

**Sentencing Council meeting:**  
**Paper number:**

**23 September 2022**  
**SC(22)SEP02 – Sale of knives etc to  
persons under eighteen**

**Lead Council member:**  
**Lead official:**

**Jo King**  
**Ruth Pope**  
**ruth.pope@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 From June to August 2022 the Sentencing Council consulted on two sentencing guidelines for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988: one for sentencing [individuals](#) and one for sentencing [organisations](#).

1.2 The Council has received 32 responses to the consultation including from sentencers, retailers and prosecutors. A small scale road testing exercise was carried out with ten magistrates during the consultation period. A summary of the road testing is attached at **Annex A**.

1.3 The guidelines were developed with the assistance of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) and we have held a further meeting with trading standards officers since the close of the consultation to discuss some of the issues raised in the responses.

1.4 One further meeting was planned to consider the responses and finalise the definitive guidelines but depending on the progress made an extra meeting may be required.

## **2 RECOMMENDATION**

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

- Retain the scope of the guideline
- Amend the culpability factors
- Add a second level of harm
- Consider changes to aggravating and mitigating factors
- Make amendments to step 3
- Consider whether to remove the reference to compensation from step 7
- Consider whether any issues of equity and diversity can be addressed
- Consider the impact and risks associated with the guideline

### **3 CONSIDERATION**

#### *Background*

3.1 In 2020 the Council received a submission 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 18. The submission argued that sentences being passed for larger organisations did not adequately reflect the seriousness of the offence and the means of the organisation. The Council agreed to add this to the list of future guidelines to be developed when resources were available.

3.2 The offence is prosecuted by Trading Standards departments within local authorities and almost all prosecutions are as a result of test purchases. This means that the volume of prosecutions is very closely linked to the resources that Trading Standards departments are able to devote to this aspect of their work. It is low volume: around 70 individuals and nearly 90 organisations were prosecuted in the five-year period 2016 to 2020. The Council drew on the expertise of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) in developing the guidelines.

3.3 The offence of selling knives etc to persons under the age of 18 is a summary only offence; it carries a maximum of six months' imprisonment (or, in the case of an organisation, an unlimited fine). It is a strict liability offence (there is no requirement to show intention or knowledge) subject to a defence of proving that all reasonable precautions were taken and all due diligence was exercised to avoid the offence.

3.4 In developing the guideline we also spoke to police about the sale of knives to children through more informal channels (such as peer to peer and via social media) or directly or indirectly by websites that sell knives in bulk. The police voiced concerns that the proposed guideline would not sentence these cases effectively. However, the police also accepted that they do not use this offence to prosecute such offending. Therefore the Council decided to restrict the guideline to the type of offending that is actually coming before the courts. This is discussed further below.

#### *Responses to the consultation*

3.5 Many of the consultation responses have been supportive of the proposals, but several have suggested areas for improvement. Most of the areas of contention arise in relation to the guideline for organisations, so this paper concentrates on the factors in that guideline though many of the issues will be common to both guidelines. The sentence levels can be reviewed once decisions have been reached on the factors.

### *Scope of the guideline*

3.6 The consultation asked whether the wording relating to the scope of the guideline was clear:

This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children.

3.7 Most respondents found the wording to be clear – though some questioned what would amount to a small quantity of knives with some suggesting that it should specifically state that a ‘small quantity’ includes a single knife and others wanting it to make clear that it would include a set of kitchen knives even if there were a relatively large number in that set. In road testing the majority of the magistrates thought the introductory text was clear but again some commented on the interpretation of ‘a small quantity of knives’.

3.8 The question in the consultation related only to whether the scope was clear but several respondents questioned the Council’s decision to limit the scope of the guideline:

The Expert Panel of Age Restrictions believes that the wording is clear as far as it is drafted, but is too narrow in scope. The drafting wording appears to reflect a traditional retail environment, sometimes described as “bricks and mortar retail”. The retail environment, both formal and informal, is however markedly more diverse than that. Regardless of the circumstances of most prosecutions so far, the Expert Panel thinks that the Sentencing Council’s guidelines should reflect the wider range of circumstances and scenarios where knives are sold to children, including those situations where people over the age of 18 buy a knife and then sell it to a child under the age of 18 in a more informal community setting. **Office of Product Safety and Standards (OPSS)**

BRC members believe creating sentencing guidelines for test purchase convictions without also including associated guidelines for actual sales to underage purchasers is fundamentally flawed. The logical approach would be to produce a set of guidelines covering both circumstances, which would then aid the judiciary in understanding the true nature of the offence they are considering. The clear danger in not including such, is that the sentencing court projects the theoretical harm associated with a test purchase into an actual harm associated with an actual sale to an underage purchaser. It is essential for a court determining a test purchase sale to clearly differentiate between the two scenarios and therefore including both scenarios in the guidelines is the key starting point. **British Retail Consortium (BRC)**

We consider that the wording relating to the scope of the guideline is fairly clear, though we wonder what examples are envisaged for cases of a more serious nature such as those involving the sale of “large quantities of knives”.

We have no experience of a sale of a large quantity of knives to children being prosecuted before us. We wonder why such an offence should not be sentenced in accordance with this guideline. Indeed, we are curious why a sale of knives to children following reckless/deliberate marketing of those knives to children is also not included in this guideline. **Her Majesty’s Council of District Judges (Magistrates’ Courts).**

3.9 The explanation given in the consultation document for limiting the scope of the guideline was this:

When developing the guidelines, the Council noted that the offence could also, at least theoretically, be used to prosecute in cases of the deliberate sale of knives to children – perhaps through social media and/or for the sale of knives in large quantities. Consideration was given to expanding the scope of the guideline to cater for such cases, but the Council decided that the guideline should focus on the types of case that actually come before the courts.

3.10 In hindsight perhaps a fuller explanation of the difficulties of devising a guideline for theoretical cases would have been helpful, but having consulted on a guideline that is limited in scope it would not be practicable to broaden the scope without considerable extra work and further consultation even if it were felt to be useful to do so. We can make the rationale clear in the response to consultation.

3.11 As for clarifying the meaning of ‘a small quantity of knives’, this may be less of an issue in practice as test purchases will always follow a fairly similar pattern and are likely to involve either a single knife or a small set (e.g. three to six). They are highly unlikely to involve, for example, a set of 20 specialist chef’s knives. It is difficult to see how the wording could be improved.

**Question 1: Does the Council wish to change the scope of the guidelines?**

**Question 2: Does the Council wish to change the wording on the scope of the guidelines?**

#### *Culpability*

3.12 The culpability factors consulted on were:

| <b>Culpability</b>  |
|---|
| <b>A – High culpability</b> <ul style="list-style-type: none"><li>• Offender failed to put in place standard measures to prevent underage sales -<ul style="list-style-type: none"><li>○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts</li><li>○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.</li></ul></li><li>• Offender failed to act on concerns raised by employees or others</li><li>• Falsification of documents</li><li>• Offender failed to make appropriate changes following advice and/or prior incident(s)</li></ul> |
| <b>B – Medium culpability</b> <ul style="list-style-type: none"><li>• Systems were in place but these were not sufficiently adhered to or implemented</li></ul>   |

- Other cases where the offender's culpability falls between the factors as described in A and C

### **C – Lesser culpability**

- Offender made significant efforts to prevent underage sales where not amounting to a defence

3.13 There was some uncertainty among magistrates in road testing as to whether all or just some of the standard measures listed needed to be present to show compliance.

3.14 Some respondents were supportive of the proposals:

The culpability factors set out in the draft sentencing guideline accurately reflect the types of age verification procedures we recommend convenience retailers have in place. ACS' Assured Advice on Preventing Underage Sales acknowledge the need for identifying restricted products, clear signage, age verification checks (best practice is Challenge 25 policy), staff training, maintaining refusals log and where possible till prompts. **Association of Convenience Stores**

3.15 Others had concerns:

The Criminal Justice Act 1988 does not specify what are referred to in the draft guideline as "standard measures" in the "High" culpability category. The draft guideline would therefore indirectly create a checklist by listing "standard measures".

This raises the question of what happens if retailers adhere to different guidance including, perhaps assured advice received from their Primary Authority?

In addition, it removes the element of discretion to creating an effective due diligence system, which is a more of an issue for online retailers. The law does not prescribe what steps should be taken to ensure that you have a defence of due diligence in the context of retail stores and we are not aware of any "standard measures" relating to online age verification.

It is also not clear whether the level of culpability would be "high" if only one or two etc of the "standard measures" was not in place.

For all of these reasons, we consider that the wording of the guideline would benefit from making it clearer that typical measures to prevent age restricted sale *may* include the various steps currently labelled as "standard measures". The Court should be invited to look at the *overall* system that was in place and particular circumstances relating to the offence in question.

The guideline will need to be kept under continuous review as the guidance and/or technology evolves, particularly in respect of online sales. **Womble Bond Dickinson LLP**

The indicators for high culpability seem tougher for in-store sales than on-line sales. There are several proposed measures for shops, many of which make little difference to the offence (e.g, refusal logs), and yet the on-line business does not need to indicate number of refused orders. Yet, relevant authorities, including the police, widely accept that there is a greater risk from on-line sales where it perceived

to be an easier purchase. It seems very easy to be highly culpable in the way the factors are described and that is a concern **British Independent Retailers Association**

The suggestion there is a standard list of due diligence requirements misunderstands the nature of such requirements. For example, not all retailers believe a refusals log serves much purpose even if they use one to please Trading Standards. The due diligence procedures should be seen as a suite of measures possibly based on Primary Authority advice not as a tick box list.

