

## **Prison Reform Trust response to Sentencing Council Firearms Offences Guidelines Consultation – January 2020**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families
- promote equality and human rights in the criminal justice system.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **5. Do you have any comments on the assessment of culpability and harm at step 1 of the possession of a prohibited weapon guideline?**

In assessing culpability and harm at step one, the guidelines need to take better account of the particular vulnerabilities of individuals who may have been intimidated or coerced into possessing a weapon either through domestic abuse or criminal exploitation. While we welcome the inclusion of “held on behalf of another through coercion, intimidation, or exploitation” as a mitigating factor at step two, we recommend that this factor is considered at step one as a factor indicating reduced culpability.

Many women in prison have been victims of much more serious offences than the ones they are accused of, with a growing body of research indicating that women’s exposure to physical, emotional and sexual abuse, including coercive control, is for some a driver of their offending. 57% of women in prison report having been victims of domestic violence as adults. This is likely to be an underestimate. The charity Women in Prison report that 79% of the women who use their services have experienced domestic violence and/or sexual abuse. A key difference between women and men in prison is that family relationships tend to be a protective factor for men whilst, for women, relationships are more often a risk factor. Baroness Corston’s study of women in the criminal justice system a decade ago found that coercion by male partners and relatives is a distinct route into criminality and prison for some women.<sup>1</sup>

---

<sup>1</sup> Prison Reform Trust (2017) [“There’s a reason we’re in trouble”: Domestic abuse as a driver to women’s offending](#), London: Prison Reform Trust

It is likely that many women convicted of possession offences each year will have experienced domestic abuse given its general prevalence among the female offender population. There is a significant risk that many of these offences will have been committed partly as a result of partner coercion and intimidation.

Coercion into carry a weapon can involve forms of criminal exploitation other than domestic violence. Criminal drug gangs pressure young children and young people into carry weapons. For example, the National Crime Agency has identified over 1,000 “county lines”, where exploitation of children is a fundamental part of the drug-dealing model.<sup>2</sup> Research has identified a clear link between involvement in illegal drug markets and firearm offences. In one UK study containing interviews with 80 convicted firearms offenders, the authors concluded that: “illegal drugs markets represent the single most important theme in relation to the use of illegal firearms – in effect a ‘golden thread’ that runs through all the interviews to some degree.”<sup>3</sup> This suggests at least a strong possibility that a significant proportion of those convicted of firearm possession offences each year may have been coerced or intimidated into offending as a result of criminal exploitation.

However, in the existing guideline, there is no provision to take account of the possibility of coercion, intimidation or exploitation at step one of the process. This could result in vulnerable and criminally exploited people being given sentences at a starting point of 8 years in custody. If a defendant knows that the firearm is going to be used for criminal activities or the firearm itself is loaded, then they automatically are placed into high culpability, regardless of whether or not they were coerced into committing the possession offence. This is a vastly greater sentence than they would otherwise receive at the lower end of culpability and is neither a fair nor proportionate outcome. We therefore recommend that consideration of whether or not a weapon was held on behalf of another through coercion, intimidation, or exploitation is explicitly recognised at step one of the process as a factor indicating lower culpability.

**6. Do you have any comments on the sentencing levels in the possession of a prohibited weapon guideline?**

We appreciate that the Sentencing Council can only set sentencing guidelines within the framework originally created by Parliament. However, we note the extreme disparity in sentencing levels created by the imposition of statutory minimum terms, ranging from a low-level community order for offences not subject to the statutory minimum at the lower end of seriousness, to 8 years in prison for offences subject to the statutory minimum at the higher end of seriousness. This makes the consideration of exceptional circumstances at step 3 of the process particularly important for the fair and proportionate sentencing of these offences.

**7. Do you have any comments on the aggravating and mitigating factors for the possession of a prohibited weapon guideline?**

We agree with the proposed aggravating and mitigating factors. As highlighted in our answer to question 5, we recommend that held on behalf of another through coercion, intimidation, or exploitation is considered at step 1 as part of the assessment of culpability.

---

<sup>2</sup> National Crime Agency (2019) [County Lines Drug Supply, Vulnerability and Harm 2018](#), London: National Crime Agency

<sup>3</sup> Hales, G., Lewis, C. and Silverstone, D. (2006) [Gun Crime: The Market in and Use of Illegal Firearms, Home Office Research Study No. 289](#), London: Home Office

**8. Do you have any comments on the minimum term and exceptional circumstances guidance in step 3 of the possession of a prohibited weapon guideline?**

Step 3, point 3 of the guidance states that “the minimum term would still apply with regardless of first offence or plea”. Someone who is coming before the courts for the first time and who has fully cooperated with the process may be factors indicating that the offending was indeed exceptional. Handing down the minimum term in these circumstances could result in an unfair and disproportionate sentence. It would be helpful to clarify this in the guidance, so that these factors are not discounted from consideration of exceptional circumstances.

We feel that there is a potential contradiction between point 11 and 12. Point 11 explains that a single striking figure may amount to exceptional circumstance. However, point 12 suggest that “the mere presence of one or more of the following should not in itself be regarded as exceptional:

- One or more lower culpability factors
- The type of weapon or ammunition falling under type 2 or 3
- One or more mitigating circumstances factors
- A guilty plea

Although we understand the point being made, we believe the current wording leaves it open to misinterpretation. We recommend amending point 12 as follows:

12. Although a single striking factor may amount to an exceptional circumstance, the mere...

**9. Are there any other matters that should be addressed in steps 4 to 9 of the possession of a prohibited weapon guideline?**

At step 5, if the minimum term provisions apply, the guilty plea cannot be reduced to less than 5 years. We appreciate that this is set in statute and there is nothing that the guidance can do to mitigate the perverse consequence of minimum terms. Not only can they lead to inappropriate and unfair sentences being handed down by sentencers, without the incentive for a person to plead guilty more people will go to trial, placing additional pressure on court resources and public funds as well as increasing the distress of victims.