

THOMAS · MORE · CHAMBERS

**CRIMINAL LAW:  
A SENTENCING UPDATE**

**Thursday 18<sup>th</sup> November 2008**

**6.30pm to 7.30pm**

**CRIMINAL PRACTICE GROUP**



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## **Topics and Order of Speakers**

1. Introduction – Richard Cross.
2. Sentencing Tips and Useful Cases – Freya Rowe.
3. Dangerous Offenders – Ben Walker-Nolan.

## The Statutory Framework

# DANGEROUS OFFENDERS

### Criminal Justice Act 2003, ss. 224 to 236

1. The Criminal Justice Act 2003 introduced new sentences for offenders who commit certain offences and are deemed to be dangerous.
2. The dangerous offender provisions apply to offenders convicted of one or more specified offences committed on or after **4 April 2005**. These provisions do not apply to an offence which is charged as being committed between a date before and a date on or after 4 April 2005, unless the court is satisfied that the offence was committed after that date.
3. A variety of other “protective” sentences remain in use for offences committed before 4 April 2005. These sentences include:
  - Custodial sentences imposed where the offence otherwise would not warrant such sentences (Powers of Criminal Courts (Sentencing) Act 2000, s. 79 (formerly Criminal Justice Act 1991, s. 1(2)(b))).
  - Longer than commensurate custodial sentences (Powers of Criminal Courts (Sentencing) Act 2000, s. 80 (formerly Criminal Justice Act 1991, s. 2(2)(b))).
  - Automatic life sentences for offenders who committed a second ‘serious offence’ (Powers of Criminal Courts (Sentencing) Act 2000, s. 109 (formerly Crime (Sentences) Act 1997, s. 2)).
  - ‘Extended sentences’ (Powers of Criminal Courts (Sentencing) Act 2000, s. 85).

## **Criminal Justice and Immigration Act 2008**

4. The law in relation to dangerous offenders and sentencing was been changed significantly by the Criminal Justice and Immigration Act 2008.
5. The new provisions apply to all Defendants who fall to be sentenced under those provisions on or after **14 July 2008**.

### **Sentences Available**

#### **Serious Offences**

6. Where an adult offender is convicted of a **serious offence** and the risk and harm criteria are both met but a life sentence is either not available or not justified, the court may impose:
  - Imprisonment for Public Protection
  - An extended sentence
  - Any other lawful sentence

#### **Specified Offences**

7. Where an adult offender is convicted of a **specified offence** that is not a serious offence and the risk and harm criteria are both met, the court may impose:
  - An extended sentence
  - Any other lawful sentence

# CRITERIA FOR IMPOSING SENTENCES UNDER THE DANGEROUS OFFENDER PROVISIONS (ADULTS)

## Determining Relevant Age

8. A person is aged 18 or over for the purposes of the dangerous offender provisions if he or she was aged 18 or over on the **date of conviction** (see Robson [2007] 1 Cr App R (S) 301 at [13]).

## Imprisonment (or custody) for life

9. Section 225 now provides as follows:

*“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.*

*(2) If—*

*(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and (b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life [or in the case of a person aged at least 18 but under 21, a sentence of custody for life]”.*

10. Where the following four criteria are met, an offender aged 18 or over must be sentenced to imprisonment (or custody) for life under section 225:

- he or she is convicted of a serious offence (s. 225(1)(a)),
- the court is of the opinion that he or she is a dangerous offender (s. 225(1)(b)),

- the maximum penalty for the offence is imprisonment (or custody) for life (s. 225(2)(a)),

**and**

- the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment (or custody) for life (s. 225(2)(b)).

