

THE LONDON ADVOCATE

The newsletter of the London Criminal Courts Solicitors' Association

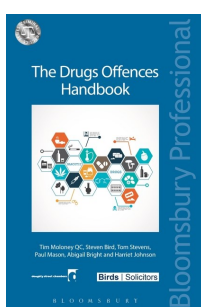
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LCCSA Notices and News

Committee Meetings:- There have been the usual monthly committee meetings taking place at the offices of Kingsley Napley with much to discuss given recent events. Amongst other matters there have been ongoing discussions regarding the CBA strike/offer. As ever, all members are welcome to attend these meetings, the next one will be held on 9 July 2018 at 6.30pm and if any member wishes to attend please email Mark Troman , LCCSA secretary: marktroman@psplaw.co.uk

Summer Party:- The Annual LCCSA Summer Party will be held on Friday 6 July 2018 at the Rotunda, Kings Cross. Tickets cost £50 for LCCSA members and £75 for non members. This includes canapes, a delicious barbeque lots of salads, fabulous desserts, loads of drinks and music. The event sold out last year and tickets have already been selling fast so don't miss out!

You can book on line or, contact LCCSA administrator Sara Boxer: saraboxer@aol.com

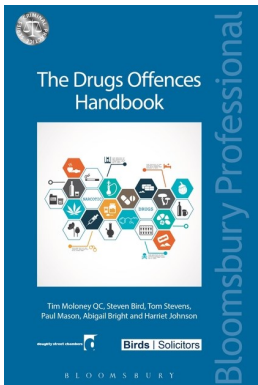
October Conference:- The 2017 LCCSA conference in Seville last October was a huge success and the 2018 European conference looks to be even better. The conference this year will be in Valencia and will be from Friday 5 October until Sunday 7 October 2018.

Accommodation will be at Hotel Barcelo Valencia. There will be pre- dinner drinks on Friday evening, followed by a 3 course dinner on the Friday evening, at Restaurant Sagardi. After a day of learning Saturday evening will bring a drinks party.

The cost includes Friday night dinner, a drinks party on Saturday evening and the 2 day Conference (flights need to be booked separately but if booked soon are reasonably priced). The cost for a twin room is £150 per person for LCCSA Members or £250 per person for Non Members and for a single room is £200 per person for LCCSA Members or £300 per person for Non Members.

For further information contact LCCSA Administrator and organiser Sara Boxer: saraboxer@aol.com.

Book Review — The Drug Offences Handbook



Tim Moloney QC, Steven Bird, Tom Stevens, Paul Mason, Harriet Johnson, Abigail Bright.

Publisher: Bloomsbury

ISBN: 9781784511609

RRP: £81

Written by leading defence barristers from Doughty Street Chambers and the founding partner of Birds Solicitors, The Drugs Offences Handbook (Bloomsbury, 2018) will benefit all criminal practitioners, whether representing the consumer, the customer-facing low hanging fruit of a modest retail operation or the remote kingpin of a conspiracy to import.

As befitting its name, this book is strongest on the black letter law of the “Drug Offences”. Each element of the principal criminal offences relating to controlled drugs is addressed in thorough, thematic chapters which read well and are easily digested. The references to case law include sufficient detail to allow the reader to assess the relevance or otherwise of the case without need to consult the original source. The level of analysis and discussion on the legal concepts goes way beyond that of a generalist text and the book successfully avoids the repetition which can blight books written by multiple contributors.

Also included are sections on the Psychoactive Substances Act 2016 the impact of which is due to be assessed by a government review released later in 2018.

Chapters on conspiracy, restraint and confiscation, jurisdiction and investigative powers are useful references and of application beyond drugs cases.

A short section on Closure Orders refers in error to the regime under the Anti-Social Behaviour Act 2003 which has since been superseded and supplemented by the Anti-Social Behaviour and Policing Act 2014.

