

# Grappling with ‘dangerousness’ provisions of the CJA 2003

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## **225. Life sentence or imprisonment for public protection for serious offences**

(1) This section applies where –

- (a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and
- (b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

## 225. Life sentence or imprisonment for public protection for serious offences (Cont.)

(2) If –

(a) the offence (*attracts life*)

(b) the court considers (*sufficiently serious to attract life*) the court must impose a sentence of imprisonment for life.

(3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection.

## **227. Extended sentence for certain violent or sexual offences: persons 18 or over**

- (1) This section applies where –
  - (a) a person aged 18 or over is convicted of a specified offence, other than a serious offence, committed after the commencement of this section, and
  - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
- (2) The court must impose on the offender an extended sentence of imprisonment

## 229. The assessment of dangerousness

- (1) This section applies where –
- (a) person has been convicted of a specified offence, and
  - (b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.

*[(2) (under 18s)]*

## 229. The assessment of dangerousness (Cont.)

(3) If at the time when that offence was committed the offender was aged 18 or over and had been convicted in any part of the United Kingdom of one or more relevant offences, the court must assume that there is such a risk as is mentioned in subsection (1)(b) unless, after taking into account –

- (a) all such information as is available to it about the nature and circumstances of each of the offences,
- (b) where appropriate, any information which is before it about any pattern of behaviour of which any of the offences forms part, and
- (c) any information about the offender which is before it,

The court considers that it would be unreasonable to conclude that there is such a risk.

**R v Lang and Others [2006] 1WLR 2509**

Risk =

*‘a higher threshold than the mere possibility of occurrence and in our view can be taken to mean “noteworthy, of considerable amount or importance” ‘*

**Johnson [2006] EWCA Crim 2486**

A turning of the tide?



- Precious convictions not irrelevant to the issue merely because they were not ‘specified’ offences. A pattern of minor previous offences of gradually escalating seriousness may be significant.

- Where the facts of the instant or the previous specified offence had not resulted in any harm actually occurring, that may be merely fortuitous. *‘Faced with such a case the sentencer considering dangerousness may wish to reflect, for example, on the likely response of the offender if his victim, instead of surrendering, resolutely defended himself.’*

- Inadequacy, suggestibility and vulnerability of the offender –whilst they might amount to mitigation in ordinary cases might in fact *‘serve to produce or reinforce the conclusion that the offender is dangerous’*.

# Producing facts of previous specified offences

- *Lang v Johnson*
- The role of the defence

## **The ‘*administrative problem*’**

No proper assessment of the risk posed by the offender would be made before the expiry of the minimum period set.

# S.O.P.O.s

## Sexual Offences Act 104

*‘is necessary...for the purpose of protecting the public or any particular member of the public from serious sexual harm from the defendant’*

## *R v Richards* [2006] EWCA Crim 2519

*‘these schemes were intended to be and are distinct’.*

*‘it is not a pre-condition to the making of (a SOPO) that the judge should be satisfied that the offender would also qualify for an extended sentence (or an IPP or Life), or that he should regard himself as deprived of necessary jurisdiction if they do not.’*