### **Effect of Imprisonment (or custody or detention) for life**

11. Unless the court declines to do so because the offence is so serious that incarceration for life is justified by the seriousness of the offence alone, irrespective of the risk to the public, it must set a minimum term, which the offender will serve in custody before the Parole Board can consider whether to release him or her, under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended by s. 19 Criminal Justice and Immigration Act 2008 (when in force)).
12. When setting a minimum term, the court should identify the notional determinate sentence, taking into account the seriousness of the offence and associated offences and any appropriate reduction for a plea of guilty.
13. Normally one half of that term should be taken, from which the court usually should deduct the time spent in custody on remand (if any) (Powers of Criminal Courts (Sentencing) Act 2000, s. 82A(3)). Care should be taken when identifying the notional determinate sentence not to incorporate an element for risk, which is already covered by the indeterminate nature of the sentence.
14. An amount greater than one half of the notional determinate sentence should not be taken when calculating the minimum term unless either the seriousness of the offence(s) is exceptional and halving the notional determinate sentence would not adequately reflect that seriousness (s. 82A(3A)) or setting the term at half of the notional determinate sentence would have little or no effect on the time in custody (s. 82A(3B)). Where those circumstances apply, the amount of reduction can be less than half. In relation to s.82A(3B), the reduction must still be at least one third (s. 82A(3C)). The court should give reasons if it specifies a proportion higher than one half.

15. Once the offender has served the minimum term, he or she will not be released on licence unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that he or she should be confined (Crime (Sentences) Act 1997, s. 28).
16. Once the offender has been released, he or she remains on licence for the rest of his or her life (Crime (Sentences) Act 1997, s. 31).

### **Concurrent Sentences**

17. A sentence of imprisonment (whether determinate or not) may not be imposed consecutively to a sentence of imprisonment (or custody or detention) for life, nor may a sentence of imprisonment be imposed to commence at the end of an existing sentence of imprisonment (or custody or detention) for life (Foy (1962) 46 Cr App R 290).
18. The court may impose a sentence of imprisonment (or custody or detention) for life consecutive to another sentence of imprisonment (whether determinate or not) but should not do so, nor should a sentence of imprisonment (or custody or detention) for life be imposed to commence at the end of an existing sentence of imprisonment (whether determinate or not) (Jones (1961) 46 Cr App R 129).
19. When sentencing an offender to imprisonment (or custody or detention) for life and to imprisonment (whether determinate or not), the court should order the other sentence of imprisonment to be concurrent with the sentence of imprisonment (or custody or detention) for life and increase the notional determinate sentence to take account of the overall criminality. The same approach should be taken where the court is sentencing an offender, who is already serving a sentence of imprisonment, to imprisonment (or custody or detention) for life.

## **Imprisonment (or detention) for public protection**

20. Section 226 provides:

*“Detention for life or detention for public protection for serious offences committed by those under 18*

*(1) This section applies where—*

*(a) a person aged under 18 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.*

*(2) If—*

*(a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and*

*(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life, the court must impose a sentence of detention for life under that section.*

*(3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.*

*(3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand).*

*(4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c 43) as to the release of prisoners and duration of licences.*

*(5) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law”.*

21. An offender aged 18 or over **may** be sentenced to imprisonment (or detention) for public protection where:

- the offender is convicted of a serious offence (s. 225(1)(a)),
- the court is of the opinion that he or she is a dangerous offender (s. 225(1)(b)),
- a sentence of imprisonment (or custody) for life is either not available or not justified (s.225(3))

**and**

- either the offender has a previous conviction for an offence specified in schedule 15A or the current offence justifies a notional minimum term of at least 2 years.

### **Effect of Imprisonment (or detention) for public protection**

22. Under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, the court must set a minimum term, which the offender will serve in custody before the Parole Board can consider whether to release him or her. This sentence may not be imposed unless the minimum term would be at least 2 years before any reduction for time spent on remand unless, in the case of an adult, the offender has a previous conviction for an offence listed in Schedule 15A.

