

# Burglary Offences Definitive Guideline

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# Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 16 January 2012, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

## Structure, ranges and starting points

For the purposes of section 125(3)-(4) Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified three *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in the Sentencing Council’s Assault Definitive Guideline, this guideline adopts an offence based starting point. **Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 15.

# Aggravated burglary

Theft Act 1968 (section 10)

AGGRAVATED

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This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable only on indictment  
Maximum: Life imprisonment

Offence range: 1–13 years' custody

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**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)

Soiling, ransacking or vandalism of property

Victim at home or on the premises (or returns) while offender present

Significant physical or psychological injury or other significant trauma to the victim

Violence used or threatened against victim, particularly involving a weapon

Context of general public disorder

**Factors indicating lesser harm**

No physical or psychological injury or other significant trauma to the victim

No violence used or threatened and a weapon is not produced

**Factors indicating higher culpability**

Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)

A significant degree of planning or organisation

Equipped for burglary (for example, implements carried and/or use of vehicle)

Weapon present on entry

Member of a group or gang

**Factors indicating lower culpability**

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

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Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	10 years' custody	9–13 years' custody
Category 2	6 years' custody	4–9 years' custody
Category 3	2 years' custody	1–4 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

### Factors increasing seriousness

#### Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

#### Other aggravating factors include:

Child at home (or returns home) when offence committed

Offence committed at night

Abuse of power and/or position of trust

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

Victim compelled to leave their home (in particular victims of domestic violence)

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

### Factors reducing seriousness or reflecting personal mitigation

Subordinate role in a group or gang

Injuries caused recklessly

Nothing stolen or only property of very low value to the victim (whether economic, commercial, sentimental or personal)

Offender has made voluntary reparation to the victim

No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Determination, and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

An aggravated burglary is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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# Domestic burglary

## Theft Act 1968 (section 9)

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This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:

- (a) inflict grievous bodily harm on a person, or
- (b) do unlawful damage to a building or anything in it.

Triable either way

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 14 years' custody

Offence range: Community order – 6 years' custody

Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.



**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)

Soiling, ransacking or vandalism of property

Occupier at home (or returns home) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

Context of general public disorder

**Factors indicating lesser harm**

Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)

Limited damage or disturbance to property

**Factors indicating higher culpability**

Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (for example, implements carried and/or use of vehicle)

Member of a group or gang

**Factors indicating lower culpability**

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the defendant is dependant on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	3 years' custody	2–6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order – 26 weeks' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	Offender has made voluntary reparation to the victim
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction*	Subordinate role in a group or gang
Offence committed whilst on bail	No previous convictions <b>or</b> no relevant/recent convictions
<i>Other aggravating factors include:</i>	Remorse
Child at home (or returns home) when offence committed	Good character and/or exemplary conduct
Offence committed at night	Determination, and/or demonstration of steps taken to address addiction or offending behaviour
Gratuitous degradation of the victim	Serious medical conditions requiring urgent, intensive or long-term treatment
Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution	Age and/or lack of maturity where it affects the responsibility of the offender
Victim compelled to leave their home (in particular victims of domestic violence)	Lapse of time since the offence where this is not the fault of the offender
Established evidence of community impact	Mental disorder or learning disability, where not linked to the commission of the offence
Commission of offence whilst under the influence of alcohol or drugs	Sole or primary carer for dependent relatives
Failure to comply with current court orders	
Offence committed whilst on licence	
Offences Taken Into Consideration (TICs)	

\* **Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.**

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20 per cent.

**STEP FIVE****Dangerousness**

A burglary offence under section 9 Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

# Non-domestic burglary

Theft Act 1968 (section 9)

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This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 if it was committed with intent to:

- (a) inflict grievous bodily harm on a person, or
- (b) do unlawful damage to a building or anything in it.

Triable either way

Maximum when tried summarily: Level 5 fine and/or 26 weeks' custody

Maximum when tried on indictment: 10 years' custody

Offence range: Fine – 5 years' custody

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**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

**Factors indicating greater harm**

Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial or personal value)

Soiling, ransacking or vandalism of property

Victim on the premises (or returns) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

Context of general public disorder

**Factors indicating lesser harm**

Nothing stolen or only property of very low value to the victim (whether economic, commercial or personal)

Limited damage or disturbance to property

**Factors indicating higher culpability**

Premises or victim deliberately targeted (to include pharmacy or doctor's surgery and targeting due to vulnerability of victim or hostility based on disability, race, sexual orientation and so forth)

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (for example, implements carried and/or use of vehicle)

Member of a group or gang

**Factors indicating lower culpability**

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the defendant is dependant on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	2 years' custody	1–5 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2 or 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

##### *Other aggravating factors include:*

Offence committed at night, particularly where staff present or likely to be present

Abuse of a position of trust

Gratuitous degradation of the victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

#### Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

No previous convictions **or** no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Determination, and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relatives

**STEP THREE****Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

**STEP FOUR****Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

**STEP FIVE****Dangerousness**

A burglary offence under section 9 of the Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

**STEP SEVEN****Compensation and ancillary orders**

In all cases, courts should consider whether to make compensation and/or other ancillary orders.

**STEP EIGHT****Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE****Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

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# Annex:

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

Fine Band	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
<b>Band A</b>	50% of relevant weekly income	25–75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75–125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125–175% of relevant weekly income

### COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work</li> <li>• Curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks)</li> <li>• Exclusion requirement, without electronic monitoring, for a few months</li> <li>• Prohibited activity requirement</li> <li>• Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Greater number of hours of unpaid work (for example, 80–150 hours)</li> <li>• An activity requirement in the middle range (20–30 days)</li> <li>• Curfew requirement within the middle range (for example, up to 12 hours for two to three months)</li> <li>• Exclusion requirement, lasting in the region of six months</li> <li>• Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours unpaid work</li> <li>• Activity requirement up to the maximum of 60 days</li> <li>• Curfew requirement up to 12 hours per day for four to six months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.



## NOTES

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