The measures for online sales should not refer to standard approaches. It should reflect the requirements of the Offensive Weapons Act and its statutory guidance including that age verification on delivery can be used as well as collect in store. **BRC**

3.16 The BRC suggested revised culpability factors:

| Culpability  |
|--|
| <p><b>A – High culpability</b></p> <ul style="list-style-type: none"> <li>• Offender failed to put in place <del>standard</del> <b>a suite of appropriate</b> measures to prevent underage sales -               <ul style="list-style-type: none"> <li>○ For in store sales <del>standard</del> measures <del>would normally</del> <b>could</b> include <b>some or all of the following or others appropriate to the business and as its Primary Authority might advise:</b> 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 <del>standard</del> measures would <b>follow the requirements of the Offensive Weapons Act statutory guidance including</b> <del>normally include:</del> identifying restricted products, <b>age verification on delivery</b> <del>use of a reliable online age verification tool and/or</del> collect in-store policy with checks on collection <b>or if available use of a reliable online age verification tool.</b></li> </ul> </li> <li>• Offender failed to act on concerns raised by employees or others</li> <li>• Falsification of documents</li> <li>• Offender failed to make appropriate changes following advice and/or prior incident(s)</li> </ul> |
| <p><b>B – Medium culpability</b></p> <ul style="list-style-type: none"> <li>• Systems were in place but these were not sufficiently adhered to or implemented <b>and there was evidence this was a pattern of behaviour rather than an isolated incidence</b></li> <li>• Other cases where the offender’s culpability falls between the factors as described in A and C</li> </ul>   |
| <p><b>C – Lesser culpability</b></p> <ul style="list-style-type: none"> <li>• Offender made <del>significant</del> <b>every</b> efforts to prevent underage sales where not amounting to a defence</li> <li>• <b>The offence resulted from a Test Purchase which as such had no potential for harm or the Test Purchase was not in accordance with the Test Purchase Code and did not represent a pattern of behaviour</b></li> <li>• <b>The offence resulted from the sale of a type of knife that could not cause harm or injury such as a cutlery knife.</b></li> </ul>   |

3.17 The changes to the high culpability factors proposed by the BRC have been discussed with Trading Standards and they were broadly content with the suggested

changes. They accept that refusals logs are not appropriate in all situations and suggested reference might instead be made to 'a means of monitoring refusals' which in the case of larger retailers could be an automated function. They also accept that age verification on collection or delivery is the most robust method for online sales.

3.18 The 'primary authority' is the local authority that a retailer with multiple sites around the country works with to give advice on trading standards matters. This means that if a store in one local authority area fails a test purchase exercise and the primary authority for that retailer is elsewhere, the investigating local authority would liaise with the primary authority before proceeding to prosecution.

3.19 The proposed change to medium culpability is problematic because it could indicate that a single incident would always be low culpability – which may not always be appropriate. The proposed change from 'significant efforts' to 'every effort' seems to be setting the bar too high for lesser culpability and it is difficult to see what would amount to 'every effort' while not amounting to a defence of due diligence.

3.20 The suggestion that any sale resulting from a test purchase should be low culpability is misconceived. Prosecutions for many offences result from similar methods of investigation such as undercover police officers buying drugs or intelligence officers infiltrating terrorist organisations. The final suggestion regarding the type of knife may be better addressed under harm.

3.21 Other respondents made suggestions for additional culpability factors:

The MA would suggest that an organisation's failure to protect employees and to act on comments and fears from staff could be meaningfully counted in the suite of culpability factors **Magistrates' Association**

Should there be a direct comment on the following:

- The trader sold with no regard a knife to a minor
- The trader had no knowledge or understanding of preventative measures
- The trader had no regard to any preventative measures to stop underage sales
- How is "offender failed to act on concerns raised by employees or others" proved?

#### **Trading Standards Wales**

To make sure every reasonable step is being taken to prevent the sale of knives and other bladed articles to those under 18, we believe that a responsible organisation should not only establish an appropriate set of procedures to prevent underage sales but must ensure these procedures (i) continue to remain effective and (ii) are updated as necessary. We therefore propose that the following additional factors should be added under Medium and Lesser Culpability

#### *Medium Culpability*

- *Offender has failed to regularly quality check the systems and procedures they have in place (for example, by working with the Local Authority to arrange test purchases in-store and online).*
- *Offender has failed to regularly review and update the written documentation and procedures in place and the staff training programme, to make sure they continue to be fit for purpose.*
- *Offender has failed to review (and if necessary update) the documentation, procedures and training when there have been relevant statutory changes.*

#### *Lesser Culpability*

- *Offender has regularly quality checked the systems and procedures they have in place (for example, by working with the Local Authority to arrange test purchases in-store and online).*
- *Offender has regularly reviewed and updated the written documentation and procedures in place and the staff training programme, to make sure they continue to be fit for purpose.*
- *Offender has reviewed (and if necessary updated) the documentation, procedures and training when there have been relevant statutory changes.*

#### **West London Magistrates' Bench**

For online sales high culpability should include offender failed to make contractual arrangements with a delivery company to ensure knives are not handed over to people under the age of 18 when delivered. **London Borough of Tower Hamlets**

With regards the specifics of culpability factors relating to Online, the current text may be misinterpreted and needs to be in line with the Statutory Home Office Guidelines which sets out on Page 22 (Defence to sale of bladed articles to persons under 18: England and Wales)<sup>1</sup> the conditions that must be met to be able to deliver bladed items to residential addresses:

1. The seller has a system in place to verify the age of the purchaser and that they are not under 18, and that the system is likely to prevent purchases by under 18s;
2. The package when dispatched by the seller is clearly marked that it both contains a bladed article and that it can only be delivered and handed over to a person aged 18 or over (whether the purchaser or someone representing them);
3. The seller has taken all reasonable precautions and exercised all due diligence to ensure that when the package is delivered, it is handed over to a person aged 18 or over. This applies whether the seller delivers the package themselves or through a third party e.g. by staff at a collection point; and
4. The seller does not deliver the package, or arrange for it to be delivered, to a locker.

These conditions need to be factored into the culpability and should therefore influence its associated level. The Guidance also specifically states that the Home Office were not looking to endorse or prescribe any specific age verification systems so the direct reference to them in the guideline can be misleading. **Ocado Retail Ltd**

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<sup>1</sup> <https://www.gov.uk/government/publications/the-offensive-weapons-act-2019/statutory-guidance-offensive-weapons-act-2019-accessible-version#sale-and-delivery-of-knives-etc---offensive-weapons-act-2019-part-3>



3.22 Taking account of all of these suggestions and the comments of magistrates in the road testing, the following is proposed:

| <b>Culpability</b>  |
|---|
| <b>A – High culpability</b> <ul style="list-style-type: none"><li>• Offender failed to put in place appropriate measures to prevent underage sales<ul style="list-style-type: none"><li>○ For in-store sales measures could include some or all of the following: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, a means of monitoring refusals, till prompts</li><li>○ For online sales measures should follow <a href="#">Home Office guidance</a> including: identifying restricted products, age verification on delivery or collect in-store policy with age verification on collection</li></ul></li><li>• Offender failed to act on concerns raised by employees or others</li><li>• Falsification of documents</li><li>• Offender failed to make appropriate changes following advice and/or prior incident(s)</li></ul> |
| <b>B – Medium culpability</b> <ul style="list-style-type: none"><li>• Systems were in place but these were not sufficiently adhered to or implemented</li><li>• Other cases where the offender’s culpability falls between the factors as described in A and C</li></ul>  |
| <b>C – Lesser culpability</b> <ul style="list-style-type: none"><li>• Offender made significant efforts to prevent underage sales where not amounting to a defence</li></ul>  |

**Question 3: Does the Council agree to the proposed changes to the culpability factors in the guideline for organisations?**

*Harm*

3.23 The Council consulted on having only one level of harm:

| <b>HARM</b>  |
|--|
| The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18. |

3.24 Magistrates in road testing and many respondents generally agreed with having only one level of harm. Concern was expressed by several respondents, in particular retailers, that the offence can be committed by the sale of any knife and that by having only one level of harm there was no way of distinguishing between the sale of, for example, a carving knife and a butter knife. Technically, the sale of any knife (even a plastic one) to a person under 18 could result in a prosecution. Some retailers we spoke to expressed a concern that an individual trading standards officer could bring a prosecution for sale of cutlery knives in situations where most would not. Trading standards have reassured us that any prosecution

has to be approved by multiple people and such a prosecution is unlikely to be considered in the public interest. Perhaps more realistically, there was a concern that trading standards might use previous sales of cutlery knives in test purchases that did not result in a prosecution as evidence of a poor record of compliance.

3.25 Retailers explained that in many stores kitchen knives would be kept in a locked cabinet and it would require two members of staff to unlock and approve the sale, whereas sets of cutlery would be on open display and staff would be less likely to appreciate the need for care when selling them even with the benefit of training and till prompts etc.