23. When setting a minimum term, the court should identify the notional determinate sentence, taking into account the seriousness of the offence and associated offences and any appropriate reduction for a plea of guilty. The notional determinate sentence should not be greater than the maximum penalty for the offence. Normally one half of that term should be taken, from which the court usually should deduct the time spent in custody on remand (if any) (Powers of Criminal Courts (Sentencing) Act 2000, s. 82A(3)). Care should be taken when identifying the notional determinate sentence not to incorporate an element for risk, which is already covered by the indeterminate nature of the sentence.

24. Once the offender has served the minimum term, he or she will not be released on licence unless the Parole Board is satisfied that it is no longer necessary for the protection of the public that he or she should be confined (Crime (Sentences) Act 1997, s. 28).
25. The offender will remain on licence for the rest of his or her life unless the licence ceases to have effect. The offender may apply for the licence to cease to have effect ten years after his or her release from custody. The licence will not cease to have effect unless the Parole Board is satisfied that the licence is no longer necessary for the protection of the public (Crime (Sentences) Act 1997, s. 31A).

### **Concurrent Sentences**

26. The court may impose a sentence of imprisonment (or detention) for public protection consecutive to another sentence of imprisonment (whether determinate or not) or vice versa, but normally should not do so. Instead, the court should order the other sentence of imprisonment to be concurrent with the sentence of imprisonment (or detention) for public protection and increase the notional determinate sentence to take account of the overall criminality. There is authority to suggest that, as a result of the increase, the notional determinate sentence may exceed the maximum penalty for the offence for which the sentence of imprisonment (or detention) for public protection is to be imposed (Delucca and Rhoden [2007] EWCA Crim 1455 at [20])
27. When sentencing a dangerous offender to imprisonment (or detention) for public protection for a serious offence and at the same time sentencing the offender for a specified offence other than a serious offence, it will no longer be necessary for a court to impose an extended sentence.

## Extended sentences

28. Section 227 provides:

*“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 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, but*

*(c) the court is not required by section 225(2) to impose a sentence of imprisonment for life.*

*(2) The court may impose on the offender an extended sentence of imprisonment [or, in the case of a person aged at least 18 but under 21, an extended sentence of detention in a young offender institution], if the condition in subsection (2A) or the condition in subsection (2B) is met.*

*(2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.*

*(2B) The condition in this subsection is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.*

*(2C) An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—*

*(a) the appropriate custodial term, and*

*(b) a further period (“the extension period”) for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by him of further specified offences.*

*(3) In subsections (2B) and (2C) “the appropriate custodial term” means a term of imprisonment [or detention in a young offender institution] (not exceeding the maximum term permitted for the offence) which—*

*(a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or*

*(b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.*

*(4) The extension period must not exceed—*

*(a) five years in the case of a specified violent offence, and*

*(b) eight years in the case of a specified sexual offence.*

*(5) The term of an extended sentence of imprisonment [or detention in a young offender institution] passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.*

*(6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection”.*

29. Where the following criteria are met, the court **may** impose an extended sentence on an offender aged 18 or over:

- the offender is convicted of a specified offence (including a specified offence that is a serious offence) (s. 227(1)(a)),
- a sentence of imprisonment (or custody) for life is either not available or not justified, (s.227(1)(c)),
- the court considers that he or she is a dangerous offender (s. 227(1)(b)) and
- either the offender has a previous conviction for an offence specified in schedule 15A or the current offence justifies an appropriate custodial term of at least 4 years (Section 225(3A) and schedule 15A as inserted by schedule 5 to the Criminal Justice and Immigration Act 2008).

