

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(22)APR05 – Terrorism
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1 ISSUE

1.1 From 20 October 2021 to 11 January 2022, the Council consulted on revisions to terrorism guidelines brought in by the Counter Terrorism and Sentencing Act 2021.

1.2 In addition, the consultation covered changes to the Preparation of terrorist acts guideline to ensure that judges approach cases involving undercover police or security services, in a consistent manner.

1.3 At this meeting the Council will be asked to consider the responses relating to the legislative changes, with the remaining issues to be discussed in May, when it is hoped that the guidelines can be signed off for publication in July to come into force in October 2022.

2 RECOMMENDATION

2.1 It is recommended that the Council agrees on revisions:

- to the Preparation of terrorist acts and Explosive substances (terrorism only) guidelines related to the introduction of 'serious terrorism sentences' and
- to the Membership of a proscribed organisation and the Support of a proscribed organisation guidelines to take into account the increase in the maximum sentence from 10 to 14 years.

3 CONSIDERATION

Background

3.1 In March 2018, the Sentencing Council published the first package of terrorism sentencing guidelines. They came into force on 27 April 2018 and covered the following offences:

- Preparation of Terrorist Acts (Terrorism Act 2006, section 5)
- Explosive Substances (Terrorism Only) (Explosive Substances Act 1883, section 2 and section 3)
- Encouragement of Terrorism (Terrorism Act 2006, sections 1 and 2)
- Proscribed Organisations – Membership (Terrorism Act 2000, section 11)
- Proscribed Organisations – Support (Terrorism Act 2000, section 12)
- Funding Terrorism (Terrorism Act 2000, sections 15 - 18)

- Failure to Disclose Information about Acts (Terrorism Act 2000, section 38B)
- Possession for Terrorist Purposes (Terrorism Act 2000, section 57)
- Collection of Terrorist Information (Terrorism Act 2000, section 58)

3.2 The Counter-Terrorism and Border Security Act 2019 received Royal Assent on 12 February 2019. This made changes to terrorism legislation, some of which affected the guidelines listed above. The Council therefore sought to amend the relevant guidelines.

3.3 In October 2019, the Council published a consultation paper seeking views on amendments to some of the guidelines to reflect the new legislation, as follows:

- Changes to the culpability factors within the Proscribed organisations – support (Terrorism Act 2000, section 12) guideline to provide for a new offence (section 12A), of expressing an opinion or belief supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.
- Changes to the wording in the culpability factors of the Collection of terrorist information (Terrorism Act 2000, section 58) guideline to account for changes in legislation which ensure that offenders who stream terrorist material (as opposed to downloading or physically being in possession of it) would be captured by the offence.
- In addition, changes were proposed to the sentence levels within the following guidelines to reflect an increase to the statutory maximum sentences:
 - Collection of terrorist information (Terrorism Act 2000, section 58). From 10 years to 15 years.
 - Encouragement of terrorism (Terrorism Act 2006, sections 1 and 2). From 7 years to 15 years.
 - Failure to disclose information about acts of terrorism (Terrorism Act 2000, section 38B). From 5 years to 10 years.
- Finally, additional aggravating and mitigating factors were added to the Funding terrorism guideline as a result of case law. The new factors were aimed at addressing the extent to which an offender knew or suspected that the funds would or may be used for terrorist purposes.

3.4 The Council considered the responses to the consultation in December 2019 and March 2020 and drafted some further changes in light of these. However, by this time, further terrorism legislation was planned which would have an impact on the guidelines, so the Council chose to pause the publication of the revised guidelines to await this new legislation.

3.5 As noted above, the Council consulted on further changes resulting from the Counter-Terrorism and Sentencing Act 2021, which was given Royal Assent on 29 April 2021.

3.6 The 2019 revised guidelines will be published alongside the revisions made under the most recent consultation process, and the accompanying consultation response document will incorporate both the 2019 changes and the changes under discussion today.

Preparation of terrorist acts guideline – the responses to consultation

3.7 The existing Preparation of terrorist acts guideline can be seen [here](#) and the draft consulted on can be found [here](#).

3.8 The Council proposed expanding and extending the text above the sentencing table to provide for the introduction of ‘serious terrorism sentences’:

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in [section 308 of the Sentencing Code](#) to make the appropriate determination. (See STEP 6 below). The court must also consider the provisions set out in s323(3) of the Sentencing Code (minimum term order for serious terrorism offenders). (See STEP 3 below).

Where the dangerousness provisions are met but a life sentence is not justified, the court should consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see STEP 3 below).

Where the dangerousness provisions are not met the court must consider the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP 7 below).

3.9 Respondents were generally content with this wording. The Criminal Bar Association (CBA) suggested a slight change:

From:

Where the dangerousness provisions are not met the court must consider the provisions set out in section 265 and 278 of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP 7 below).”

To:

Where the dangerousness provisions are not met the court must **impose a sentence in accordance with** the provisions set out in section 265 and 278 of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP 7 below).

3.10 The wording at step 7 (which reflects the language of the statute) is:

Where the court does not impose a sentence of imprisonment for life or an extended sentence, or a Serious Terrorism Sentence but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

3.11 The Prison Reform Trust referred to their opposition to the introduction of serious terrorism sentences (STS) and stated:

Attention should be given in the guidance to how age and/or lack of maturity should be taken into consideration when deciding on the imposition of an STS. This is particularly important when an STS is being considered for an offender aged 18-25. It is well established that age and/or lack of maturity are factors that are highly relevant to culpability. It is also established that this should be reflected in the sentencing process by "the humane principle that an offender deemed by statute to be not fully mature when committing his crime should not be punished as if he were". A separate sentencing regime exists for children (aged under 18) underpinned by the primary importance of considering the welfare needs of the child. For adults aged 18 and over, age and/or lack of maturity is recognised as an important factor in sentencing guidelines and prosecution guidance.

