt, that he knew offender A was planning a terrorist act and that he had agreed to provide a very small amount of assistance.

The pre-sentence report (PSR) obtained for the hearing indicates that offender C is very immature for his age, and very impressionable. In interview he had shown no signs of remorse and still seemed to believe that there was a justifiable cause for some terrorist actions.

In addition, the offender has a part time job as a lifeguard and helps his mother with family bills. His family are, to some extent, dependant on his income.

Having considered Step 1 of the sentencing guideline, the Judge has assessed this case as falling within the lower range of D1; and due to the offender's lack of previous convictions and other relevant mitigation he has reduced the sentence to 12 years.

While this was deemed a D1 case (starting point 15 years, range 10-20 years), the scenario was designed to be ambiguous to test whether the new Step 3 was useful. As anticipated, different approaches were identified. A different questioning approach to that normally used in road testing was also taken, with judges prompted to continue sentencing the offence at the end of Step 2 rather than from the beginning.

Key findings

- A range of views were elicited on the 12 year sentence at the end of Step 2.
- Three judges stated they **would not** impose a **serious terrorism sentence** as it would be *'disproportionate'*; eight judges **would**, noting there were no exceptional circumstances.
- Of the three judges who **did not** impose a serious terrorism sentence, two gave pre-guilty plea sentences of 12 years, reduced to eight years plus a four year extension and nine years, and one gave a final sentence of 12 years plus a one year Sentence for Offenders of Particular Concern (SOPC), but did not provide a pre-guilty plea sentence as timing of the guilty plea was not clear. These judges were *'happy'* with their sentences.
- Of the eight judges would **did** impose a serious terrorism sentence, four gave pre-guilty plea sentences of 14 years, reduced by 20 per cent to 11.2 years, as per the guidance; one gave a pre-guilty plea sentence of 14 years plus a 10 year extension, and would *'apply a third, if at the earliest'*; two judges stated 15 years, with one reducing by 20 per cent to 12 years, and one who would reduce *'by the book'*; and one judge started at 18 years, reducing by a third to 12 years, so *'within the 20 per cent rule'*. Seven judges felt their final sentence was *'about right'*; one noted they *'found themselves trying to find a reason not to apply serious terrorism sentence'*.
- The judges were generally positive about the **new step 3**. Specific comments included:
 - Summarise S.268 and S.282 of the Sentencing Act in the guideline;
 - Reflect wording used in statute, i.e. 'at least' a minimum of 14 years' custody;
 - Clarification on 'exceptional circumstances': does it *'[apply] just to life sentence exceptions or also to serious terrorism sentences'*; *'use of 'arbitrary' and 'disproportionate' ... risk watering down the requirement to be truly exceptional'*; and should the guideline *'set out the effects of the amendments to the minimum term for deterrent sentences?'*; and;
 - One judge was concerned *'it catches young adults in the 18-21 age bracket'* and suggested it *'might be helpful to say something [in the exceptional circumstances] about age and immaturity'*.

Table 2: Summary of results for scenario 2 – Step 3 – Minimum Terms, Serious Terrorism Sentences (STS), and exceptional circumstances

	Views on 12 years	Impose 14 year STS?	Exceptional circumstances?	Pre-GP sentence	Reduction for GP	Final sentence	Views on sentence
1 ¹	Appropriate, fatalities involved	No, disproportionate	Immature, impressionable. STS is disproportionate. Culpability is significantly low.	Credit for GP but unclear when	Unclear	12 years + 1 year SOPC	Right
2	Inadequate, intention is mass fatalities	Yes. Risk of serious harm/ deaths. S268 is engaged.	None. He's encouraged terrorism and offered assistance.	14 years	20%	11.2 years	Appropriate
3	Agree with D1, but reduction is too much - would only take 1 year off for mitigation	Yes. Dangerousness provisions met, potential of multiple deaths.	None. Would impose STS of 14 years anyway. Mitigating factors are not exceptional, even taken collectively.	STS. 14 years.	20%	11.2 years	About right under amended. Without, would go for 8/9 years as young, limited assistance, doesn't know full scale.
4	Same result, by different route	Yes.	None.	18 years	33% (within 20% of 14 years STS)	12 years + 7 years extension.	Fair sentence
5	Bit low – agree D1 but would have gone with 15 years.	Yes. Act would direct me to that.	None.	15 years	20%	12 years + 1 year on licence	About right
6	Probably is a D1, but would have gone with 15 years.	Yes. Qualifies for STS, directed to that.	None. Mitigating factors are not exceptional.	14 years plus 10 year extension	If at earliest, one third	Depends on when GP was	14 years statutory minimum - found self trying to find a reason not to apply it.
7	Agree with D1, 12 years seems high, not unduly lenient.	No. Too young, immature, disproportionate.	Young, immature, limited steps taken on encouragement, role on fringes of plot.	12 years	Third	9 years	Alright. What would cause me sleepless nights would be giving 14 years - pretty hefty for a 19 year old.

¹ Judges who did **not** impose the STS are highlighted in grey, as '[do] not reduce the sentence by less than 80 per cent of the statutory minimum' for a GP does not apply.

	Views on 12 years	Impose 14 year STS?	Exceptional circumstances?	Pre-GP sentence	Reduction for GP	Final sentence	Views on sentence
8	Wouldn't sentence C alone, would want to make assessment having heard A and B's trial. However, would have gone for C1.	Yes.	None – mitigating factors are not exceptional.	15 years	Depends when GP was –do by the book.	Depends on when GP was	About right
9	Joint enterprise s5 – would look at full context. However, under the guideline, it's right.	Yes. No remorse, justifiable cause, dangerous. Likely to result/ contribute to deaths.	None. Joint enterprise s5; party to very serious offending.	14 years	Follow 80% rule	11.2 years	Don't feel totally uncomfortable with the sentence. Under Court of Appeal version of the guideline he might have got more.
10	Can see how Judge came to this. 12 years is about right at step 2.	No. Immature. Unjust to apply STS.	Yes. No exceptional circumstances for offence. For the offender, defendant is 19 but PSR says very immature – there are no provisions for someone under 18. Immature people are less culpable - if very immature, a 16/17 year old would expect to have a reduction of a third.	12 years	Full reduction	8 years + 4 year extension	Quite happy as didn't apply STS. 14 years for a minimum for a 19 year old is pretty high, and the same for over 21s - no distinction from adults is a little surprising.
11	Can see how the Judge got there, D1 seems acceptable although may not have gone down the range	Yes. Dangerous, in touch with extremists, just cause, no remorse.	None.	14 years	Follow 80% rule	11.2 years	Proportionate - he knew the plan involved loss of life on mass scale

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