3.26 Some respondents went further:

[N]o harm whatsoever can arise from a test purchase sale as it is in controlled circumstances and the prosecution should acknowledge the fact that there is no harm if there is no evidence of any actual sales to minors by the retailer in question. This is vital to ensure the matter is considered in the correct context. Potential, and we stress potential, harm only arises from an actual sale and even then there may in fact be no harm arising unless one assumes ALL under- age sales are to people determined to use the item for a crime.

To suggest there is harm in a test purchase sale is to suggest that because the test was failed, there must inevitably be occasions in the past or future when a sale has or will be made and that sale will result in harm. This supposition without any evidence in fact seems a novel approach to law. **BRC**

[W]e propose there should be more than one level of harm. Purchases by minors which are test purchases under the control of adults from the local authority or other agencies can be placed in the lowest level, as there should be no harm caused here. Purchases other than test purchases should then be distinguished by both the type of bladed article sold and the number of bladed articles sold. We propose three levels of harm that should be assessed for a particular offence **West London Magistrates Bench**

3.27 All, or almost all, prosecutions for this offence are as a result of test purchases and the Council has already decided that the harm from the offence is the **risk** of knives falling into the hands of young people. Contrary to what the BRC suggests this approach is based in law. Section 63 of the Sentencing Code states:

Where a court is considering the seriousness of any offence, it must consider—

(a) the offender's culpability in committing the offence, and

(b) any harm which the offence—

(i) caused,

(ii) was intended to cause, or

(iii) might foreseeably have caused.

3.28 Several respondents thought that the age of the purchaser was relevant to the level of harm but the majority accepted that there was no clear correlation between the risk of harm and the age of the purchaser. One respondent thought that the age of the purchaser was relevant to culpability in that a sale to a younger child demonstrated deliberate or

reckless selling. In the context of how test purchases are carried out it is not recommended that the age of the purchaser should be a key factor in assessing seriousness. If it is relevant in a particular case it could be taken into account as an aggravating or mitigating factor.

3.29 Despite the fact that it is unlikely in practice that a prosecution would result from the sale of anything other than a sharp knife, in the light of the way the legislation is worded and the concerns raised by respondents, it is proposed to add a second level of harm. For example:

#### **HARM**

The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. Where the item(s) sold do not fit clearly into one category the court should consider the level of harm risked by the sale of such item(s)

#### **Higher risk**

- Any article with a blade that is capable of causing a serious injury to a person which involves cutting that person's skin
- An axe
- 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.

#### **Lower risk**

- Any cutlery knife (excluding steak knives or similar)
- Any other knife which is not likely to be used as a weapon such as:
  - utility knives with small cutting blades
  - snap off cutters
  - pizza cutters
  - small cheese knives

3.30 The wording of the factors is based on [Home Office statutory guidance](#). The views of trading standards and industry representatives on any revised factors could be sought before they are finalised.

**Question 4: Does the Council agree to having two levels of harm?**

**Question 5: Are the proposed revised harm factors the right ones?**

*Aggravating and mitigating factors*

3.31 There were only a limited number of aggravating and mitigating factors in the draft guideline reflecting the fact that most relevant factors are covered in culpability factors and the relatively narrow range of offending that is captured by this offence:

#### **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:**

- Obstruction of justice

3.32 The West London Magistrates' Bench were unsure what was meant by the aggravating factor 'Obstruction of justice'. They suggested rewording to: 'Obstruction of justice – including the hiding or destruction of evidence, blaming others, etc'. Alternatively they suggested two new factors: 'Poor level of co-operation with the investigation' and 'Limited or no acceptance of responsibility'. They also suggested adding: 'No evidence of any steps taken since the current offence to prevent recurrence'. A similar suggestion was made by a magistrate in road testing.

3.33 Womble Bond Dickinson LLP suggested that previous convictions should be considered in the context of the size of the defendant's retail operation by specifically taking into consideration the number of stores operated by the defendant organisation and/or volume of sales of age restricted products.

3.34 London Borough of Tower Hamlets suggested adding a factor relating to failing to adhere to assured advice given by a Primary Authority. The British Transport Police suggested having the age of the child as an aggravating factor as well as the sale occurring in a high violent crime area.

3.35 These suggestions should be considered in the context of the high culpability factors:

- Offender failed to act on concerns raised by employees or others
- Falsification of documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)

3.36 These offences are fairly straightforward and on reflection, it is not entirely clear what conduct 'Obstruction of justice' is aimed at when 'Falsification of documents' is included at step 1. The other suggestions from the West London Magistrates' Bench are mirrors of mitigating factors and it could be argued that it would not be appropriate to aggravate for failure to take positive action/ steps.

3.37 Consideration could be given to providing more context to previous convictions. There is an existing expanded explanation for previous convictions but the content is aimed at individual offenders and has little relevance to organisations. If the Council thought it would be useful some wording could be added either on the face of the guideline or as an expanded explanation. In practice, larger organisations will be represented and these points will, no doubt, be made to the sentencing court whether or not they are in the guideline.

3.38 The only other suggestions not already covered by step 1 factors relate to the age of the purchaser (which was also mentioned by some magistrates in road testing) and the sale taking place in a high violent crime area. Magistrates in road testing also suggested the number of items sold could aggravate the sentence. It is not clear that any of these necessarily make the offence more serious in ways that are not already captured at step 1.

**Question 6: Does the Council wish to make any changes to the aggravating factors?**

**Specifically:**

- **adding information about how previous convictions should be considered;**
- **removing the obstruction of justice factor;**
- **adding any new factors**

**Factors reducing seriousness or reflecting 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

3.39 There were only a few comments on mitigating factors. The British Independent Retailers Association asked for clarity around ‘high level of co-operation with the investigation’. From their response it appears that they interpreted this as relating to making changes required by trading standards whereas that would be more relevant to ‘Evidence of steps taken voluntarily to prevent re-occurrence’. They make the point that for smaller retailers it is not always financially or physically possible to make changes requested by trading standards (e.g. changing store layout). This could perhaps be addressed by referring to ‘reasonable steps’ or ‘appropriate steps’.

3.40 West London Magistrates’ Bench suggested splitting the third factor into two factors:

- High level of co-operation with the investigation
- Acceptance of responsibility

3.41 The difficulty with this suggestion is that ‘acceptance of responsibility’ could be conflated with a guilty plea, whereas presumably it was intended to indicate pre-court admissions/ acceptance. This could perhaps be solved by rewording to ‘acceptance of responsibility from the outset’. However, in the context of this offence it may not be particularly relevant and could disadvantage larger organisations where there are several layers of decision making. Therefore it is recommended that this part of the factor be removed.

3.42 Womble Bond Dickinson LLP queried what was encompassed by ‘Good record of compliance with Trading Standards’ given the broad remit of Trading Standards. One

solution could be to limit that factor matters relating to age restricted products. They also proposed additional mitigating factors:

- previous test purchase record;
- the target audience – selling and marketing services to the trade creates less of a risk of than selling to consumers, especially those stores which appeal to children;
- engagement with community initiatives and/or the Police to reduce knife-related crime;
- additional efforts to tackle underage sales in areas with high-levels of knife crime;
- engaging in voluntary initiatives to reduce underage sales such as public pledges.

3.43 This last suggestion is echoed in part by the BRC who suggested that being a signatory to the Home Office Voluntary Agreement should be taken into account. However, signing up to various initiatives is not necessarily mitigation if it does not lead to compliance. As the list of mitigating factors is non-exhaustive there is no reason why any relevant matters (insofar as they are not covered elsewhere) could not be taken into account where appropriate.

3.44 The suggested reworded factors are:

- High level of co-operation with the investigation ~~and acceptance of responsibility~~
- Good record of engagement and compliance with Trading Standards (particularly in relation to age restricted sales)

**Question 7: Does the Council wish to make any changes to the mitigating factors?**

*Step 3 – adjustment of fine*

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

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

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

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

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

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

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

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

**Factors to consider in adjusting the level of fine**

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

3.45 Respondents who commented generally agreed with this step. All but one magistrate in road testing thought it was useful though several found it quite complicated. The BRC suggested adding two further factors to consider in adjusting the fine:

- The potential reputational damage that the offender will suffer and be likely to deter any future offence
- Recognition that a fine for a test purchase should reflect only that purchase and not make suppositions that a single failed test purchase is a guide to future behaviour for which there is no evidence

3.46 Reputational damage could be relevant to deterrence – though the extent of the reputational damage may be linked to the amount of the fine.

3.47 West London Magistrates' Bench preferred this wording in the fines dropdown in the guideline for individuals:

When sentencing **organisations** the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

To the wording in the guideline for organisations:

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

3.48 Taking these suggestions into account some changes are proposed:

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range.

The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

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

The fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

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

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

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

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

#### **Factors to consider in adjusting the level of fine**

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- The effect of the reputational damage to the offender of the conviction and fine

### **Question 7: Does the Council wish to make the proposed changes to step 3?**

*Steps 4 to 8*

#### **Step 7 – Compensation and ancillary orders**

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

**Confiscation orders** under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

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



3.49 Two respondents queried the relevance of compensation for this offence, bearing in mind the nature of the offence and that in practice prosecutions result from test purchases.