However, the new STS regime goes against the recognition of age and maturity in other areas of sentencing, by imposing the same conditions on children and young adults as adults convicted of terrorist offences. Removing the possibility of parole authorised release from children and young adults is counter to existing sentencing practice; and the evidence that it is this group in particular which are most capable of change and desistance from crime.

We recommend that this section of the guidance cross-refers to the equal treatment bench book. As we highlight in our answer to question 4, special consideration should also be given to age and / or lack of maturity as a factor which may indicate exceptional circumstances for not imposing an STS. Further concerns relating to the proposed guidance on exceptional circumstances, and the knock on impact of the 14 year minimum term on sentencing levels, are highlighted below.

Question 1: Does the Council wish to make any changes to the proposed text regarding serious terrorism sentences?

3.12 The consultation recommended that the sentence table for this offence should remained largely unchanged, stating:

If a serious terrorism sentence is to be imposed but the sentencing table would lead to a custodial term of below 14 years then at Step 3, once the seriousness has been determined, the judge will need to increase the sentence to the minimum unless exceptional circumstances apply.

There are not many sentences within the table that might require adjustment in this way. The serious terrorism sentence criteria includes the multiple deaths condition (i.e. that the offence was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people as a result of an act of terrorism). This means that category 2 and 3 harm cases are unlikely to ever be eligible for a serious terrorism sentence, and so no adjustment would be necessary.

D1 includes a sentence of less than 14 years within the sentencing range. However, whilst cases falling into this category *may* meet the criteria for a serious terrorism sentence and if so might need adjusting at step 3, there are just as likely to be cases that do not meet the criteria. Many cases falling into this category will not meet the first main test (that the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further serious terrorism offences or other specified offences) and in

those cases it is helpful for the sentencer to be given a suitable starting point and range that is based on the offence seriousness.

3.13 The only change that the consultation recommended to sentence levels was to change the category range for C1 from: life imprisonment with a minimum term of 10-20 years to: life imprisonment with a minimum term of 14-20 years. The consultation stated:

The only other adjustment that might be needed would be in those instances where a life sentence is imposed, but the 'serious terrorism case' criteria is met (i.e. this would have been a serious terrorism sentence but for the imposition of a life sentence). In these situations, the minimum term must be at least 14 years. C1 currently includes a life sentence minimum term of less than 14 years within its range. However it is hard to imagine a C1 scenario where the serious terrorism sentence criteria would not have been met, given that harm category 1 is 'multiple deaths risked and very likely to be caused', and the guideline assumes that in the majority of cases the dangerousness criteria would be met, and a life sentence imposed.

3.14 Jonathan Hall QC, the independent reviewer of terrorism legislation did not agree with the change to C1:

I do not agree that the range should start at 14 years (up from 10 years). The reasoning provided in the consultation document is that the harm category ('multiple deaths risked and very likely to be caused') is essentially the same as the statutory criterion for a serious terrorism sentence, and that it is 'hard to imagine' that a serious terrorism sentence will not be merited for a case falling within C1.

However, 'multiple deaths risked and very likely to be caused' is not the only criterion under section 282B(3) of the Sentencing Code. In addition, the offender must have been, or ought to have been aware, of that likelihood. It is possible that although the harm objectively risked by a plot is the same, the harm may have been differently foreseeable to different co-defendants. The fact that a 14-year minimum is imposed for those who satisfy the statutory criteria is not a reason for raising the bottom of the range for those who do not.

3.15 The Justice Committee was persuaded by this argument:

Given that it is possible that a defendant may have met the criteria for a C1 sentence but not the statutory criteria for a Serious Terrorism Offence we would agree that it is sensible to keep the existing category range.

3.16 The Prison Reform Trust endorsed this view and considered that the proposal 'risks contributing to sentence inflation and the upward drift of sentences which were not within scope of the original legislation'. They said that the guideline should not assume that no case could fall into C1 where the serious terrorism criteria were not met and run the risk of imposing a disproportionate sentence as a consequence.

3.17 The CBA agreed with the proposed increase at C1 from a 10 to a 14 year minimum term but suggested increasing the starting point from 15 to 17 years so that the starting point was more centrally positioned in the range.

Question 2: Does the Council wish to change the range for C1 as proposed in the consultation?

3.18 The consultation proposed a new step 3 in the guideline to give guidance on minimum terms, serious terrorism offences and exceptional circumstances.

Step 3 – Minimum terms, Serious Terrorism Sentences and exceptional circumstances

Life Sentence Minimum Terms

For serious terrorism cases the life sentence minimum term must be at least 14 years' **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.**

A "serious terrorism case" is a case where, but for the fact that the court passes a life sentence, the court would be required by section 268B(2) or 282B(2) to impose a serious terrorism sentence (s323(3) of the Sentencing Code).

Serious Terrorism Sentence - Minimum Custodial Sentence

Where the criteria for a serious **terrorism sentence** are met, as set out in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code, then the court must impose the serious terrorism sentence **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.**

Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years' custody. (s282C Sentencing Code).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence where the other tests are met, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances

Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence.

The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the provisions by too readily accepting exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court **must impose a shorter minimum**.

If there are exceptional circumstances that justify not imposing a Serious Terrorism Sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a Serious Terrorism Sentence is not imposed (see step 5 – Reduction for guilty pleas).