There has been a growing awareness on the overlap between child exploitation, modern slavery and those found couriering controlled drugs since the National Crime Agency first issued guidance on

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"County Lines" in August 2015. The issue of duress and the slavery and exploitation defence offered by s.45 Modern Slavery Act 2015, and drug dealers being prosecuted for Modern Slavery Act offences are significant recent developments deserving of an additional chapter in the next edition of the Handbook.

Similarly whilst the law remains twentieth century in spirit, in 2017 25% of British drugs consumers purchased their drugs online via the dark net, third only behind the progressive bastions of Finland and Norway (according to the Global Drugs Survey). The Wire may in time be replaced by the App, at least for more sophisticated users and dealers. As this trend towards online retail continues and investigators adapt, criminal investigations and prosecutions in this area may in time develop very different characteristics.

The Government's analysis of the success of its 2010 Drugs Strategy (published last year) suggests that law enforcement disruption of drug markets creates only short-lived gains in terms of crime reduction and has little impact on the availability of drugs. Violence related to drug markets is described as a "potential unintended consequence of enforcement activity". Evidence suggests that enforcement raises prices and it is the raising of prices which can adversely affect drug misuse; findings consistent with recent government policy towards the pricing of tobacco and alcohol.

Nonetheless, there are no signs of a shift in approach. The 2017 Strategy states "Drugs are illegal because scientific and medical analysis has shown they are harmful to human health" and makes clear the UK Government has no interest in limited decriminalisation which has been explored to various degrees in jurisdictions across North America, Latin America and Europe.

Criminal practitioners need not fear then that their modest investment in the "Drug Offences Handbook" will be rendered redundant by a looming shift to a less coercive regulatory environment any time soon.

Reviewed by Ben Stuttard, Solicitor at Commons Legal

LATEST SENTENCING NEWS ROUNDUP

The Sentencing Council has issued three new definitive guidelines recently in the following areas:-

- Terrorism offences – applies from 27th April 2018
- Domestic Abuse – applies from 24 May 2018
- Bladed Articles & Offensive Weapons – applies from 1 June 2018

[Terrorism offences](#)

Until this guideline there was very little in the way of guidance for judges sentencing in this area. The guidelines cover a wide range of terrorism offences, including the preparation of terrorist attacks, causing or attempting to cause an explosion, collecting or sharing extremist material, raising funds for terrorism, glorifying terrorist acts, failing to disclose information about terrorist acts and joining or supporting a banned organisation. The guidelines do not directly cover offences where death or injury are caused by acts of terrorism since these would be charged as murder or assault. Inevitably, stiff custodial sentences are the starting point for the vast majority of offences.

[Domestic Abuse](#)

Perhaps of more relevance to day-to-day practice is the Overarching Principles: Domestic Abuse guideline. The guideline identifies the principles relevant to the sentencing of cases involving domestic abuse, defined as:

"Any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to: psychological, physical, sexual, financial."

Therefore if the context of the offence is such that it falls within the definition of "domestic abuse" the guideline should be referred to in addition to the sentencing guideline for the specific offence charged.

The guideline makes the following main points in relation to the issue of seriousness:

- The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship.
- Cases in which the victim has withdrawn from the prosecution do not do not indicate a lack of seriousness and no inference should

be made regarding the lack of involvement of the victim in a case.

Prior to the guideline coming into force the point could always be made when mitigating in these cases that there was nothing in law that obliged the sentencing bench to treat the offence as more serious by virtue of the fact that it was committed in a domestic context per se and the domestic context was relevant only insofar as these offences normally carried with them their own set of aggravating features. The new guideline now makes it clear that this is no longer the approach to be taken, but does not state explicitly that the sentencing bench must consider an uplift in the starting point because the offence is committed in the domestic context (although it does seem as if that the guideline is implicitly inviting the sentencing bench to take this approach).

