
RESPONSE TO SENTENCING COUNCIL CONSULTATION
ON TERRORISM OFFENCES GUIDELINE

1. I was appointed as Independent Reviewer of Terrorism Legislation on 23 May 2019.
2. My response to the Sentencing Council’s Consultation on the Terrorism Offences Guideline dated October 2019, resulting from recent amendments to terrorism legislation made by the Counter-Terrorism and Border Security Act 2019, is as follows.

Question 1 (Sections 12 and 12(1A) Terrorism Act 2000, culpability factors)

3. The effect of the proposed amendments is to steer the sentencing judge from ever including an offender who has been convicted of the section 12(1A) offence in the highest Culpability bracket (A). This is because the offence will not qualify as an Intentional Offence, and the second (“persistent efforts to”) and third (“encourages activities intended to”) also appear to require intention.
4. The background to the enactment of the section 12(1A) Terrorism Act 2000 offence is the case of *R v Choudhary and Rahman* [2016] EWCA Crim 61 (see Counter Terrorism and Border Security Act 2019, Explanatory Notes, paragraph 25). Where individuals in positions of significant influence persistently express opinions or belief, reckless as to whether those in the audience will be encouraged to support a proscribed organisation (which the Court of Appeal in *Choudhary and Rahman* considered would not be an offence, leading to the enactment of the new offence), sentencers ought not to be discouraged from treating suitable cases as falling within Culpability A.
5. The section 12(1A) Terrorism Act 2000 offence requires proof of subjective recklessness. An outcome of the proposed change is that, even for cases in Harm Category 1, for example where there is evidence that individuals have acted on or been assisted by the encouragement to carry out activities endangering life, the starting point will be limited to 5 years.
6. It is therefore suggested that the Culpability factor “Offender in position of trust, authority or influence and abuses their position” should not be split between “Intentional Offence” and “Reckless Offence”.
7. Instead, the fact that the offender has been convicted of the recklessness offence contrary to section 12(1A) Terrorism Act 2000 should be reflected in mitigating factors. This is not inconsistent with what the Council proposes in relation to the section 17 Terrorism Act 2000 offence (considered below).

Question 2 (Section 58 Terrorism Act 2000, culpability factors)

8. I agree that the repeated access factor should be removed from Culpability B.

Question 3 (Section 58 Terrorism Act 2000, sentence levels)

9. I agree with the proposed changes.

Question 4 (Sections 1 and 2 Terrorism Act 2006, sentencing levels)

10. I agree with the proposed changes.

Question 5 (Section 38B Terrorism Act 2000, sentencing levels)

11. I agree with the proposed changes, particularly because the preventive justification for the increase in maximum sentences generally applies with little if any force to offenders who commit the least serious offences under section 38B.

Question 6 (Additional guidance on extended determinate sentences and on sentences for offenders of particular concern)

12. I agree with the additional guidance.

Question 7 (Section 17 Terrorism Act 2000, funding guideline)

13. The Council proposes adding an aggravating factor of “Knowledge that the money or property will or may be used for the purposes of terrorism”. I agree that the offender’s state of mind is an aggravating feature, but I suggest that it is also an aggravating feature that the offender in fact suspected that the money property would or might be used for the purposes of terrorism.
14. Since, as recent cases have confirmed, the offence can be committed without any actual knowledge or suspicion, it is right to distinguish between those who simply have reasonable cause to suspect (less serious), and those who have actual suspicion but nonetheless become concerned in a terrorism funding arrangement (more serious). The current aggravating feature “Failure to respond to warnings” may capture some cases of actual suspicion, but not all.
15. I therefore suggest that an additional aggravating feature, albeit less serious than the factor including knowledge, should be “Suspicion that the money or property will or may be used for the purposes of terrorism”.
16. Separately, it is noted there is a difference in the wording of certain apparently identical culpability factors for different offences. For the section 12 and 12(1A) Terrorism Act 2000 offences, there is reference to “Offender in position of trust, authority or influence and abuses their position”. For the Section 17 Terrorism Act 2000 the formulation is “Abuse of position of power, trust or responsibility”.

JONATHAN HALL QC

INDEPENDENT REVIEWER OF TERRORISM LEGISLATION
12 NOVEMBER 2019