3.19 There was general agreement from respondents with the proposed step 3. The Council of Her Majesty's Circuit Judges agreed with the guidance but noted an apparent error:

the current wording of the first paragraph under the heading "Principles" appears to contain an error in the way in which a Serious Terrorism Sentence is considered – should this not read "Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or the imposition of the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence" – rather than the current wording which is "or **not imposing** the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence."? [highlighting added]

3.20 Jonathan Hall QC queried the wording on exceptional circumstances:

I do not agree with the reference to deterrence in, "It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the provisions by too readily accepting exceptional circumstances". There is no evidence that the serious terrorism sentence provisions have a deterrent purpose and given the cohort of offenders in question (terrorist offenders who have risked multiple deaths) it is

highly unlikely that they will be deterred by the prospect of a statutory minimum term of 14 years. It is much more likely that the provisions have an incapacitative purpose, by ensuring that offenders are held in prison for longer.

3.21 The Prison Reform Trust also objected to the reference to deterrence and developed their point made at 3.11 above:

special consideration should be given in the guidance to age and / or lack of maturity as a factor which may indicate exceptional circumstances for not imposing an STS, particularly when an STS is being considered for an offender aged 18-25.

Furthermore, we recommend the removal of the following paragraph:

The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the provisions by too readily accepting exceptional circumstances.

Within the context of specific sentencing guidance, it seems inappropriate and potentially bias for the Sentencing Council to make a general warning about the constitutional position of the courts in relation to Parliament. A warning against 'too readily accepting exceptional circumstances' may have the impact of making courts too risk averse, and failing to accept exceptional circumstances in cases where it would otherwise be justified in doing so. In the absence of more specific guidance on what counts as 'truly' exceptional, it should be for the courts to decide what counts as exceptional circumstances and whether the imposition of an STS would result in an arbitrary and disproportionate sentence.

Furthermore, there is simply no evidence that mandatory minimum terms such as these have any kind of deterrent effect on offenders. Therefore, it would be highly unlikely that a ruling by a court in relation to a particular case would have any impact on the general deterrent purpose of the sentence.

3.22 In contrast the Justice Committee stated:

We support the inclusion of the guidance in Step 3 to remind the courts not to undermine the intention of Parliament by too readily accepting exceptional circumstances. We welcome the inclusion of reasoning that sets out the principles that explain what should and should not count as exceptional circumstances. The consultation could have included a more detailed explanation of the reasoning behind the inclusion of this guidance in relation to this particular offence. A more detailed explanation would assist the Committee in understanding the case for more detailed guidance on statutory criteria in other guidelines. The Council could also consider including examples in the guideline to illustrate what scenarios might count as exceptional.

3.23 The CBA had one area of disagreement:

We agree although we consider it would be best to remove the statement that one or more lower culpability factors or one or more mitigating factors cannot amount to exceptional circumstances on their own because that is too prescriptive. It is a mitigating factor that the offender has a mental disorder that substantially reduces his culpability for his offending but to say that a severe mental disorder on its own cannot amount to exceptional circumstances but it could if taken into account alongside any

other relevant matter that does *not* appear in the list of the mitigating features could lead to unfairness. It could also lead to arguments over whether certain circumstances relied upon by the defence as exceptional fall within the rubric of one of the mitigating factors and are therefore outside the court's consideration unless they can be allied to other circumstances that do not. In making this suggestion we recognise that the changes referred to in the Consultation Paper reflect the structure of the Definitive Guideline for Firearms Offences where the issue of exceptional circumstances also arises. Nevertheless, we believe that as with sentencing exercises for other offences where there is an exceptional circumstances route away from a mandatory sentence the courts are well-placed to judge whether those circumstances exist without the benefit of this particular type of assistance.

3.24 In road testing conducted in September and October 2021, judges were generally positive about the proposed step 3, although there were suggestions for changes. Of eleven judges sentencing a scenario which was presented as meriting 12 years before any guilty plea reduction, eight imposed a serious terrorism sentence and three found exceptional circumstances not to do so. A summary of the road testing of step 3 is provided at **Annex A**.

3.25 Of the three judges who **did not** impose a serious terrorism sentence, two gave pre-guilty plea sentences of 12 years, one reduced this to eight years for the plea plus a four year extension, and one to nine years, and one judge 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. These judges were '*happy*' with their sentences.

3.26 Of the eight judges who **did** impose a serious terrorism sentence, four judges gave pre-guilty plea sentences of 14 years reducing these by 20 per cent to 11.2 years; 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 started at 15 years, with one reducing by 20 per cent to 12 years, and one who would reduce '*by the book depending on when the guilty plea was entered*'; and one judge started at 18 years, reducing by a third to 12 years, noting this was '*within the 20 per cent rule*'. Seven judges felt their final sentence was '*about right / fair*', while one noted they '*found themselves trying to find a reason not to apply serious terrorism sentence*'.

3.27 The apparent inconsistency in outcomes is not an issue because the scenario was devised to test the usefulness of the guidance at step 3 and not in the expectation of a particular outcome. However, there does appear to be an issue in that many of the sentences passed were not in accordance with the legislation (sections 268C and 282C of the Sentencing Code), which specifies that a 'serious terrorism sentence' comprises a period of imprisonment (or detention in a young offender institution for those aged 18-21) for a minimum period of 14 years, and an extension period to be served on licence (between 7 and 25 years).