The guideline then goes on to list the aggravating and mitigating features particular to offences committed in the domestic context. Of note is the fact that "abuse of trust and abuse of power" are listed as an aggravating feature. It is unclear whether the Sentencing Council meant this simply as a re-statement of the principle stated earlier in the guideline that the domestic context makes the offence more serious because it represents a violation of trust and security and therefore implicitly inviting the sentencing bench to make some kind of uplift simply by virtue of the fact that it is an offence in the domestic context, or whether this feature was envisaged as warranting an uplift in addition to this. If the former, care should be taken ensure that there is no element of double-counting. If the latter, presumably the Crown will have to explain what trust/power has been abused over and above that which is deemed by the guideline to be inherent in offences committed in this context.

The guideline also lists the fact that the "victim is particularly vulnerable" as an aggravating feature but then goes to give some rather cryptic commentary in parentheses as follows:

"All victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more

vulnerable than others, and not all vulnerabilities are immediately apparent."

This rather throws up more questions than it answers. If all victims of domestic abuse are potentially vulnerable, is it intended that this aggravating feature be deemed to be present in all cases committed in the domestic context? Is it simply a different way of achieving the same aim as making "abuse of trust and abuse of power" an aggravating feature? How is the court meant to sentence on the basis of a vulnerability that is not "immediately apparent"? Again, care needs to be taken to avoid double-counting where this is cited as an aggravating feature alongside "abuse of trust and power".

The guideline also lists specific mitigating features, citing positive good character as a mitigating feature but then going on to qualify this by saying that this should be of no relevance where there is a "proven pattern of behaviour", the reasoning being that domestic abusers frequently have a "public and private face". Of more interest to practitioners is the fact that "evidence of genuine recognition of the need for change, and evidence of obtaining help or treatment to effect that change" is also listed as a specific mitigating feature, which should form part of the advice given to clients who are preparing for sentencing hearings in these cases.

The guideline then lists some general principles to be applied in these cases. The most noteworthy are:

- A sentence imposed for an offence committed within a domestic context should be determined by the seriousness of the offence, not by any expressed wishes of the victim.
- Offences involving serious violence, or where the emotional/psychological harm caused is severe, will warrant a custodial sentence in the majority of cases.
- Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Where the custody threshold is only just crossed, the court will wish to consider whether the better option is instead to impose a community order, including a requirement to attend an accredited domestic

domestic abuse programme or domestic abuse specific intervention. Such an option will normally only be appropriate where the court is satisfied that the offender genuinely intends to reform his or her behaviour and that there is a real prospect of rehabilitation being successful.

Bladed Articles & Offensive Weapons

A long-awaited guideline given the increasing prevalence of these offences. The new guideline replaces the *Povey* guidance and significantly increases the penalties for these types of offences. For instance, whereas *Povey* recommended a starting point of 12 weeks' imprisonment for possession of a knife not in "dangerous circumstances", the starting point in the new guideline for the same offence is 6 months' imprisonment, an uplift of 50 %.

The guideline is separated out into three areas – cases involving simple possession of bladed articles and offensive weapons, cases involving threats made with bladed articles and offensive weapons and cases involving children and young people.

For simple possession offences, the court must first decide upon culpability and then proceed to consider harm before being given the sentencing starting point. There are four degrees of culpability from A to D, with A being the most serious. Bladed articles of any description will always come within A, as will all racially aggravated offences (whether involving a knife or an offensive weapon) and offences involving a "highly dangerous weapon". The guideline therefore introduces the new concept of the "highly dangerous weapon" into the law in this area. Some guidance is given about what kind of weapon should fall within this definition and thereby come within the highest culpability category:

"An offensive weapon is defined in legislation as 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose

dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case."

Corrosive substances that are carried with the requisite intent will therefore seemingly automatically fall into this category. For everything else, the Crown will need to make a case for a weapon being "highly dangerous", the only guidance being that the weapon's dangerous nature must be "substantially above and beyond" any article made or adapted for use for causing injury, or is intended by the person having it with him for such use." This provision introduces further unwelcome complexity into the law in this area and is somewhat nonsensical. If we start from the position that any article made or adapted for use for causing injury, or any article made or adapted by any person with the intention of causing injury, is inherently dangerous it is difficult to see what qualities an offensive weapon can possess that take it from being merely dangerous to being "highly" dangerous. Even if such qualities can be identified with certainty, the court will then have to consider whether or not those qualities take the article's "dangerous nature" "substantially above and beyond" (my emphasis) that which is inherent in any offensive weapon. What if the qualities only take the article's dangerous nature moderately or insubstantially above and beyond those inherent in any offensive weapon? This provision might lead to some interesting philosophical discussions in court and will doubtless be fertile ground for submissions from defence lawyers.