#### **Question 8: Does the Council wish to retain the reference to compensation?**

### **4 EQUALITIES**

4.1 There were very few responses to the consultation questions relating to disparities in sentencing and issues of equality and diversity. The Northumbria Violence Reduction Unit commented:

In terms of operational responsibility, should further consideration be given on the expectations on Trading Standards to ensure the new guidelines when communicated to retailers are accessible and easily understood? We are aware that a significant number of small retailers are owned by people from minority communities and language may be a barrier for some. It is important that all retailers understand their responsibilities.

This is also relevant in considering how you ensure there is increased awareness and understanding of sentencing guidelines, there is a need to ensure the guidelines are also clearly understood by people from diverse cultures.

In future how do you ensure there is robust collection of demographic data (for instance, lack of data on ethnicity) where this data is absent it makes it difficult to understand disparity amongst certain groups.

4.2 We have not raised these issues with Trading Standards, but can do so before the next Council meeting to see if there are ways we can work with them (and the retail groups who have responded) to ensure awareness of the definitive guidelines when they are published including among retailers from ethnic minority backgrounds.

#### **Question 9: Aside from exploring how to raise awareness of the guidelines among retailers from ethnic minority backgrounds, are there any equality and diversity issues that we should be addressing?**

### **5 IMPACT AND RISKS**

5.1 Various respondents (especially retailers) have raised concerns that increased penalties for reputable retailers will lead to them withdrawing knives from sale:

If retailers believe they can do nothing more in terms of due diligence there is a danger that they will decide the potential reputational damage – and financial damage – is too great and withdraw from the market – as they have largely online – driving customers to less well organised or less reputable retailers or websites. **BRC**

Whilst the guideline will address inconsistency, the levels of fine will undoubtedly increase. The result is that retailers are being held increasingly accountable for knife crime which, as far as we are aware, is not substantiated with evidence. The real harm is caused by those retailers who deliberately or recklessly market knives to children, which are expressly excluded from the guideline. We therefore consider that a number of amendments can be made to the guideline to be more reflective of the

overall risk of harm in the context of bladed articles by national retailers who, in reality, are the primary target of test purchasing activities. **Womble Bond Dickinson LLP**

Independent retailers are responsible but not perfect. Mistakes are made by owners and employees but in general these business owners are practical, sensible and aware of their legal responsibilities. Since the legislation was introduced, many measures have been taken with regards to the sale of knives to ensure that it is safer.

These sentencing guidelines may well deter retailers from selling bladed articles altogether which would be a poor outcome. If shops, where the controls in place are visible and easily assessed, ordinary consumers and criminals will buy more and more on-line - a sales channel that is a far harder to control and regulate. In all our discussions with police forces, on-line sales have been an area of much more concern so these guidelines may well make it even harder to effectively regulate the sale of knives. **British Independent Retailers Association**

5.2 The Council is limited in what it can do or say in this regard. The guideline can only address the sentencing of cases that are successfully prosecuted (as discussed earlier in this paper).

5.3 A slightly different concern has been raised by some respondents:

The Expert Panel considers that publication of these guidelines may, possibly inadvertently, lead to an increase in the number of large organisations being taken to court more frequently, given it may lead to an increase in test purchasing programmes where some sales are identified as a result of a single failure of human judgement in verifying age rather than systemic failure of age restricted sales policies or abuse. **OPSS Expert Panel**

We are concerned that issuing this Guideline to increase fines on large organisations will send the wrong message – that more test purchasing of large retailers is the key to solving the problem. **BRC**

5.4 It is important to note that an increase in fine levels will not increase the resources of trading standards departments and they have pointed out that there was no increase in the number of prosecutions correlating to the maximum fine increase from £5,000 to unlimited in 2015.

5.5 Some respondents welcomed the improvement in consistency that the guidelines would bring:

We believe these guidelines will result in a more consistent approach from the Courts and sentences that better reflect the detriment and harm caused by these type of offences. **ACTSO**

The draft sentencing guideline will address the significant degree of inconsistency in the approach to sentencing which is welcome. It is this inconsistency which has, in our experience, resulted in the better known national retail brands being disproportionately punished when compared with less reputable businesses that may

often present a greater risk from the perspective of allowing under 18s access to knives. **Womble Bond Dickinson LLP**

I welcome the Council's intention to ensure the courts take a consistent approach to sentencing this offence and, in the case of organisations, impose fines linked to turnover to make penalties proportionate to the size of organisation. **Sarah Dines MP  
Parliamentary Under-Secretary of State for Justice**

5.6 Before the guidelines are signed off consideration will be given to how best to communicate with sentencers, prosecutors, retailers and other interested parties on publication of the definitive guidelines to ensure that the aims of the guidelines (consistent and proportionate sentences for the offences coming before the courts) are understood and implemented.

**Question 10: Are there any issues relating to the risks and impact of the guideline for organisations (not covered elsewhere in this paper) that the Council should address?**

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## Sale of knives etc to persons under 18: road testing summary

### Introduction

In May 2020, the Council considered a submission on behalf of the London Borough of Barking and Dagenham for a sentencing guideline for selling knives to persons under the age of 18, and agreed to add this to the list of future guidelines. In March 2022, the Council agreed the content and signed off two guidelines for consultation, which ran from 1 June to 24 August 2022: one for the sale of knives by individuals; and one by organisations.

### Methodology

Small-scale qualitative road testing of both guidelines<sup>1</sup> took place in June 2022 to ensure the wording is clear and to test how the new guidelines will work in practice. Ten magistrates were interviewed, with each sentencing three hypothetical scenarios: two to test the organisations guideline, one to test the individuals guideline. Particular attention was paid to issues Council had discussed, including: the introductory explanation<sup>2</sup> about the focus on small numbers of sales; the inclusion of only one level of harm; the proposed sentences and fines outlined in the sentencing tables<sup>3</sup>; and Step 3 – ‘Adjustment of fine’.

### Summary of main points

1. Magistrates found the **introductory text** to be ‘*self-explanatory*’, agreeing **both guidelines** were generally ‘*clear*’ and ‘*easy to interpret*’.
2. There was a high level of consistency when determining **culpability** using both guidelines.
3. Magistrates generally agreed with the inclusion of only one level of **harm**.
4. There were some mixed views on the **sentencing tables**: some felt the starting points and ranges for larger organisations were about right but a little high for smaller organisations, and on the individuals guideline the ranges could be expanded.
5. There was some inconsistency when applying, or not, **Step 3 – Adjustment of fine** with a large/very large organisation, but greater consistency with a smaller organisation and an individual.

This paper discusses the results of the road testing on the organisations guideline, then the individual guideline, drawing comparisons across both where appropriate. Summary tables for each scenario are presented in Annex A.

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<sup>1</sup> [Sale of knives etc to persons under 18: Consultation – Sentencing \(sentencingcouncil.org.uk\)](#)

<sup>2</sup> The introductory text states: “Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers *or those employed by retailers*. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children”. Text in italic was in the individuals guideline only.

<sup>3</sup> For organisations, this covers fines from £500 for a micro-organisation through to £1,000,000+ for a very large organisation, maximum of an unlimited fine; for individuals, it covers discharge through to a MLCO/fines, maximum of six months’ custody.

## Organisations guideline

### Scenario 1: Online purchase

*A 13-year-old test purchaser bought a three-piece knife set from a prominent on-line retailer XX Ltd (one of the largest exclusively online retailers in the UK).*

*Trading Standards had warned XX Ltd in advance that test purchases would be taking place.*

*XX Ltd acknowledged that it had specifically considered the risk of knives being purchased by children but decided that such an event was highly unlikely. Age restricted items were identified on its website and purchasers were asked to confirm their age, but no age verification measures were in place to check this information.*

*XX Ltd was convicted after trial of one offence contrary to s.141A of the Criminal Justice Act 1988. The company had no previous convictions.*

*XX Ltd had a turnover during the relevant period of approximately £1.5 billion.*

This was expected to be high culpability (A); there is only one level of harm. The starting point for a large organisation<sup>4</sup> is £400,000, range £200,000 - £1,000,000; it could be higher if treated as a very large organisation<sup>5</sup>. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 - Adjustment of fine could result in an increase as this is a large/very large organisation. The estimated final fine is £1 million or more. Key findings are below; the summary table can be found in Annex A, Table 1.

#### Key findings

1. None of the 10 magistrates had previously sentenced any cases of sales of knives.
2. Nine magistrates chose **culpability A**; one B<sup>6</sup>. Factors discussed included the: lack of age verification checks; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and the organisation thought the risk of knives being bought was very unlikely.
3. Nine magistrates chose a **starting point** of £400,000; the sentencer who chose B selected £200,000. The majority of respondents thought it was '*straightforward*' and '*easy*' to **determine the starting point**, with only one stating that '*you really have to be quite specific to the actual items in the guideline*'. When asked if they had considered whether this was a **very large organisation**, seven said they would and '*that it might be necessary to move outside the range*', with a couple noting they would '*need more information*'; two had missed the instruction, with one noting they '*went straight to the tables*'; and one that it was '*not particularly helpful as it gives you such a wide range*'.
4. Eight respondents said there were no **aggravating factors**; two mentioned the fact that three knives were sold, one of whom '*would want to know if time had lapsed as they would have had time to consider*', and the other that the '*child was only 13*' although they did not increase the sentence.

<sup>4</sup> 'Turnover or equivalent of £50 million and over'.