3.28 Taking the various points in turn:

- (a) The point made by the Council of HM Circuit Judges at 3.19 above (and by a judge in road testing) appears to be a good one - it is proposed that the change they suggest is adopted;
- (b) Jonathan Hall QC makes a valid point about deterrence not being a purpose of the provisions – the wording could be amended to remove the reference to deterrence;
- (c) The suggestion from the Prison Reform Trust that special consideration should be given to age and/or lack of maturity in the step 3 guidance could have an impact on the number of cases where there are findings of exceptional circumstances. The age profile of offenders for this offence is relatively young: in 2018-2020 28% were aged 18-21 and 39% aged 22-29. Three judges in road testing made reference to immaturity (in a scenario featuring a 19 year old offender) and one judge specifically said that step 3 should make some reference to age and immaturity.
- (d) The Justice Committee’s suggestion that the guidance should include examples of what might be exceptional is problematic. The Council has previously taken the view that by its very nature it is neither possible nor helpful to try to identify what amounts to ‘exceptional’. One judge in road testing queried the use of the words ‘arbitrary and disproportionate’ suggesting that they might dilute the requirement to be truly exceptional – this is wording taken from case law on minimum terms for firearms offences and without it there is no real guidance on what ‘exceptional circumstances’ are.
- (e) The CBA’s comment appears to be based on a misunderstanding of the guidance – it does not say that a single factor cannot amount to exceptional circumstances, only that the mere presence of a low culpability factor or mitigating factor is not in itself exceptional. The guidance specifically says that ‘a single striking factor may amount to exceptional circumstances’.
- (f) The apparent uncertainty among some of the judges in road testing as to the exact requirements of a serious terrorism sentence, suggests that it may be useful to spell this out at step 3 (including a reference to the restrictions on the reduction for a guilty plea) and possibly also in the text above the sentence table.

Question 3: Does the Council wish to make changes to step 3?

Explosive substances (terrorism only) guideline

3.29 The consultation proposed the same changes to the [Explosive substances \(terrorism only\) guideline](#) and consultees repeated the points made above in relation to this guideline.

Proscribed Organisations – Membership (Terrorism Act 2000, section 11)

3.30 The consultation proposed changes to the sentence levels to reflect the change in the statutory maximum sentence from 10 to 14 years. The draft guideline can be found [here](#).

Existing sentence table:

Culpability	A	B	C
	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 5-9 years' custody	Category range 3-7 years' custody	Category range High level community order - 4 years' custody

Proposed sentence table:

Culpability	A	B	C
	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 3 years' custody
	Category range 8 - 13 years' custody	Category range 5-9 years' custody	Category range High level community order - 4 years' custody

3.31 Jonathan Hall QC raised an issue not specifically addressed in the consultation:

Given the new maximum sentence (14 years), it is worth considering that the offence under section 11 can be committed in two ways: by belonging to a proscribed organisation or by professing to belong. In Attorney General's Reference No 4 of 2002; *Sheldrake v Director of Public Prosecutions*, Lord Bingham observed that the meaning of profess in section 11 was far from clear, including whether the profession of membership had to be true; although Professor Clive Walker QC considers that the truth of the assertion is beside the point. In any event, the second aspect of the section 11 offence appears to capture conduct which is probably (a) less culpable and (b) a different harm from that caused by actual membership.

If the purpose of the sentencing guideline is to deal with sentencing for membership only, then it should say so. If it is intended to capture profession as well, then the distinction between membership and profession of membership should be reflected in some way within the guideline.

3.32 Section 11 of the Terrorism Act 2000 states:

(1) A person commits an offence if he belongs or professes to belong to a proscribed organisation.

3.33 Looking back through Council papers, the relevance of the guideline to professing to belong does not appear to have been discussed. I can find one reference to a case where an offender professed to belong to a proscribed organisation when in fact he had no links to it. He invited support for the organisation over the internet by calling on Muslims in the UK to prepare themselves for 'martyrdom operations' and was prosecuted under both s11 (membership) and s12 (support) receiving concurrent 5 year sentences for each after a guilty plea.

3.34 As the guideline stands, an offender who professes to belong (but does not) would fall into culpability C: 'All other cases'.

Question 4: Should the guideline explicitly refer to professing to belong to a proscribed organisation?

3.35 One anonymous respondent thought that the range for category A should go up to the statutory maximum, stating:

Parliament increased the maximum sentence, therefore, there should be provision for judges to impose the maximum sentence in cases where there is high level of seriousness, as opposed to limiting the maximum sentence for exceptionally serious cases. This will address the unintended issue where a defendant who falls in the highest category of offending could escape the maximum sentence after mitigating factors are applied.

3.36 A magistrate disagreed with having a community order option at the bottom of the range for category C.

3.37 The Prison Reform Trust disagreed with the proposed levels:

As stated in the impact assessment of the legislation, the policy intention behind the legislation is that "serious and dangerous terrorism offenders spend longer in custody". However, the draft guidance as it is currently worded will result in offenders whose offending is less serious and dangerous also receiving longer custodial sentences. The absence of an additional harm category and the narrow category ranges adopted in the draft guidance makes the contrast between the existing and proposed new guidance particularly stark. In particular, according to the revised guidance, offenders in culpability B and C will spend longer in custody than they would under the previous guidance. This is not the stated intention of the legislation and the guidance should be amended accordingly:

Culpability C: The starting point should remain 2 years. 3 years is illogical when the midpoint is 2 years.

Culpability B: The lower category threshold should remain 3 years. The starting point could be adjusted to the midpoint of 6 years.

Culpability A: The lower category threshold should remain 5 years. The starting point could be adjusted to the midpoint of 9 years.

3.38 Other respondents who commented, agreed with the proposed sentence levels. The Justice Committee specifically agreed with the inclusion of a non-custodial sentence in category C.

Question 5: Does the Council wish to make any changes to the proposed new sentence levels for membership of a proscribed organisation?

Proscribed organisations – support (Terrorism Act 2000, section 12)

3.39 The consultation proposed changes to the sentence levels to reflect the change in the statutory maximum sentence from 10 to 14 years. The draft guideline can be found [here](#).