Possession of weapons other than bladed articles and highly dangerous weapons that are used to cause fear fall into category B and possession of such weapons not used to cause fear fall into category C. Possession of all weapons (including knives and highly dangerous weapons) where the reason for the possession falls "just short" of reasonable excuse falls into category D.

Once the sentencing bench has decided upon culpability it must then go on to consider harm. The type of harm that can be cause is split into two categories – 1 and 2, with one being the most serious. If the

offence is committed in any of the following contexts it will be regarded as a category 1 harm offence:

- Offence committed at a school or other place where vulnerable people are likely to be present
- Offence committed in prison
- Offence committed in circumstances where there is a risk of serious disorder
- Serious alarm/distress

The guideline rather curiously does not state who or what must be caused the serious alarm or distress to make the offence come within this category. Also of note is the fact that the alarm or distress must be "serious" to make the offence come within this category. It seems that merely "moderate" alarm or distress will be insufficient.

Category 2 harm is broadly defined as "all other cases".

For offences falling into Category A-1, the starting point is a sentence of 1 year 6 months imprisonment, with a range of 1 year to 2 years 6 months. At the other end of the scale at D-2, the starting point is a low level community order with a range of a Band C fine to a medium level community order.

Practitioners very much need to be alive to the distinction between a weapon that is merely dangerous and not used to threaten or cause fear and one that is deemed to be "highly" dangerous. The starting point for simple possession of the former (C-2) is a medium level community order. The starting point for simple possession of the latter (A-2) is 6 months' imprisonment.

For offences involving the use of weapons and bladed articles to threaten another person in a public place in such a way that there is an immediate risk of serious physical harm to that other person, the guideline follows broadly the same culpability/harm structure as for simple possession offences, save that there are only two categories of culpability, A and B, with B being the most serious. For an offence to

fall within category A one of the following features must be present:

- Offence committed using a bladed article
- Offence committed using a highly dangerous weapon
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Significant degree of planning or premeditation

All other offences are category B.

Harm is again broken down into category 1 and 2, with 1 being the most serious. For an offence to fall within category 1 one of the following features must be present:

- Offence committed at a school or other place where vulnerable people are likely to be present
- Offence committed in prison
- Offence committed in circumstances where there is a risk of serious disorder
- Serious alarm/distress caused to the victim
- Prolonged incident

All other offences are category 2.

For offences falling into category A-1, the starting point is 2 years' imprisonment with a range of 1 year 6 months to 3 years. At the other end of the scale – category B-2 – the starting point is 6 months' imprisonment with a range of 6 months to 1 year 6 months.

The guideline eschews the culpability/harm structure completely in the case of youths. It suggests that offences with one or more of the following factors will be suitable for non-custodial sentences:

- Possession of weapon falls just short of reasonable excuse
- No/minimal risk of weapon being used to threaten/cause harm
- Fleeting incident and no/minimal distress

The guideline then suggests that offences with one or more of the

the following factors will be suitable for custodial sentences or a youth rehabilitation order with intensive supervision and surveillance or fostering:

- Possession of a bladed article whether produced or not
- Possession of a highly dangerous weapon[†] whether produced or not
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity
- Prolonged incident and serious alarm/distress
- Offence committed at a school or other place where vulnerable people may be present

The guideline also introduces an additional “step” in the sentencing process for youths in that the bench must consider matters of “personal mitigation”, defined (non-exhaustively) as follows:

- Particularly young or immature child or young person (where it affects their responsibility)
- Communication or learning disabilities or mental health concerns
- Unstable upbringing including but not limited to:-
 - time spent looked after
 - lack of familial presence or support
 - disrupted experiences in accommodation or education
 - exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse
 - victim of neglect or abuse, or exposure to neglect or abuse of others
 - experiences of trauma or loss
- Determination and/or demonstration of steps taken to address offending behaviour
- Child or young person in education, training or employment

Camberwell Green Flooding & Court Closure

Update

By Bruce Reid

DJ Cuddles sailed into court.