<sup>5</sup> 'Turnover or equivalent very greatly exceeds the threshold for large organisations'.

<sup>6</sup> They originally thought A but chose B as they felt there was some evidence of systems being in place.

5. Eight magistrates noted that there were no previous convictions under **mitigating factors** with one also stating they *'would want to know if remedial actions had been taken or cooperation'*; the remaining two felt there were no mitigating factors.
6. Four respondents did not apply any additional factors as outlined under **Step 3 – Adjustment of fine**, while six did, citing *'implementing effective compliance programmes'*, *'appropriate punishment'*, and *'deterrence'* from Step 3, and that they would *'make it less financially attractive for them to continue to breach'*, with two noting that as it is a very large organisation, they could go *'outside the range'* and *'a larger fine is necessary'*.
7. While a wide range of **final sentences**<sup>7</sup> were given, from two extremes of £10,000 through to £10 million, the majority were more aligned: one was for £200,000 from the sentencer who chose culpability B, two chose £400,000, one between £500,000 to £750,000 with another selecting £750,000, and the remaining three £1 million. Of the two extremes, the magistrate who chose £10,000 noted they only had three years' experience and that *'district judges usually deal with these sorts of cases... they are much more used to sentencing organisations... a magistrate's court imposing a fine of £1,000,000 plus feels like... fantasy land'*; the magistrate who chose £10 million noted they *'felt out of their comfort zone dealing with such large numbers and keeping a grasp of proportionality'*.
8. As might be expected, there were a range of **views about their final sentence**:
  - a. The magistrate who selected £10,000 noted that *'fining an organisation £1 million plus for selling some knives online feels... inappropriate... £10,000 still seems a lot but anything smaller... wouldn't be significant'*;
  - b. The one selecting £200,000 noted it *'might go up depending on information such as have things improved since?'*;
  - c. The two selecting £400,000 felt it was a *'hefty amount of money'* or *'it seems heavy'* but both referred to the turnover and that they are *'in favour of robust financial penalties'* or *'they're... in the market of knowing what they're doing'*;
  - d. The two selecting £500,000 to £750,000 and £750,000 had slightly different views: the former noted it is *'a proper and high level of fine towards the upper end'* while the other *'would feel more comfortable [if we could] see some additional things... there needs to be something in place to ensure they comply with regulations... and if it doesn't, we would impose further fines or take some other action'*;
  - e. The three who imposed £1 million agreed that this was *'appropriate'*, *'reasonable'*, and *'will act as a deterrent [but could] imagine a conversation where we would be looking to go higher than that'*; and,
  - f. The sentencer imposing a £10 million fine noted this *'seems an extreme amount'*.

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<sup>7</sup> The scenario noted that this went to trial – there was therefore no reduction for a guilty plea.

## Scenario 2: In store purchase<sup>8</sup>

*A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts Ltd (a small independent craft and hobby shop).*

*The company (through its owner and sole director, Terry Smith) pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. It accepted that it had failed to identify knives as age-restricted products in its store (though it did have restrictions in place for solvents).*

*Trading Standards had written to the company 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.*

*The company had no previous convictions.*

*The company had an annual turnover during the relevant period of approximately £75,000 but was not profitable having made a loss of £5,000 in the most recent trading year.*

This is expected to be high culpability (A); only one level of harm. The starting point for a micro-organisation<sup>9</sup> is £12,500, range of £6,000 - £25,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 – Adjustment of fine could decrease the fine as the organisation is not profitable, and a reduction of a third for a guilty plea. The estimated final fine is £4,000. Key findings are below; the summary table can be found in Annex A, Table 2.

### Key findings

1. Eight magistrates chose **culpability A**; one A or B; and one B<sup>10</sup>. Factors discussed included the: lack of age verification checks; failure to identify age-restricted items; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and having systems in place but not being sufficiently adhered to.
2. The eight magistrates who chose culpability A all chose a **starting point** of £12,500; the one who said A or B chose between £6,000 to £12,500; the remaining one chose £6,000. The majority found it 'easy' or 'straightforward' to **determine the starting point**, with only one noting that they found it 'quite difficult actually' referring to the 'loss of £5,000 last year' but did also note Step 3 considers putting companies out of business.
3. Nine respondents noted there were no **aggravating factors**; one noted the child was 14 but did not increase the sentence.
4. Nine noted a **mitigating factor** of no previous convictions; one stated there were none. Individuals mentioned 'wanting to see if there was any evidence of any steps taken', 'exploring their record of compliance as they had restrictions for solvents', and 'the guilty plea indicates they accept responsibility'.

<sup>8</sup> Please note: this scenario is very similar to the individual scenario below, to test whether there is any difference if the offender is an individual or an organisation when everything else is similar.

<sup>9</sup> 'Turnover or equivalent not more than £2 million'.

<sup>10</sup> The magistrate noted the offender had 'pleaded guilty... were sent a detailed list from trading standards they haven't understood or taken heed of... it's a retractable craft knife'.



5. Nine magistrates applied additional factors as per **Step 3 – Adjustment of fine**, reducing the fine; one did not. The majority of those who did noted that the company was very small and not making a profit/ low turnover, and discussed their ability to pay, that it could put them out of business, and the impact of the fine on staff and service users, as well as on their ability to implement a compliance programme.
6. As might be expected due to the discretion allowed under Step 3, there were a range of **pre-guilty plea sentences** given, ranging from £1,000 to £8,000: one respondent gave £1,000; one gave £3,000; another gave £3,000 to £5,000; four gave £6,000; and one chose £8,000<sup>11</sup>.
7. All respondents took into account a **reduction for a guilty plea**, with final sentences ranging from £300 to £5,280: one gave £300; one gave £660; one gave £2,000; another gave £2,000 to £2,500; one gave £3,000; four gave £4,000; and one gave £5,280.
8. As might be expected, respondents **views of their final sentence** varied. The two at the lower end acknowledged that *'in reality it would be an impossible situation because it is so far below the starting point and the lower limit'* and *'it's way off the guidelines'* noting they felt *'comfortable'* or it was *'fair and proportionate'*. The next three (final sentences between £2,000 to £3,000) noted it was a *'hefty fine which [should] have an impact'*, *'hope it's fair [and] ensures implementation... is undertaken...'* and it *'will have the desired punishment effect and deterrence'*. Of the four choosing £4,000, three thought it was *'fair'*, *'appropriate'* or *'correct'*, while one noted the fact that the company ignored information sent in advance *'keeps the fine at the higher level... if they'd put things in place and staff had forgotten about it, that would have made a difference'*. Finally, the magistrate who gave a final sentence of £5,280 noted *'it's sufficiently punitive for them to get their act together'*.

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<sup>11</sup> One respondent did not give a pre-guilty plea sentence; another did but then reduced the fine in accordance with Step 3.

## Comments on the organisations guideline

The following summarises comments made during the application of the guideline to the scenarios and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end:

1. The magistrates all thought the guideline helped them **assess culpability**, with several noting that they were *'very helpful'*, *'familiar format'*, and *'fully explained'*. Some did provide suggestions for amendments: *'you might want to distinguish between identification of restricted products and age verification... should I have moved it down because they had realised it should be age restricted?'* with another similarly noting *'it could be clearer... whether one or all of the matters listed were needed'*. Individuals noted: *'is age of the purchaser relevant? Could make it clearer that it applies to anyone under 18?'*; *'is there any difference based on the type of knife?'* (then decided not); on lower culpability *'if they had made so many efforts, why would Trading Standards bring it to court?'*; and on the middle category, one stated that they say *'something along the lines of anything else not in C, so having a definition of what B means is helpful and clear... I understand and appreciate the clear distinction between the three categories, which isn't always the case'*.
2. There were **mixed views on the starting points and ranges** in the sentencing table: two felt the *'ranges and starting points, particularly for a large organisation... are appropriate'* or *'about right'*; one that *'they are serious amounts, but it allows flexibility'*; one that the *'starting points are fine'* but these *'need to be regularly monitored – perhaps an update every 3 – 5 years'*; while a fifth felt they were *'too high'*. One felt that *'for smaller companies... they are rather steep...but for the larger companies they are about right'*; two others also felt that *'for the smaller companies... they seemed to start relatively high'* or *'the range is quite vast'*, quoting £3,000 to £12,000 on culpability B, and *'there seems to be an awful big drop between the big companies and the smaller ones'*. Magistrates also suggested some changes: two wondered if there *'could be a category below micro'*, with one noting it could be for *'proper micro organisations of up to £100,000 or £200,000'* while another thought it should be for a *'turnover of not more than a million with lower fine ranges'*; three indicated there could be a *'new starting point/ category for the very large organisation'* with two noting they had missed the guidance as it did not fit the table format used for the other organisational sizes so *'it would make it easier'*, and *'could it include some indication of percentage of turnover?'*. Another noted it would be good to have *'more guidance on £50 million or over'*.
3. While four magistrates thought there was nothing to add to the **factors increasing seriousness**, others provided suggestions, including: three about the *'number of items'* such as *'could be an aggravating factor if four or five knives'* while another thought *'a set or maybe eight or a dozen [knives]'*; two about the *'age of the child'*; two wondered about the type of knife, with one referring to the guideline on bladed weapons; and two suggested *'reference to failing to take immediate remedial action'* or *'wilful negligence'*.
4. Seven magistrates thought there was nothing to add to the **factors reducing seriousness**, with positive feedback with two noting that *'steps taken to prevent reoccurrence is good'* while another noted that the *'good record of compliance is*

*important as is high level of cooperation and evidence of steps'. One asked 'how do you know about the good record of compliance? Trading Standards? Prosecutor?', another wondered whether there could be more 'opposites as aggravating and mitigating factors', and a third noted 'if the person buying the knife has been sufficiently sophisticated in their approach to proving their age, that could lead a reasonable person to think the person is the age they say they are?'*

5. There were mixed views on **Step 3 - Adjustment of fine**: five felt these were 'pretty good', 'fine', had 'nothing to add' or were 'reasonably easy', with a further one noting 'there is a lot of flexibility... many magistrates might feel out of their depth [although] the principles are clear'; two felt it 'took a little time to look through it' or 'I had to reread that a couple of times to understand it', but both then noted it 'sets it out' and 'makes good sense'; one said 'it's not that easy' and another noted that 'you have a clear set of fine ranges within culpability... I would take it out, it's not adding anything'.
6. There were two further comments on **using the guideline**: 'sale of knives to persons under 18 is mentioned at the top and under harm in both guidelines but not elsewhere – should say it throughout i.e. sales to individuals under 18?'; and 'could removal of gain including through the avoidance of costs be made clearer?'