Existing sentence table:

	A	B	C
1	Starting point* 7 years' custody Category range 6-9 years' custody	Starting point* 5 years' custody Category range 4-6 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
2	Starting point* 6 years' custody Category range 5-7 years' custody	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 2 years' custody Category range 1-3 years' custody
3	Starting point* 5 years' custody Category range 4-6 years' custody	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 1 years' custody Category range High level community order – 2 years' custody

Proposed sentence table:

	A	B	C
1	Starting point* 10 years' custody Category range 8-13 years' custody	Starting point* 7 years' custody Category range 5-9 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
2	Starting point* 8 years' custody Category range 6-9 years' custody	Starting point 4 years' custody Category range 3-6 years' custody	Starting point 2 years' custody Category range 1-3 years' custody

3	Starting point* 6 years' custody Category range 4-7 years' custody	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 1 years' custody Category range High level community order – 2 years' custody
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3.40 As can be seen above, the Council did not propose increasing all sentences on the basis that the intention of Parliament could be met by ensuring that the most serious offenders receive tougher sentences. The categories marked with an asterisk* had their starting point raised and their ranges broadened to give sentencing judges greater discretion to move around the starting point where the facts of the case require it. Category B2 has similarly had its range broadened, although its starting point remains the same.

3.41 Responses to the proposed new sentence levels were generally supportive, including from the Prison Reform Trust. The anonymous respondent thought that the range for category A should go up to the statutory maximum for this offence as well and a magistrate repeated his objection to a community option at C1. The Council of HM Circuit Judges agreed with all sentences apart from C1 on the grounds that the discrepancy between the starting points in C1 and B1 is too great. The Council may also wish to consider whether the range for either B1 or C1 should be widened so that they meet if not overlap.

3.42 The Ministry of Justice stated:

We have considered carefully the Sentencing Council's proposed amendments to the relevant sentencing guidelines for the offences at sections 11 and 12 of the Terrorism Act 2000 (membership of a proscribed organisation and support for a proscribed organisation, respectively) and would ask the Council to consider whether the sentence levels within these guidelines should be more closely aligned. The invitation and expression of support for proscribed organisations can pose a significant threat to national security, including through the effect this can have on others, for example by influencing individuals to travel abroad to fight for such an organisation. This remains the case even when that support is expressed recklessly by the offender. Under the Council's current proposals, some of the starting points and category ranges for the offence of support of a proscribed organisation remain unchanged from the existing guidelines, potentially including cases where there is evidence that others have acted on or been assisted by the encouragement to carry out activities. We believe closer alignment with the section 11 guideline will help avoid potential inconsistencies in sentences imposed for these two offences and better reflect the potential threat behind all forms of such offending, including so-called 'lesser' categories of support.

3.43 The Justice Committee agreed:

The sentence table for "support" includes nine categories and the Council proposes to not increase all of the categories but rather to focus on the most serious offenders receiving tougher sentences. The Committee would suggest that the consultation should have included a more detailed explanation of why the Council was taking a different approach to reflecting the change in the statutory maximum for "support" as

opposed to “membership” of proscribed organisations. We support the Ministry of Justice’s position set out in its response that it would be preferable to align the two offences and to increase the starting point and category ranges for all categories other than the least serious type of case. In the least serious type of case we agree that the category range should stay the same and that a non-custodial sentence should remain available.

3.44 Looking at step one and the sentence tables of the two guidelines side by side:

S11 membership	S12 support
<p>Culpability demonstrated by one or more of the following:</p> <p>A</p> <ul style="list-style-type: none"> • Prominent member of organisation <p>B</p> <ul style="list-style-type: none"> • Active (but not prominent) member of organisation <p>C</p> <ul style="list-style-type: none"> • All other cases 	<p>Culpability demonstrated by one or more of the following:</p> <p>A</p> <ul style="list-style-type: none"> • Intentional offence – Offender in position of trust, authority or influence and abuses their position • Persistent efforts to gain widespread or significant support for organisation • Encourages activities intended to cause endangerment to life <p>B</p> <ul style="list-style-type: none"> • Reckless offence – Offender in position of trust, authority or influence and abuses their position • Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation • Intended to gain widespread or significant support for organisation • Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure <p>C</p> <ul style="list-style-type: none"> • Lesser cases where characteristics for categories A or B are not present • Other reckless offences
<p>Harm</p> <p>There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.</p>	<p>Harm</p> <p>Category 1</p> <p>Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life</p> <p>Significant support for the organisation gained or likely to be gained</p>

				Category 2 Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life Category 3 All other cases			
Culp	A	B	C		A	B	C
	SP 10 Range 8 - 13	SP 7 Range 5-9	SP 3 Range High level CO - 4	1	SP 10 Range 8-13	SP 7 Range 5-9	SP 3 Range 2-4
				2	SP 8 Range 6-9	SP 4 Range 3-6	SP 2 Range 1-3
				3	SP 6 Range 4-7	SP 3 Range 2-4	SP 1 Range High level CO – 2

3.45 The factors for the support offence were considered by the Council in December 2019 in the light of consultation responses. The relevant section of that paper annotated with the decisions made is attached at **Annex B**.

3.46 Both of these offences have low volumes of cases sentenced. In the three years 2018-2020, around 20 offenders were sentenced for the membership offence. All but one received an immediate custodial sentence. The mean average custodial sentence length (ACSL) was 5 years (median was 5 years 6 months) after any reduction for guilty plea. From 2010 to 2020 (inclusive) there have been 11 offenders sentenced for the support offence. All 11 offenders were actually sentenced in 2016 and 2017 which was prior to the publication of the current sentencing guideline. All offenders received an immediate custodial sentence. The mean ACSL was 4 years 5 months (median was 5 years) after any reduction for a guilty plea. At **Annex C** the Council can see a summary of some membership and support cases taken from transcripts.