Mooring the kayak she dropped a 2002 Archbold over the side to anchor it and, slipping on the Wellington Boots of Justice squelched to the Bench.

DJ Cuddles - "First case?"

Marty Mole (List Caller). It was going to be Tabitha Turtle's client, Madam but she seems not to be here.....

Squirrel Nutkin punted his Defence LiLo towards Felix Mansfield and muttered "Just punctured her water wings....."

Felix Mansfield " Thought turtles could swim?"

SN - She can't mitigate either.....

DJC - Oh well, next? Larry Lizard? Burglary? Deferred sentence? Got the facts? Got wifi Selina?"

Selina Stoat (Prosecuting) Flickering into life Madam....

Downstairs Norbert Newt filled up the feeder tray in front of Horace Hamster's flywheel and, as Horace got into his stride the router glowed encouragingly.

Selina's screen flashed up Larry's file and then suddenly failed.

SS Sorry ma'am, just died on me.

DJC - Where's Norbert?, I thought he had got the MOJ to fix this.

Norbert Newt - Technical issue Ma'am, I bought birdseed by mistake and Horace is sulking in his straw. Won't move without the HamsterMunch.

DJC - Can't do this without knowing what the deferred conditions were.....

Larry Lizard - I know Ma'am, DJ Honeybun said that if I didn't set fire to Her Majesty's Dockyards for 6 months he'd give me a Con Dis.

DJC - "Don't believe a word of that, Larry but seeing as you will be back next week in breach you can have it, I'll pot you then..... I suppose we will have to send the rest to Croydon...?"

MM - 'Can't do that Madam, flooded as well.

DJC - Thames?

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MM - Godzilla flattened it on Wednesday....

DJC - Hendon?

MM - "No-one in South London has ever been able to find that....."

DJC - (turning to Gary Goblin of the MOJ) - "Mr Goblin, you have been here on a 'Magistrates Court Disaster Impact Delivery Management Initiative' for a week, what are you doing?!?"

Gary Goblin - "The Ministry have sprung into action Madam, I have single handedly completed 15 forms. I have just finished Form SEBRFUEC 17 - (Spare Emergency Bucket Requisition For Use In Exceptional Circumstances)" I will send it to the Mailbox of Oblivion immediately....he tails off looking at Selina's blank screen - "Look, I can't do everything at once! The Court will have to close - the sooner this place gets turned into Yuppie Flats the sooner I get my MBE.

Felix Mansfield - Can't do that Gary, this place is an SSSI - Site of Special Scientific Interest, the DOE listed it yesterday. "Endangered Fauna Conservation issue."

GG - (With an evil scowl) It's neither scientific nor interesting and none of the wildlife are rare enough!

Omar Owl (Co-defending with Felix). Not so Gary, hop into the Beautiful Pea Green Boat and we will show you.

Minutes later the Owl and the Pussycat, together with a reluctant Goblin sailed in the Beautiful Pea Green Boat through the door to the Gaolers, nosing past the frogs on the lily pads in darkness; to a scene lit only by the occasional fizzing flash of short-circuiting overhead wiring.

From Cell 4 came the sound of splashing and excited giggling.

FM - You see Gary, Norbert's a Great Crested, he and Nancy have been working on the tadpoles for a week now, got more of them in here than the whole of Hertfordshire. The Ministry said they can't be disturbed.....

(More splashing and cries of - 'Oh! You are naughty!!!!' - from Cell 4.)

FM - Not that you'd want to right now.....I figure Camberwell is good for another year.....

Want to suggest content or contribute an article? Please email Rose Davies
Commander: r.commander@gtstewart.co.uk