## Individual guideline

### Scenario 3: In store purchase<sup>12</sup>

*A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts (a small independent craft and hobby shop).*

*The owner and manager Terry Smith pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. He accepted that he had failed to identify knives as age-restricted products in the store (though he did have restrictions in place for solvents).*

*Trading Standards had written to him 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.*

*Mr Smith, aged 47, had no previous convictions.*

*Mr Smith presents a means form showing he earns approximately £500 per week which is nearly all accounted for by food and household bills. He says he has a wife and 2 children who are dependent on him and he is struggling to make ends meet. He says he would need time to pay any fine.*

This is expected to be high culpability (A); there is only one level of harm. The starting point is a medium level community order (MLCO) or Band E fine. Based on his income, the anticipated fine would be £8,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 could decrease the fine due to affordability<sup>13</sup>, and reduction of a third for a guilty plea. The estimated final fine is £600. Key findings are below; the summary table can be found in Annex A, Table 3.

#### Key findings

1. Nine magistrates chose **culpability A**; one said A or B. Respondents listed factors such as: failure to identify age-restricted items; had a warning; lack of age verification checks; and failed as a person of responsibility.
2. Eight magistrates chose a **starting point** of a MLCO or Band E fine; two simply stated MLCO.
3. All 10 noted there were no **aggravating factors**.
4. Nine listed no previous convictions as a **mitigating factor**, with two also noting 'sole/primary carer for dependent relatives', and one the 'guilty plea suggests a high level of cooperation' and 'they accept responsibility'. One stated there were no factors.
5. Two magistrates reduced their sentence based on **Step 3 – Adjustment of fine**, the remaining eight did not, although they did discuss options such as 'opting for a financial penalty rather than a CO', 'giving him time to pay', 'ensuring the fine is appropriate' and 'exploring compliance as had one in place for solvents'.
6. A mix of COs and fines were given for **pre-guilty plea sentences**. Four magistrates gave COs: one gave a LLCO with 80 hours unpaid work, another a LLCO or lower end MLCO,

<sup>12</sup> As noted above, this scenario is very similar to that for scenario 2 (organisation in-store), to test what difference it makes if the offender is an individual or an organisation if everything else is similar.

<sup>13</sup> 'Having regard to the financial position of the offender'

and the other two MLCO (one with a programme requirement); five gave fines, with two stating Band E fine, and three giving figures (£1,000, £1,500 and £2,000)<sup>14</sup>.

7. All respondents gave a **reduction for the guilty plea**. Those who gave COs reduced the number of days, amended from a MLCO to LLCO, or reduced the number of hours of unpaid work; those giving fines reduced the fines, such as from a Band E fine to a Band D fine, or taking a third off where explicit figures were stated (e.g. £1,500 down to £1,000).
8. The magistrates were generally satisfied with their **final sentences**: those who gave COs noted it was a '*perfectly good sentence*', they were '*quite content*', or '*satisfied*', and it '*feels reasonable*'. Four of those giving fines held similar views, while one felt their fine of £300 was '*a bit too high*' and another, who gave £666, that it '*would be interesting to see what probation thought of a LLCO*'.

### Comparison with similar scenario using the individuals and organisations guidelines

Across both guidelines:

1. The majority of magistrates chose **culpability A**.
2. The majority of magistrates stated there were no **aggravating factors**.
3. The majority of magistrates stated there was a **mitigating factor** of no previous convictions; more personal factors were noted with the individuals guideline.
4. All respondents took into account a **reduction for a guilty plea**.

Using the organisations guideline, at **Step 3 – Adjustment of fine**, the majority of respondents would reduce the fine: this was not the case with the individuals guideline where only two of the five who selected fines explicitly stated they would, although others did discuss certain elements, as outlined above.

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<sup>14</sup> One magistrate did not give a pre-guilty plea sentence.

## Comments on the individuals guideline

The following summarises comments made during the application of the guideline and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end.

1. The majority of the magistrates thought the guideline was *'helpful', 'straightforward', 'points you in the right direction'* for **assessing culpability**. However, as with the organisations guideline, one queried *'whether one or all of the matters listed were needed, that could be clearer'* and the *'it could make it clearer that it applies to anyone under 18'* and *'is there any difference based on type of knife'*. Another noted it *'could have a bit more differential between B and A culpability'* and another that *'it didn't have a great deal of manoeuvrability for someone struggling with his company – I would have gone culpability C rather than A but you couldn't because of the way it was written'*.
2. Four magistrates thought the **starting points and ranges** in the sentencing table were *'about right'* or *'quite good'*, while another felt the *'starting points are about right [but] the ranges may be expanded somewhat'* noting that *'as an individual, if you are caught with an offensive weapon, the starting points are considerably higher. If you are selling as an individual... and you know you shouldn't, the range could go a bit further into 12 weeks' custody'*. This was echoed by another magistrate who, while also referring to sentencing for carrying a knife, noted *'where a small retailer/ individual is on their third/ fourth offence, a custodial sentence or SSO is needed to get the message across'*. One felt the *'punishments are too high'*; another that *'the possibility of discharge is interesting'*; one had a *'reservation about the starting point for the lower level points of transgressions, [i.e.] at the medium level there should be an starting point of a CO'*; while another thought there was a *'big jump [in fine] from culpability C to B'*.
3. Similarly to comments on the organisations guideline, five magistrates felt there was nothing to add to the **factors increasing seriousness**, three reiterated the quantity involved could be an aggravating factor, and one mentioned the age of the child. One magistrate noted there was *'no recognition of the outcome of whether or not it is involved in any injury'* while another wondered *'does it need to be quite as heavy as the organisation one, i.e. the way its written with aggravating factors – does it have to be quite so determined/ precise?'*
4. Eight magistrates had nothing to add to the **factors reducing seriousness**, while two asked for clarification: *'could you clarify what is expected by voluntarily prevent re-occurrence?'* and *'what is serious medical condition in the context of this one?'*.
5. Eight magistrates were positive about the **Step 3 – Adjustment of fine**, with one suggesting we *'highlight the phrase 'the court should step back and consider the overall effect of its orders' [as] it makes you think about equal opportunities, different cultures, ways of life etc'*; one noted it should *'perhaps look at adjustment of CO as well as it is unfair to talk about adjusting one type of punishment but not the other'*, and one magistrate reiterated that the step *'doesn't add anything'*.
6. Two **further comments were provided on the guideline**: as with the organisations guideline, one magistrate felt that the guideline should say *'sales to individuals under*

18' throughout; and one noted *'I'm not necessarily fully understanding of step 4 – taking into account section 74, not something for the magistrates' court'*.

7. Magistrates were asked whether they thought there were 'any particular words of phrases in the draft [individual] guideline that you think may contribute to **disparities in sentencing**'. The majority thought that there were not, with only one magistrate providing a possible issue: in *'high culpability, I wondered about the inclusion of the word 'standard' in standard measures – it denotes a collective knowledge/ regulation and the small person in an organisation/ employee in corner shop in sections of the community may not have the same access to what may be perceived by a huge organisation as standard measures. Is standard codified anywhere? Could 'standard' be replaced by 'reasonable' or 'acceptable' or some other alternative that does not connote a knowledge of what those measures are?'*

### Comments across both guidelines

The following summarises comments applicable to both guidelines:

1. All 10 thought it was **clear which guideline to use** (i.e. when to use the one for an individual or for an organisation): four noted the court would be told which one to use.
2. The majority of the magistrates thought the **introductory text**<sup>15</sup> in both guidelines was *'clear', 'easy to read' or 'self-explanatory'*, with three commenting about the number of knives, i.e. *'what is considered a small quantity of knives?'* and *'could that be made more explicit?'*, with one suggesting that it *'perhaps a definition could be added... could be an aggravating factor if four or five?'*
3. All of the magistrates thought both guidelines were **clear and easy to interpret**, although it must be noted that one initially struggled a little to navigate the individual guideline, until the interviewer displayed the guideline on their screen.
4. Magistrates generally agreed with **only one level of harm**, commenting: *'it is very difficult to determine harm as there doesn't appear to be a 'victim' - harm is to society itself and possibly individuals – it covers it quite well'*; *'the issue here is there is a risk... selling knives to under 18, that the risk doesn't change, the harm is there'*; and *'I don't know how you can put it into different categories, I don't know how else you could do it?'*. However, one noted it would be good to *'spell it out more'*, and another that they were *'moderately surprised there's only one level of harm because of the risk to everyone. You only have to think about a group of 17-year-olds getting knives and going out and stabbing the boy from the school next door. Very different to someone who just buys a kitchen knife for cooking purposes. Puzzled that harm is not said to play any part because harm is always the same. Other guidelines, such as dangerous driving, assault, take into account the degree of injury. Seems to be inconsistent with other guidelines. Should be a consideration of any consequences of selling a knife to an underage person if that does result in injury or even threat – ought to attract a higher sentence.'*

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<sup>15</sup> The introductory text states: "Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers or those employed by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children". Text in italic was in the individual guideline only.