## Effect of Extended sentences

30. When passing an extended sentence, the court must fix the custodial term for the offence. This must be for the shortest term commensurate with the seriousness of the offence(s).
31. The appropriate custodial term must be at least 4 years unless the offender has a previous conviction for an offence listed in schedule 15A. Where a court exercises its discretion to impose an extended sentence where there is such a previous conviction and the appropriate custodial term would have been less than 12 months, the court is nonetheless required to set that term at 12 months.
32. Usually the court should declare that the time spent in custody on remand (if any) should count towards the custodial term (s. 240).
33. An offender will be entitled to automatic release after serving one half of the custodial term (s. 247 as amended by s. 25 of the Criminal Justice and Immigration Act 2008).
34. When passing an extended sentence, in addition to fixing the custodial term, the court must fix the extension period. The length of the extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences (ss. 227(2)(b) and 228(2)(b)). The extension period must not exceed five years for a specified violent offence or eight years for a specified sexual offence (ss. 227(4) and 228(4)). Further, the aggregate of the custodial term and the extension period must not exceed the maximum penalty for the offence (ss. 227(5) and 228(5)).
35. The length of the extension period is not intended to reflect the seriousness of the offence; it is designed to provide greater protection for the public from the commission of further offences. Therefore, proportionality with the seriousness of the offence is not a primary factor in determining the length of the extension period. Rather, the objective should be to fix the length of the extension period by reference to what realistically can be achieved within it to secure the offender's rehabilitation and prevent re-offending. In some cases, the court may be able to tailor the extension period to the availability and length of treatment or other programmes. In all cases the court should consider whether the length of the extension period can be justified by the evidence available.

36. The extension period commences at the end of the custodial term, not the point at which the offender has been released on licence during the custodial term.

### **Consecutive Sentences**

37. The court may order an extended sentence to run consecutively to a determinate sentence of imprisonment or another extended sentence, or a determinate sentence to run consecutive to an extended sentence, but wherever possible should not do so. Instead, if possible, the court should order the sentences to be concurrent and increase the custodial term to reflect the overall criminality (C [2007] Crim LR 581).

38. However, as the aggregate of the custodial term and the extension period must not exceed the maximum penalty for the offence (ss. 227(5) and 228(5)), it may not be possible to increase the custodial term sufficiently.

39. If the court is sentencing a dangerous offender for more than one specified offence other than a serious offence and it is not possible to increase the custodial term sufficiently, consecutive extended sentences should be imposed.

40. If the court is imposing an extended sentence and a determinate sentence of imprisonment and it is not possible to increase the custodial term sufficiently, the determinate sentence should be imposed first and the extended sentence consecutive to it, regardless of the order in which the offences were committed: the court need not impose sentences in the order that the offences occurred (C [2007] Crim LR 581).

41. The effect of consecutive sentences which include one or more extended sentences is as follows:

- Extended sentence consecutive to a determinate sentence: the offender serves one half of the determinate sentence and then one half of the custodial term, after which he or she is released on licence for the remainder of the custodial term, the remainder of the determinate term and the extension period (C [2007] Crim LR 581).
- Consecutive extended sentences: the custodial terms should be aggregated and the release date will be after one half of that period. The offender will be released on licence for the

remainder of the custodial terms and the aggregate of the extension periods (C [2007] Crim LR 581).

- Determinate sentence consecutive to an extended sentence: this combination of sentences should not be passed but, if such sentences are imposed, should be treated in the same way as an extended sentence consecutive to a determinate sentence (C [2007] Crim LR 581).

## **Mental health disposals**

42. If the conditions for a hospital order are satisfied, the court may make such an order, even if the criteria for passing a sentence of detention for life, detention for public protection or an extended sentence are met (Mental Health Act 1983, s. 37 (as amended)).

