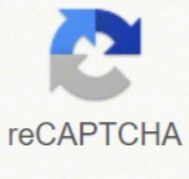




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## Magistrates court sentencing guidelines bladed article



### Sentencing Practice

Before passing sentence, the court will consider:

- Any aggravating / mitigating factors
- Pre-sentence reports (Probation service)
- Any previous convictions
- Medical Reports
- Character Statements
- D's financial / domestic circumstances



The person must prove this good reason or lawful authority on the balance of probabilities. A fear of an impending attack is capable of being a good reason, and the person's state of mind is a relevant consideration to the question of whether or not they have a good reason to be carrying a bladed article (Clancy [2012] EWCA Crim 8). Forgetfulness alone cannot amount to a good reason, but it may do if combined with other factors. Possession of a bladed article is a statutory offence, which is created by section 139 of the Criminal Justice Act 1988 (CJA). It was stated in *Harris v Director of Public Prosecutions* [1993] 1 WLR 82 that a lock knife is secured in the open position by a locking mechanism, and is therefore not a 'folding pocket knife' because it is not immediately foldable at all times. Note that a blade need not be sharp and it follows that a butter knife is capable of being a bladed article (*Brooker v Director of Public Prosecutions* [2005] EWHC 1132 (Admin)). 23 July 2021 The following article offers a brief guide to possession of a bladed article, which, we hope, will prove useful for those under police investigation or being prosecuted for the offence. In other words, for a person to have something with them, they need to have closer contact to it than mere possession. As May LJ said in *McCailla* (1988) 87 Cr App R 372, 'Every case of 'having' is one of 'possessing', but it does not necessarily follow that every case of 'possessing' is one of 'having' within the meaning of the relevant statutory provisions'. In *Henderson* [2016] EWCA Crim 965, [2016] 4 WLR 172, the Court of Appeal commented that relevant considerations to the question of whether or not a person has a weapon (or bladed article) 'with him' are: Possession of a weapon is a wider concept than having it 'with him'; having a weapon 'with him' is a wider concept than carrying it; the proximity between the person and the weapon; whether the weapon is immediately available to the person; the accessibility of the weapon; the context of any criminal enterprise embarked upon; and the purpose of the applicable statute. To summarise this, for a person to have a bladed article 'with him', there must be a very close physical link and a degree of immediate control over the weapon by the person alleged to have the weapon with them. The meaning of a bladed article Section 139 covers any 'article' which has a blade or is sharply pointed, except a folding pocket knife. This section states that 'any person who has an article to which this section applies with him in a public space shall be guilty of an offence'. Procedure Possession of a bladed article is triable either way meaning that, if a person is charged with the offence, their case can be heard in either the Magistrates' Court or the Crown Court. However, a common sense test is to be applied to the question of whether or not an article is bladed, namely that the article must have the same broad category as a knife or sharply pointed instrument. If the case is heard in the Crown Court the maximum sentence is four years imprisonment, or a fine, or both. Elements of the offence A person can only be convicted of a criminal offence if all of the elements of the offence are proved beyond a reasonable doubt. The prosecution must prove the following elements in order for a person to be convicted of possessing a bladed article in a public place: The meaning of 'has with him' The meaning of 'has with him' has been set out in a somewhat confusing manner by case law. This means, as established by case law, that a screwdriver is not a bladed article (*Davis* [1996] Crim LR 564). The definition of a public place A public place means any place to which, at the relevant time, the public have, or are permitted, access. Defences There are two statutory defences, which are as follows: Good reason or lawful authority It is a defence to a charge of possession of a bladed article for a person to prove that they had good reason or lawful authority to have the article with them. Note however that even a folding pocket knife is covered by the section if the cutting edge of its blade is longer than three inches. Case law states that a lock knife is not a folding knife, irrespective of the length of its blade. The maximum sentence that a Magistrates' Court can impose is a custodial sentence of no more than six months and/or an unlimited fine. In *Chalal v Director of Public Prosecutions* [2010] EWHC 439 (Admin), the Court found that forgetfulness combined with the fact that the defendant had with him a knife for work could amount to a good reason. Religious reasons, for use at work or national costume It is a defence to a charge of possession of a bladed article for a person to prove on the balance of probabilities that they had the bladed article for use at work, or for religious reasons, or as part of any national costume. How to instruct Bindmans Our criminal defence team has extensive experience in representing clients who have been accused of, and charged with, possession of a bladed article. If you have any questions about this you can complete the enquiry form here or call the direct line number to speak to our specialist team +44 (0)20 7014 2050 or in the case of emergency, call +44 (0)20 7305 5638 for our out of hours police station assistance. Our criminal defence lawyers will discuss your case with you during a preliminary consultation and advise you on the nature of any police investigation, or the case against you if you have been charged.

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