3.47 In discussions at previous meetings the Council has acknowledged that although the legislation draws a distinction between support and membership, in reality that distinction is not clear cut. Nevertheless, it is difficult to see how the sentences for these two guidelines can be aligned when they are structured so differently. The concern raised by MoJ seems to

relate to cases of medium harm and this could be addressed by increasing the starting point for B2 from 4 years to 5 or 6 years. If that were done, the range would probably need to be adjusted as well, possibly to 3-7 years or 4-7 years with potential adjustments to the ranges for other categories. See suggestions below:

	A	B	C
1	Starting point 10 years' custody Category range 8-13 years' custody	Starting point 7 years' custody Category range 5-9 years' custody	Starting point 3 years' custody Category range 2-5 years' custody
2	Starting point 8 years' custody Category range 6-9 years' custody	Starting point 5/6 years' custody Category range 3/4-7 years' custody	Starting point 2 years' custody Category range 1-3/4 years' custody
3	Starting point 6 years' custody Category range 4-7 years' custody	Starting point 3 years' custody Category range 2-4 years' custody	Starting point 1 years' custody Category range High level community order – 2 years' custody

3.48 At **Annex D** the Council can see the sentencing tables of a number of other terrorism offences with similar statutory maximum sentences for comparison.

Question 6: Does the Council wish to make any changes to the proposed new sentence levels for support of a proscribed organisation?

4 IMPACT AND RISKS

4.1 The resource assessment will be updated in the light of any changes agreed at this meeting and presented to the Council at the next meeting.

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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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Sentencing Council meeting:

20 December 2019

Consultation Responses

The Consultation can be seen here: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Terrorism-offences-guideline-consultation-2019.pdf>

Consultation Question 1

Do you agree with the change to the culpability factors in the Proscribed Organisations – Support guideline?

The consultation version of the Support guideline can be seen here:

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/proscribed-organisations-support-for-consultation-only/>

- 3.3 The offence of inviting support for a proscribed organisation (section 12 Terrorism Act 2000) was amended by the Counter Terrorism and Border Security Act 2019 (the 2019 Act) to create a new offence (section 12(1A)) of expressing an opinion or belief supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.
- 3.4 In the consultation the Council proposed that the culpability factors were amended so that the original factor; 'Offender in position of trust, authority or influence and abuses their position' was separated into an intentional offence and a reckless offence, with the intentional offence appearing in culpability A and the reckless offence in culpability B.
- 3.5 Of the 13 respondents only nine commented; six agreed and three disagreed. Amongst those that agreed were the CPS and the Criminal Bar Association. However, in disagreement was the current Independent Reviewer of Terrorism Legislation, Jonathan Hall;

The effect of the proposed amendment is to steer the sentencing judge from ever including an offender who has been convicted of the section 12(1A) offence in the highest Culpability bracket (A). This is because the offence will not qualify as an Intentional Offence, and the

second (“persistent efforts to”) and third (“encourages activities intended to”) also appear to require intention.

The background to the enactment of the section 12(1A) Terrorism Act 2000 offence is the case of R v Choudhary and Rahman [2016] EWCA Crim 61 (see Counter Terrorism and Border Security Act 2019, Explanatory Notes, paragraph 25). Where individuals in positions of significant influence persistently express opinions or belief, reckless as to whether those in the audience will be encouraged to support a proscribed organisation (which the Court of Appeal in Choudhary and Rahman considered would not be an offence, leading to the enactment of the new offence), sentencers ought not to be discouraged from treating suitable cases as falling within Culpability A.

The section 12(1A) Terrorism Act 2000 offence requires proof of subjective recklessness. An outcome of the proposed change is that, even for cases in Harm Category 1, for example where there is evidence that individuals have acted on or been assisted by the encouragement to carry out activities endangering life, the starting point will be limited to 5 years.

It is therefore suggested that the Culpability factor “Offender in position of trust, authority or influence and abuses their position” should not be split between “Intentional Offence” and “Reckless Offence”. Instead, the fact that the offender has been convicted of the recklessness offence contrary to section 12(1A) Terrorism Act 2000 should be reflected in mitigating factors. This is not inconsistent with what the Council proposes in relation to the section 17 Terrorism Act 2000 offence.

3.6 However, the other two respondents who disagreed (Prison Reform Trust and a Professor at the University of East Anglia) both expressed their concern about the mere existence of the provisions in legislation. The Prison Reform Trust went on to say;

Given these concerns, we believe that the addition of recklessness as a factor in culpability should be approached with extreme caution. We do not believe that the current draft guideline meets this test. Indeed, the addition of recklessness to culpability B speaks precisely to the concern highlighted by the JCHR of an academic speaking out in favour of the deproscription of proscribed organisations. Under the current draft guideline, this individual could potentially face a maximum of six years in prison.

The current draft guideline also fails to take account of the range of aggravating and mitigating factors which ought to apply when someone is deemed to have committed a reckless – as opposed to an intentional – offence. Relevant factors ought to include:

- Whether or not the defendant knew if the organisation was on the proscribed list*
 - The context for and motivation of the offence – eg support expressed for a proscribed organisation in the context of an educational setting and in the interests of furthering open debate and democratic accountability and scrutiny should at least be subject to mitigation, and arguably exempt from criminal prosecution entirely*
 - The extent to which the defendant took steps to mitigate or reverse the original reckless offence eg by deleting and / or retracting a tweet made in support of a proscribed organisation.*
- Therefore, rather than seeking to integrate the new recklessness offence into the existing guideline, we recommend that the new offence is drawn up as a separate guideline, so that the full range of factors relating to both culpability and aggravation / mitigation can be properly outlined. This should be subject to separate consultation, with a particular focus on understanding the implications for civil liberties and freedom of expression.*

