

**260.8 Custodians Judicial guidance**

*Att-Gen's Ref 2017 Re Blake 2017 EWCA Crim 1378* D pleaded (15% discount) to conspiracy to possess a prohibited weapon for sale or transfer (section 5(2A)(c)), possessing a prohibited weapon, possessing criminal property and possessing ammunition. She acted as a custodian for a fully functioning pump-action 12-bore shotgun and 25 cartridges for it. M carried a holdall with the shotgun and ammunition out of D's premises and was stopped by police. D's address was searched and £1,000 was found in a fruit bowl in the sitting room. In her bedroom was a handgun in a glove which was in a shopping bag on top of a wardrobe. The gun was loaded with five live rounds in it. D was interviewed and lied. She was aged 32 and had two dishonesty convictions. One was in 2004 and the other in 2005. The prosecution said there were the following aggravating factors. 1) The shotgun was in working order with its ammunition. 2) A number of offenders were working together. 3) It was a professional supply of firearms. 4) The transportation of the firearm could only have been to kill and maim [or] terrorise and intimidate. 5) There was a reward. 6) There were two working firearms. The mitigation was said to be, a) this was not a large-scale conspiracy, b) the conspiracy failed, c) D was directed by another, d) her plea, and e) D had no relevant convictions. Held. A deterrent sentence was required. The starting point for the sale offences is in the range of 8-12 years. For the overall criminality the lowest starting point is in the order of 10 years, so with plea, **8½ years**.

**260.8a Custodians Cases**

*Att-Gen's Ref 2017 Re Blake 2017 EWCA Crim 1378* D pleaded (15% discount) to conspiracy to possess a prohibited weapon for sale or transfer (section 5(2A)(c)), possessing a prohibited weapon, possessing criminal property and possessing ammunition. She acted as a custodian for a fully functioning pump-action 12-bore shotgun and 25 cartridges for it. M carried a holdall with the shotgun and ammunition out of D's premises and was stopped by police. D's address was searched and £1,000 was found in a fruit bowl in the sitting room. In her bedroom was a handgun in a glove which was in a shopping bag on top of a wardrobe. The gun was loaded with five live rounds in it. D was interviewed and lied. She was aged 32 and had two dishonesty convictions. One was in 2004 and the other in 2005. The prosecution said there were the following aggravating factors. 1) The shotgun was in working order with its ammunition. 2) A number of offenders were working together. 3) It was a professional supply of firearms. 4) The transportation of the firearm could only have been to kill and maim [or] terrorise and intimidate. 5) There was a reward. 6) There were two working firearms. The mitigation was said to be, a) this was not a large-scale conspiracy, b) the conspiracy failed, c) D was directed by another, d) her plea, and e) D had no relevant convictions. Held. A deterrent sentence was required. The starting point for the sale offences is in the range of 8-12 years. For the overall criminality the lowest starting point is in the order of 10 years, so with plea, **8½ years**.

**260.26 Firearms Act 1968 s 16 Cases**

*R v Kepple 2017 EWCA Crim 2195* D was convicted of possessing a firearm with intent to endanger life. She had earlier pleaded to possessing a firearm without a certificate. D lived with her baby daughter, her 11-year-old brother and her parents. Police executed a search warrant at the property and found the family sitting on the sofa. D was told by police that they had a firearms warrant and she immediately said, "There's something in my bedroom." She added she thought it was a gun, that it wasn't hers and that she didn't know if it was loaded. She said she didn't know if there was ammunition but said, "He told me it works though." The police found a sawn-off shotgun in three parts and five cartridges of live ammunition stored under the baby's cot. The gun was later assembled, test fired and was found to be working. In interview D said she had been given the gun by Y, who was best friends with the father of her daughter. She was told to look after it and not to look in the bag. When D took the bag, there were people running in the street and passers-by told her there had just been a shooting.

An internet search confirmed this and D thought the gun was related to the shooting. D admitted to having received £65 per week for keeping the gun and she had had it for about 3-4 weeks. D was aged 20 at the date of the offence and had no previous convictions. The Judge identified the aggravating factors as: a) the length of time D held the gun, b) the gun was stored under a cot in a room that could be accessed by D's young brother, and c) D exposed her parents to the risk of an aggressive police raid. She added that D had facilitated, aided and assisted in a way which elevated this to a most serious example of a section 16 offence. Held. This offence was much more serious than simple possession of a firearm. D was prepared to look after the gun knowing it had been used very recently in a shooting. She was prepared to keep it for a number of weeks. D received payment for storing it and knew it would go back into circulation. Punitive and deterrent sentences were called for. 14 years was a severe sentence for a woman so young with a baby to look after but people need to understand how seriously they will be dealt for such offences, so **12 years**.

### **260.39 Defendant aged under 18 years Cases**

*R v H* 2018 EWCA Crim 689 D, aged 15, pleaded to possessing a firearm and ammunition with intent to endanger life and possessing a knife on school premises. After his parents had left home, D found the key to his father's gun cabinet. He took a shotgun, cartridges and a balaclava from the cabinet and took them to school. 10 minutes into a lesson he claimed he had a music lesson to attend. A few minutes later, D dialled 999 and said he had the shotgun and ammunition at school but he didn't know why he had them. He added, "I just felt so angry this morning." When asked who he was thinking of using the gun against, D said, "Someone else." When asked "Who?", D said, "Anyone." He also said he had 200 cartridges. D spoke of suicidal thoughts, bad mood swings and being 'just scared'. D was told to break the gun and put it outside the room, which he did. Later he said he wanted to end his life. The deputy headmaster, B, entered the room and spoke to the operator on D's phone. B said the gun was outside the room, he did not feel in any danger and D was a polite and model student. When police arrived, they found the gun and cartridges with a lock knife and a balaclava. D later apologised for his actions. In interview D admitted intending to harm people at school but said he had changed his mind. D had a loving and caring family and references. A doctor said: a) D had social anxiety symptoms which had a significant impact on him and D could not deal with them, b) there was no history of violence, c) D had an insight into his depression and anxiety and wanted help, and d) a custodial sentence would have a severe detrimental effect upon D's mental health. The doctor outlined a programme to help D and assessed the offence as being an impulsive act and a cry for help. A member of the youth justice service assessed D as having a [risk] of 'high-level serious harm'. She recommended a robust community [package]. The Judge considered the depression was severe. After the sentence, a psychiatrist said D met the criteria for autism spectrum disorder (ASD). Further, D had a severe depressive disorder. She concluded that there was a low probability of D engaging in risky behaviour and that D was vulnerable and required supportive intervention. A manager from the secure children's home he was residing at said D's ASD, asthma and psoriasis had been exacerbated by his admission to the home. Further, his conduct had been exemplary, although D had found custody difficult. Held. D's conduct did have potentially fatal consequences. It was a dreadful decision he took but D came to his senses in time. The experts are unanimous. D's welfare and ultimately the interests of the public are best served by a sentence other than detention. D's condition is now worse than the Judge appreciated. We follow the recommendation for a robust **community package**, the details of which we will decide when all the arrangements are in place.

### **260.59 Minimum Sentences Stun guns**

See also: *R v McMahon* 2018 EWCA Crim 1296 (D pleaded to possession of two cannabis plants and possession of a stun gun, disguised as a torch. Held. The Judge was wrong not to find exceptional circumstances, which were: a) D had been given the stun gun and not bought it, b) it was a non-lethal weapon, c) D had never used it, d) D had no intention of using it, e) D had kept it for sentimental reasons, and f) D did not know possession of it was unlawful (which we doubt but it was in the basis of plea). Remembering deterrence, **30 months** not 5 years.)