## THE ASSESSMENT OF DANGEROUSNESS

### Dangerousness

43. Section 229 provides as follows:

*“229 The assessment of dangerousness*

*(1) This section applies where—*

*(a) 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) the court in making the assessment referred to in subsection (1)(b)—*

*(a) must take into account all such information as is available to it about the nature and circumstances of the offence,*

*(aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,*

*(b) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (aa) forms part, and*

*(c) may take into account any information about the offender which is before it.*

*(2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to –*

*(a) a finding of guilt in service disciplinary proceedings, and*

*(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 (“conviction” here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction)”.*

## **Dangerousness**

44. When considering whether it may be able to impose a sentence under the dangerous offender provisions, the court must first decide whether there is a significant risk to members of the public of serious harm caused by the offender committing further specified offences (s. 229(1)(b)).
45. There are two parts to this test:
- there must be a **significant risk** of the offender committing further **specified offences** (whether serious or not), and
  - there must be a **significant risk of serious harm** to members of the public being caused by such offences.
46. The court must obtain a pre-sentence report before deciding that the offender is a dangerous offender unless, in the circumstances of the case, the court considers that such a report is unnecessary (s. 156(3) and (4)). Where the offender is under 18, the court cannot conclude that a pre-sentence report is unnecessary unless there are one or more previous pre-sentence reports, the most recent of which is in writing and is before the court (s. 156(5)).
47. The court is guided, but not bound, by the assessment of dangerousness in a pre sentence report. Both counsel should be given the opportunity of addressing the court on the issue of dangerousness, especially if it contemplates differing from the conclusion in such a report.

## **Relevant factors: general**

48. In assessing whether an offender is a dangerous offender, the court:
- **must** take into account all available information about the nature and circumstances of the offence (s. 229(2)(a)),
  - **may** take into account all available information about the nature and circumstances of any other offence(s) of which the offender has been convicted by a court anywhere in the world (s. 229(2)(aa)),

- **may** take into account any information about any pattern of behaviour of which the offence is part (s. 229(2)(b)), and

- **may** take into account any information about the offender (s. 229(2)(c)).

49. Any information that may have been put before the court to prove that the offender was guilty of the offence for which he or she is to be sentenced may be relevant to the assessment of dangerousness, regardless of whether the information actually was before the court prior to conviction, unless that information would have been excluded from a trial (Considine and Davis [2007] 3 All E.R. 621 at [36]).

50. The court should not rely on a disputed fact in finding that the offender is a dangerous offender unless the dispute can be resolved fairly (Johnson [2007] 1 Cr App R (S) 674 at [10(vi)]).

### **Relevant factors: significant risk of further specified offences**

51. There are three groups of factors that are relevant in the assessment of whether there is a significant risk of the offender committing further specified offences:

- the nature and circumstances of the current offence and the offender's 'offending' history, including whether the offending demonstrates any pattern,
- the offender's social and economic circumstances including accommodation, employability, education, associations, relationships and drug or alcohol abuse, and
- the offender's thinking, emotional state and attitude towards offending and supervision

52. Usually the pre-sentence report will contain information regarding these factors, as well as an assessment of the risk of the offender committing further offences. Where possible, this assessment should cover the risk of the offender committing further specified offences.

## **The offender's 'offending history'**

53. The existence (or non-existence) of previous convictions does not determine whether an offender is a dangerous offender; an offender with no previous convictions may be a dangerous offender, whilst an offender with previous convictions may not (Johnson [2007] 1 Cr App R (S) 674).
54. Any previous conviction may be relevant in the assessment of whether an offender is a dangerous offender; offences may be considered whether or not they are specified offences (Johnson [2007] 1 Cr App R (S) 674). For these purposes, a conviction could have occurred anywhere in the world (s.229(2)(aa)). Also included are findings of guilt in service disciplinary proceedings or conviction of a service offence (s. 229(2A)).
55. The offender's offending history includes the facts of any previous offence and the sentence passed, as well as the type of offence. The prosecution should have these details available in court. If the prosecution fails to do so the court may adjourn, although such an adjournment is not obligatory. Alternatively, the defence should be able to explain the facts of the previous offences on the basis of instructions from the offender. If the prosecution is not in a position to challenge those instructions, the court may proceed on the basis of the available information (Lang [2006] 2 Cr App R (S) 3).
56. In assessing whether the offender is a dangerous offender, the court is not prohibited from considering evidence of previous misconduct which would amount to a discrete criminal offence of which he or she has not been convicted, provided any dispute can be resolved fairly. However, a Newton hearing should not be used to circumvent the offender's right to trial for a criminal offence (Considine and Davis [2007] 3 All E.R. 621).
57. Any information which formed the basis for the imposition of an Anti-Social Behaviour Order may be considered in assessing whether the offender is a dangerous offender (Hillman [2006] 2 Cr App R (S) 85).