## Annex A: Summary tables

Table 1: Scenario 1 – organisation, online purchase

|          | Culp | Factors   | SP       | Aggravating  | Mitigating  | Step 3 – Adjustment of fine - additional factors considered  | Impact on sentence  | Final sentence                     |
|----------|------|---|----------|--|---|--|---|------------------------------------|
| Expected | A    | <ul style="list-style-type: none"> <li>Failed to put in place standard measures to prevent underage sales</li> </ul>  | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>The value, worth or available means</li> </ul>  | <ul style="list-style-type: none"> <li>Increase</li> </ul>                                | £1 million (or more) <sup>16</sup> |
| 1        | A    | <ul style="list-style-type: none"> <li>No age verification checks</li> <li>Informed the exercise was going to happen</li> <li>Acknowledge the risk of knives being purchased but thought it was highly unlikely</li> <li>Failure of duty of care</li> </ul> | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Would consider how easily and quickly they could implement a compliance programme - given the size of the company, expect them to do something fairly quickly i.e. in a matter of weeks</li> </ul>                    | <ul style="list-style-type: none"> <li>None stated</li> </ul>                             | £750,000                           |
| 2        | A    | <ul style="list-style-type: none"> <li>No age verification measures</li> <li>Decided, despite being warned, that it was highly unlikely they needed to take any action</li> </ul>   | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>None applied</li> </ul>   | <ul style="list-style-type: none"> <li>Could increase as a larger organisation</li> </ul> | £400,000                           |
| 3        | A    | <ul style="list-style-type: none"> <li>Identified products as age related but made conscious decision not to implement age verification checks</li> </ul>   | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>Would want to know if remedial actions had been taken/ cooperation</li> </ul> | <ul style="list-style-type: none"> <li>Want to ensure future compliance and properly punish the organisation</li> <li>Make it less financially attractive for them to continue to breach rather than implement measures to prevent underage sales</li> </ul> | <ul style="list-style-type: none"> <li>None stated</li> </ul>                             | £500,000-£750,000                  |

<sup>16</sup> Please note: the expected final sentence is not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion



|   | Culp | Factors   | SP       | Aggravating   | Mitigating  | Step 3 – Adjustment of fine - additional factors considered   | Impact on sentence   | Final sentence |
|---|------|---|----------|---|---|---|--|----------------|
| 4 | A    | <ul style="list-style-type: none"> <li>Lack of standard measures of a reliable online age verification tool or a collect in-store with checks</li> <li>Might be said that they failed to make appropriate changes following advice – you could say that the warning in advance of test purchases potentially amounts to advice</li> </ul> | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Appropriate punishment – but fining an organisation £1million plus for selling some knives online feels disproportionate.</li> </ul> | <ul style="list-style-type: none"> <li>Decrease</li> </ul>   | £10,000        |
| 5 | A    | <ul style="list-style-type: none"> <li>Failed to put in standard measures about age verification checks.</li> <li>Failed to make appropriate changes as had been a warning test purchases would be taking place and they didn't do anything</li> </ul>  | £400,000 | <ul style="list-style-type: none"> <li>3-piece knife set</li> <li>Would want to know if time had lapsed as would have had time to consider</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>None, fine has to be about punishment and deterrence.</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>  | £1 million     |
| 6 | A    | <ul style="list-style-type: none"> <li>Company had been warned</li> <li>Failed to put in place the standard measures for online sales</li> </ul>  | £400,000 | <ul style="list-style-type: none"> <li>3 knives</li> <li>Child only 13</li> </ul>   | <ul style="list-style-type: none"> <li>None</li> </ul>                    | <ul style="list-style-type: none"> <li>None applied</li> </ul>  | <ul style="list-style-type: none"> <li>N/A</li> </ul>  | £400,000       |
| 7 | A    | <ul style="list-style-type: none"> <li>Failed to put in place age verification measures</li> <li>Active decision to act against guidance</li> </ul>   | £400,000 | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Outside the range with a turnover of 1.5 billion.</li> </ul>   | <ul style="list-style-type: none"> <li>Increase - calculated 1% of turnover = £12 million, then reduced</li> </ul> | £10 million    |

|    | <b>Culp</b> | <b>Factors</b>  | <b>SP</b> | <b>Aggravating</b>                                     | <b>Mitigating</b>   | <b>Step 3 – Adjustment of fine - additional factors considered</b>   | <b>Impact on sentence</b>                                  | <b>Final sentence</b> |
|----|-------------|---|-----------|--|---|--|--|-----------------------|
| 8  | A           | <ul style="list-style-type: none"> <li>No online age verification tool</li> </ul>   | £400,000  | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>If £400,000 is applicable to a company with a £50 million turnover, larger fine is necessary for a company with a lot larger turnover</li> <li>They should have the resources available to put the necessary safeguards in place</li> </ul> | <ul style="list-style-type: none"> <li>Increase</li> </ul> | £1 million            |
| 9  | A           | <ul style="list-style-type: none"> <li>Age restricted items were identified on the website, but there was a failure to use reliable online verification tools.</li> </ul>   | £400,000  | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Very large organisation</li> <li>Fine needs to be substantial enough to bring it home to management etc that they need to operate within the law</li> <li>Got to be appropriate punishment and a deterrent in future</li> </ul>             | <ul style="list-style-type: none"> <li>Increase</li> </ul> | £1 million            |
| 10 | B           | <ul style="list-style-type: none"> <li>Originally thought A but moved to B because there were systems in place but not sufficiently adhered to - had put on their website things about knives, but not enough work on the age verification process</li> </ul> | £200,000  | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>None applied</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>      | £200,000              |

**Table 2: Scenario 2 – organisation, in store purchase**

| No       | Culp   | Factors   | SP                         | Aggravating  | Mitigating  | Step 3 – Adjustment of fine – additional factors considered   | Impact on sentence   | Final sentence without GP | Final sentence with GP |
|----------|--------|---|----------------------------|--|---|---|--|---------------------------|------------------------|
| Expected | A      | <ul style="list-style-type: none"> <li>Failed to put in place standard measures to prevent underage sales</li> </ul>  | £12,500                    | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Micro organisation</li> <li>Not profitable</li> </ul>  | <ul style="list-style-type: none"> <li>Decrease</li> </ul>   | £6,000                    | £4,000 <sup>17</sup>   |
| 1        | A or B | <ul style="list-style-type: none"> <li>System in place for solvents but not knives. Could they adapt and apply to offensive weapons?</li> <li>System in place but not sufficiently adhered to or implemented</li> </ul> | Between £6,000 and £12,500 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>Would want to see if there was evidence of any steps taken</li> </ul> | <ul style="list-style-type: none"> <li>Impact of fine on offender's ability to implement effective compliance programme</li> </ul>  | <ul style="list-style-type: none"> <li>Reduction of fine</li> </ul>  | £3,000-£5,000             | £2,000-£2,500          |
| 2        | A      | <ul style="list-style-type: none"> <li>Failed to identify age restricted items</li> <li>No age verification checks</li> </ul>   | £12,500                    | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Ability to pay</li> </ul>  | <ul style="list-style-type: none"> <li>Would do a payment plan with instalments</li> </ul>   | £1,000                    | £660                   |
| 3        | A      | <ul style="list-style-type: none"> <li>Failed to identify products as age-related</li> <li>Not taken any action</li> <li>Not checking age</li> <li>Not properly training staff</li> </ul>                               | £12,500                    | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Fairness - very small business, precarious financial state, limited income, financial dependants</li> <li>Not very profitable</li> <li>Need to see 3 years</li> <li>Turnover very low</li> </ul> | <ul style="list-style-type: none"> <li>Reduce to £10,000, third off for GP (£6,666), impact on business and ability to pay = £3,000</li> </ul> | None stated               | £3,000                 |

<sup>17</sup> Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion.