- 3.7 If we take the course of action recommended by Jonathan Hall the concerns expressed by the PRT would be exacerbated. The type of case they (and the JCHR) refer to, where an academic is speaking about an organisation that should be deproscribed, reckless as to whether his talk will encourage his students to join the proscribed organisation, would remain at culpability A and only receive a small reduction at step 2 through the use of relevant mitigating factors.
- 3.8 When drafting the amendments, the Council understood that the legislative change was intended to capture figures such as Anjem Choudhary but was also mindful of the fact that the guideline must ensure that anyone sentenced for this offence receives an appropriate sentence. It was felt that ensuring that only intentional acts fall into the highest culpability bracket was the most appropriate way to proceed.
- 3.9 It is unclear how the PRT would like their concerns to be addressed beyond the addition of aggravating and mitigating factors. It may be that they would prefer the reckless factor to fall into culpability C. However, when drafting the revised guidelines, the Council was clear that an offender in a position of trust, authority or influence should receive a harsher sentence. Whilst the scenario described of an academic falling foul of the legislation is a concern there will be many other examples that are more likely to be prosecuted that need to be adequately sentenced through the guideline.
- 3.10 A way to address the concerns raised by both parties could be through additional step 2 factors;
- Aggravating: Offender has terrorist connections and/ or motivations
 - Mitigating: Offender has no terrorist connections and/ or motivations
 - Mitigating: Offender did not know that the terrorist organisation was proscribed (could be problematic as many offenders could argue this)
 - Mitigating: Offender has taken steps to retract their support
- 3.11 Alternatively, changes could be made to step one. Instead of separating out the first factor into intentional and reckless acts the Council could instead focus on the offender's motivation:
- Category A - Offender with terrorist connections and/ or motivations, in a position of trust, authority or influence, and abuses their position
 - Category B - Offender with no terrorist connections and/ or motivations, in a position of trust, authority or influence, and abuses their position

Question 3: Does the Council want to add any additional aggravating and/ or mitigating factors?

Agreed to add factors set out below:

Aggravating factors

- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- Offender has terrorist connections and/ or motivations

Mitigating factors

- Offender has no terrorist connections and/ or motivations
- Unaware that organisation was proscribed

Question 4: Does the Council want to amend the step 1 factors to remove the reference to reckless and intentional acts?

No:

The Council considered the responses and concluded that separating reckless and intentional acts so as to treat intentional acts as more serious within culpability is common to sentencing guidelines and an important factor in assessing seriousness.

Offender name and year sentenced	Offence	Details	Sentence
Yamin 2019	S11	Went to Syria in 2013 and joined Al Qaeda. Took part in a video recording which showed that he was part of an armed combat group engaged in fighting against Kurdish forces in northern Syria. He promoted the Al Qaeda cause in the video. The video recording demonstrates that the defendant had entrenched extremist views and fully supported and encouraged the use of violence to achieve the group's aims. Due to his own sight and hearing difficulties, the defendant, although armed with a gun, played a limited combat role. However, he was based near the front line of the fighting and provided active support and encouragement for those group members who were engaged in the actual fighting by driving ambulances, caring for Al Qaeda combatants, as well as what has been described as 'cooking and general maintenance' for the group. On 31 May 2014, shortly before ISIS, or IS, declared a new Caliphate over a large part of the Syrian and neighbouring regions, the defendant returned to this country, having become disillusioned with Al Qaeda and the nature and the course of the armed conflict in Syria. He was arrested on his return and interviewed at Heathrow Airport. Having turned his back on the extremist cause, the defendant returned home and, in due course, resumed his studies and has now completed his degree in civil engineering. Culpability B- active but not prominent member.	14 years for preparation of terrorist acts offence and 4 years concurrent for membership (after trial).
Ward 2019	S11	Pleaded guilty to being a member of the proscribed organisation, National Action. Joined in October 2016 when it was then not a proscribed organisation. In his application he said, "We are at war and it's time for me to fight". He said he was, "A hundred per cent committed", and, quote, "All I have to offer is my thirst for gratuitous violence". He told the leader, he considered himself fanatical. The organisation was proscribed on 16 December 2016 and shortly thereafter he left because he did not consider that National Action was likely to meet his needs. He "needed to fight" and would "be better use somewhere else". By April he was back and making suggestions for a means of recruitment for further members of what he knew then was a terrorist organisation, suggestions for improved security and particularly training. He was very keen to encourage the others in the need for paramilitary training. He planned a camp and was keen that the organisation was active in its pursuit of its violent, racist objectives and calling	4 years (after trial)

		for the organisation to do something rather than simply talk about it. By May 2017 he was sending messages within the chat group saying, "Our main goal should be to cause conflicts between different groups of people and force society to collapse. We should become agitators". Arrested on 5 September 2018 he was in possession of extreme right-wing material and had two pistols, an air pistol, and a steel ball bearing gun and two air rifles. Culpability B- active but not prominent member.	
Jones, Jack, Cutter 2020	S11	<p>Prior to proscription, all three offenders were members of National Action. Following proscription, all 3 defied the ban and continued active membership.</p> <p>Before proscription JONES was the London regional organiser and heavily involved in the creation of propaganda and artwork for the organisation. After proscription, he was one of only a handful of prominent individuals included in two chat groups known as Inner and Sesh. He met with other prominent members in January 2017 and planned how National Action was going to operate underground. He also co-founded a group called NS131. That organisation was an online artwork platform, but on 28 September 2017 it was proscribed as being an alias of National Action. Furthermore, he designed some artwork for an organisation calling itself Scottish Door which in due course was proscribed as being another alias for National Action. He continued to organise training camps for recruits in which boxing and martial arts were taught and weapons were used, including knives. Over a period of several months he was involved in grooming a 16 year-old girl for membership in the organisation. He played a significant role in the continuity of the organisation. Within the definitive guideline his role was prominent.– culpability A. Although it was accepted that others were more central, and his role fell short of being a leader- thus moved down the range.</p> <p>JACK became a member of National Action in July 2016. On 9 July 2016 he was involved in placing inflammatory and racist stickers on the grounds of the Aston University. Subsequently, he was involved in a number of National Action demonstrations and meetings. Following proscription, he remained a committed member of the organisation and attended eight meetings involving its membership. That includes a meeting in Birmingham where senior members of the organisation set out plans for the group's continuance. Immediately after the ban he was</p>	<p>JONES 5 years 6 months (after trial)</p> <p>JACK, 4 years 6 months (after trial)</p> <p>CUTTER, 3 years (after trial)</p>