## The offender's emotional state

58. An offender's inadequacy, suggestibility or vulnerability may mitigate his or her culpability. However, such features may also produce or reinforce a conclusion that he or she is a dangerous offender (Johnson [2007] 1 Cr App R (S) 674).

## Relevant factors: significant risk of serious harm

59. The court should not assume automatically that there is a significant risk of serious harm because the foreseen specified offence is a serious offence; many serious offences can be committed in ways which do not give rise to a significant risk of serious harm (Lang [2006] 2 Cr App R (S) 3).
60. If the foreseen offence is a specified offence other than a serious offence, it is unlikely that there will be a significant risk of serious harm. Repetitive offending at a relatively low level without serious harm does not give rise of itself to a significant risk of serious harm in future (Lang [2006] 2 Cr App R (S) 3).
61. The absence of actual harm caused by the offender in the instant offence or any offence previously committed by the offender does not lead automatically to a conclusion that there is a negligible risk that he or she will cause serious harm in future. In some cases it may be entirely by chance that no harm actually was caused by the offender; in such cases the court should consider the offender's likely response if the circumstances had been different, such as if the victim attempted to defend himself or herself (Johnson [2007] 1 Cr App R (S) 674).
62. The pre-sentence report will contain an assessment of the level of risk of serious harm posed by the offender. Serious harm is defined, for the purposes of a pre-sentence report, as '*an event which is life-threatening and/or traumatic and from which recovery, whether physical or psychological, can be expected to be difficult or impossible*' (National Offender Management Service, OASys Manual v2 with Revised Chapter 8, July 2006.). This differs from the definition of serious harm in s. 224(3) ("*death or serious physical or psychological injury*").

63. The pre-sentence report will assess the risk of serious harm as being low, medium, high or very high. The levels of risk are defined as follows:

- Low: current evidence does not indicate any likelihood of causing serious harm.
- Medium: some risk has been identified but the offender is unlikely to cause serious harm unless circumstances change.
- High: a risk of harm has been identified. The potential event could occur at any time and the impact would be serious.
- Very high: there is an imminent risk of serious harm. The potential event is more likely than not to happen imminently and the impact would be serious.

64. However, a pre-sentence report may assess only the risk of the offender causing serious harm, not whether such harm will be caused by the commission of further specified offences.

## **APPEALING SENTENCE IN RELATION TO DANGEROUSNESS**

### **Reasons**

65. The court should give reasons for finding that an offender is a dangerous offender.

### **Appeals**

66. The Court of Appeal normally will not allow an appeal against the conclusions reached by a court which has identified the relevant principles accurately and considered the relevant facts; the question is whether the sentence was manifestly excessive or wrong in principle. The same applies to a Reference by the Attorney General, where the question is whether the sentence is unduly lenient.

67. The Court of Appeal normally is not assisted by reference to individual cases where there appears to be some similarity with the instant case (Johnson [2007] 1 Cr App R (S) 674).

### **Failure by the Parole Board to consider release on licence**

### **No Grounds for Appeal To Court of Appeal**

68. Where the Parole Board fails to assess properly the risk posed by the offender prior to the end of the minimum term in a sentence of imprisonment (or custody or detention) for life or imprisonment (or detention) for public protection, the Court of Appeal cannot provide a remedy unless the sentence, when imposed, was wrong in principle or manifestly excessive; there may, however, be a remedy in the Administrative Court (Johnson [2007] 1 Cr App R (S) 674).