| No | Culp | Factors  | SP      | Aggravating   | Mitigating  | Step 3 – Adjustment of fine – additional factors considered  | Impact on sentence                                       | Final sentence without GP | Final sentence with GP |
|----|------|--|---------|---|---|--|--|---------------------------|------------------------|
| 4  | A    | <ul style="list-style-type: none"> <li>Absence of measures to prevent underage sales</li> <li>Did have a warning - could see that as failed to make appropriate changes following advice and/or prior incidents</li> </ul> | £12,500 | <ul style="list-style-type: none"> <li>None</li> </ul>        | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Appropriate punishment</li> <li>Micro organization, operating on thin margins</li> <li>Impact of fine on the employment of staff, service users</li> <li>May impact future compliance</li> <li>Means of the offender</li> <li>On the edge of viability</li> </ul> | <ul style="list-style-type: none"> <li>Reduce</li> </ul> | None stated               | £300                   |
| 5  | A    | <ul style="list-style-type: none"> <li>Failed to make appropriate changes following advice – were notified a test purchase was going to happen and they didn't do anything</li> </ul>                                      | £12,500 | <ul style="list-style-type: none"> <li>None</li> </ul>        | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>Would explore reasonable record of compliance as had restrictions for solvents</li> </ul> | <ul style="list-style-type: none"> <li>Company was not profitable so would explore impact of a fine on employment of staff</li> </ul>  | <ul style="list-style-type: none"> <li>Reduce</li> </ul> | £6,000                    | £4,000                 |
| 6  | B    | <ul style="list-style-type: none"> <li>Sent documentation and notification about test cases which they didn't understand/ take heed of</li> </ul>  | £6,000  | <ul style="list-style-type: none"> <li>14-year old</li> </ul> | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>None applied</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>    | £6,000                    | £4,000                 |
| 7  | A    | <ul style="list-style-type: none"> <li>Had warning</li> <li>Failed to identify knives as age restricted</li> </ul>   | £12,500 | <ul style="list-style-type: none"> <li>None</li> </ul>        | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>Turnover at low end and not profitable - £12,500 not appropriate</li> </ul>   | <ul style="list-style-type: none"> <li>Reduce</li> </ul> | £3,000                    | £2,000                 |

| No | Culp | Factors   | SP      | Aggravating  | Mitigating   | Step 3 – Adjustment of fine – additional factors considered   | Impact on sentence   | Final sentence without GP | Final sentence with GP |
|----|------|---|---------|--|--|---|--|---------------------------|------------------------|
| 8  | A    | <ul style="list-style-type: none"> <li>• Hadn't identified knives as age-restricted products</li> <li>• Made no attempts to establish the age of person buying the knife</li> </ul> | £12,500 | <ul style="list-style-type: none"> <li>• None</li> </ul> | <ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>  | <ul style="list-style-type: none"> <li>• Company is losing money</li> </ul>   | <ul style="list-style-type: none"> <li>• Reduce</li> </ul> | £8,000                    | £5,280                 |
| 9  | A    | <ul style="list-style-type: none"> <li>• Failed to identify knives as age restricted products</li> </ul>  | £12,500 | <ul style="list-style-type: none"> <li>• None</li> </ul> | <ul style="list-style-type: none"> <li>• No previous convictions</li> <li>• GP indicates accepts responsibility</li> </ul> | <ul style="list-style-type: none"> <li>• Business made a £5,000 loss in the last year</li> <li>• Fine within category range will potentially wipe the business out</li> <li>• Could be loss of employment</li> <li>• Need more information</li> </ul> | <ul style="list-style-type: none"> <li>• Reduce</li> </ul> | £6,000                    | £4,000                 |
| 10 | A    | <ul style="list-style-type: none"> <li>• Had warning but hadn't done anything about it</li> <li>• Had some restrictions for solvents in place, but nothing for knives</li> </ul>    | £12,500 | <ul style="list-style-type: none"> <li>• None</li> </ul> | <ul style="list-style-type: none"> <li>• No previous convictions</li> </ul>  | <ul style="list-style-type: none"> <li>• Micro company making a loss</li> <li>• Could put them out of business</li> </ul>   | <ul style="list-style-type: none"> <li>• Reduce</li> </ul> | £6,000                    | £4,000                 |

**Table 3: Scenario 3 – individual, in store purchase**

| No       | Culp   | Factors  | SP                            | Aggravating  | Mitigating  | Step 3 – Adjustment of fine – additional factors considered  | Impact on sentence  | Final sentence before GP        | Final sentence after GP                                   |
|----------|--------|--|-------------------------------|--|---|--|---|---------------------------------|---|
| Expected | A      | <ul style="list-style-type: none"> <li>Failed to put in place standard measures to prevent underage sales</li> </ul>   | MLCO or Band E fine of £8,000 | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>                               | <ul style="list-style-type: none"> <li>Financial position</li> </ul>   | <ul style="list-style-type: none"> <li>Decrease</li> </ul>    | £900                            | £600 <sup>18</sup>  |
| 1        | A or B | <ul style="list-style-type: none"> <li>If they had something they were going to implement and didn't, it's B. If totally disregarded it, it's A</li> </ul>   | MLCO                          | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>None</li> </ul>  | <ul style="list-style-type: none"> <li>Would discuss - may have mental/ physical health problem, lack a skill/ understanding, which could be fixed by a programme</li> </ul> | <ul style="list-style-type: none"> <li>None stated</li> </ul> | MLCO with programme requirement | Depends on requirement of MLCO - reduction in no. of days |
| 2        | A      | <ul style="list-style-type: none"> <li>Hadn't identified age restricted products</li> <li>Warned</li> </ul>  | MLCO                          | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>Level of cooperation</li> </ul> | <ul style="list-style-type: none"> <li>None applied</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>         | MLCO                            | L or M CO, 75 hours UPW or 6 weeks curfew 6am-8pm         |
| 3        | A      | <ul style="list-style-type: none"> <li>Failed as a person or responsibility</li> <li>Didn't identify product as age-related</li> <li>Didn't check age properly</li> <li>Didn't impose a policy/ train staff</li> </ul> | MLCO or Band E fine           | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>                               | <ul style="list-style-type: none"> <li>None applied</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>         | Band E fine - 300-500%          | £1,000  |

<sup>18</sup> Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion

| No | Culp | Factors   | SP                  | Aggravating  | Mitigating  | Step 3 – Adjustment of fine – additional factors considered  | Impact on sentence  | Final sentence before GP | Final sentence after GP |
|----|------|---|---------------------|--|---|--|---|--------------------------|-------------------------|
| 4  | A    | <ul style="list-style-type: none"> <li>Absence of measures to prevent underage sales</li> <li>Had a warning - could see that as failed to make appropriate changes following advice and or prior incidents</li> </ul> | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul>   | <ul style="list-style-type: none"> <li>None applied, but gives discretion</li> </ul>   | <ul style="list-style-type: none"> <li>N/A</li> </ul>         | None stated              | £300                    |
| 5  | A    | <ul style="list-style-type: none"> <li>Owner/ manager - their responsibility to put in place standard measures</li> <li>Failed to act on concerns</li> </ul>  | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>Sole/ primary carer for dependent relatives</li> </ul>  | <ul style="list-style-type: none"> <li>Ensure fine is proportionate</li> <li>Explore compliance as had them in place for solvents</li> </ul> | <ul style="list-style-type: none"> <li>None stated</li> </ul> | Band E fine              | Band D fine             |
| 6  | A    | <ul style="list-style-type: none"> <li>Lack of standard measures</li> </ul>   | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> <li>GP suggests high level cooperation with investigation</li> <li>Accepts responsibility</li> <li>Sole/ primary carer for dependant relatives</li> </ul> | <ul style="list-style-type: none"> <li>N/A</li> </ul>  | <ul style="list-style-type: none"> <li>N/A</li> </ul>         | LLCO with 80 hours UPW   | LLCO with 50 hours UPW  |

| No | Culp | Factors  | SP                  | Aggravating  | Mitigating  | Step 3 – Adjustment of fine – additional factors considered   | Impact on sentence   | Final sentence before GP | Final sentence after GP |
|----|------|--|---------------------|--|---|---|--|--------------------------|-------------------------|
| 7  | A    | <ul style="list-style-type: none"> <li>Warned</li> <li>Failed to identify knives as age restricted</li> </ul>                                    | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Fine is most appropriate as CO is more serious</li> <li>Range of 300-500%</li> </ul> | <ul style="list-style-type: none"> <li>Reduce to 300%</li> </ul> | £1,500                   | £1,000                  |
| 8  | A    | <ul style="list-style-type: none"> <li>Hadn't identified knives as age-restricted products</li> <li>Made no attempts to establish age</li> </ul> | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>None applied</li> </ul>  | <ul style="list-style-type: none"> <li>N/A</li> </ul>            | LLCO or lower end MLCO   | Third off               |
| 9  | A    | <ul style="list-style-type: none"> <li>Failed to identify knives as age restricted products</li> </ul>   | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Opt for financial penalty rather than CO</li> <li>Give him time to pay it</li> </ul> | <ul style="list-style-type: none"> <li>N/A</li> </ul>            | Band E fine - £2,000     | Band E fine - £1,333    |
| 10 | A    | <ul style="list-style-type: none"> <li>Warned but done nothing about it</li> </ul>   | MLCO or Band E fine | <ul style="list-style-type: none"> <li>None</li> </ul> | <ul style="list-style-type: none"> <li>No previous convictions</li> </ul> | <ul style="list-style-type: none"> <li>Income and levels of fines – he hasn't really got any money</li> </ul>               | <ul style="list-style-type: none"> <li>Reduce</li> </ul>         | £1,000                   | £666                    |