		<p>involved in seeking to introduce one of his friends to the organisation. Subsequently, he put forward an idea to create propaganda on behalf of the continuing organisation. In April 2017 he was arrested for stirring up racial hatred relating to the stickering at Aston University. But notwithstanding that he remained as a member of National Action and attended two further meetings of the organisation.</p> <p>Despite his dedication to the group it is accepted that he was never in organising or leadership roles- culpability B.</p> <p>CUTTER became a member of National Action in late May or early June of 2016. Following proscription, she continued to express extreme anti-Semitic and racist and revolutionary views and aspirations. She also attended the meeting in Birmingham in which plans were set out by senior members for the group's continuance. She was a trusted confidant of Alex Deakin who was the organiser of the Midland chapter of the continuing group, providing him with encouragement and advice upon recruitment, training and security and spoke of her desire to recruit two women into the organisation.</p> <p>It was accepted that she never held any organising or leadership role - culpability B.</p>	
Anderson & Khan 2016	S12	<p>Set up a stall near Oxford Circus to distribute leaflets urging support for ISIS. 'It is clear that you were at that location that day to promote and invite support for ISIS/IS by engaging with and trying to persuade passers by and by handing out leaflets'. It was no coincidence that the pair chose to set the stall up on a day when there was a pro Gaza event in the vicinity that was likely to pass by the stall. 'The danger is that those invited and who succumb are often young people who then, once recruited, will be lured to Syria or Iraq and to a potential death.'</p>	2 years (after trial)
Kahar 2016	S12	<p>Sought to encourage his nephew, brother-in-law and friend to join IS sending documents and material to them to influence them via social media/ internet chat.</p>	3.5 years (after trial) increased as ULS to 4 years (consecutive to various other sentences for different terrorism

			offences – total sentence 8 years)
Anjem Choudhary & Mohammed Rahman 2016	S12	Both joined in and became signatories to an oath of allegiance document affirming the legitimacy of the caliphate. Both then took part in lectures broadcast via the internet in which it was said that ISIS had established a legitimate caliphate and there was an obligation on every Muslim to obey the caliph (leader of the caliphate) and to fight those who differed from him. It was also said that apostates (those who renounce this belief) would face capital punishment. Both were highly regarded, influential men within a particular section of the Muslim community in the UK and abroad; followers looked to them for advice and guidance. The audiences were very large, and it is likely that a significant proportion were impressionable people looking for guidance as to how they should act. It was very likely that some of their followers would be influenced by the words to commit acts of violence. The offences were repeated and determined.	Each sentenced to 5 years 6 months (after trial)

Funding terrorism Terrorism Act 2000, s.15 - s.18

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/funding-terrorism/>

Statutory Maximum: 14 years

	A	B	C
1	Starting point 12 years' custody Category range 10-13 years' custody	Starting point 9 years' custody Category range 8-10 years' custody	Starting point 7 years' custody Category range 6-8 years' custody
2	Starting point 9 years' custody Category range 8-10 years' custody	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 4 years' custody Category range 2-5 years' custody
3	Starting point 7 years' custody Category range 6-8 years' custody	Starting point 4 years' custody Category range 2-5 years' custody	Starting point 2 years' custody Category range High level community order – 3 years' custody

Collection of terrorist information Terrorism Act 2000, s.58

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/collection-of-terrorist-information/>

NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 10 to 15 years. However, that guideline has not yet been published, and so is not in force.

Statutory Maximum: 15 years

	A	B	C
1	Starting point 10 years' custody Category range 8 - 14 years' custody	Starting point 7 years' custody Category range 5-9 years' custody	Starting point 3 years' custody Category range 1-5 years' custody
2	Starting point 7 years' custody Category range 5-9 years' custody	Starting point 4 years' custody Category range 3 - 5 years' custody	Starting point 1 year 6 months custody Category range 6 months - 3 years' custody
3	Starting point 5 years' custody Category range 3-6 years' custody	Starting point 3 years' custody Category range 2 - 5 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody

Encouragement of terrorism Terrorism Act 2006, s.1 and s.2

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/encouragement-of-terrorism/>

NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 7 to 15 years. However, that guideline has not yet been published, and so is not in force.

Statutory Maximum: 15 years

	A	B	C
1	Starting point 10 years' custody Category range 7 - 14 years' custody	Starting point 7 years' custody Category range 4-9 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
2	Starting point 7 years' custody Category range 4-9 years' custody	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 2 years' custody Category range 1-3 years' custody
3	Starting point 4 years' custody Category range 3-5 years' custody	Starting point 2 years' custody Category range 1-3 years' custody	Starting point 1 years' custody Category range High level community order – 2 years' custody

Possession for terrorist purposes Terrorism Act 2000, s.57

[Possession for terrorist purposes – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/offences/crown-court/item/possession-for-terrorist-purposes/)

Statutory Maximum: 15 years

	A	B	C
1	Starting point 12 years' custody Category range 9 - 14 years' custody	Starting point 7 years' custody Category range 6-9 years' custody	Starting point 4 years' custody Category range 3-6 years' custody
2	Starting point 8 years' custody Category range 7-9 years' custody	Starting point 6 years' custody Category range 4-7 years' custody	Starting point 3 years' custody Category range 2-4 years' custody
3	Starting point 6 years' custody Category range 4-7 years' custody	Starting point 4 years' custody Category range 2-5 years' custody	Starting point 2 years' custody Category range 1-3 years' custody