

Sentencing Council

Sentencing Council meeting: 17 July 2015
Paper number: SC(15)JUL05 – Theft
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1 ISSUE

1.1 This is the final consideration of the theft guidelines post consultation. The paper is focused on sentence levels.

1.2 The timetable is for the guidelines to be signed off at this meeting, published on 6 October, and come into force in January 2016.

2 RECOMMENDATION

2.1 That the Council:

- agrees the sentence levels in the handling guideline, para 3.1, page 1 onwards;
- agrees the proposed changes to the sentence levels in the general theft guideline, para 3.8, page 3 onwards;
- agrees the new wording regarding short custodial terms in the shop theft guideline, para 3.25 page 8;
- provides any comments on the outline of the response to the consultation paper (Annex G) by email by 24 July, para 3.29, page 9; and
- provides any comments on the style/layout of the guidelines by 24 July, para 3.30, page 9.

3 CONSIDERATION

Handling guideline – Annex A

3.1 At the last Council meeting the culpability factors were discussed and it was decided to move ‘*possession of recently stolen goods*’ from culpability A to B. It was

also agreed at the last meeting to reword the factor in culpability A '*advance knowledge that the stolen goods were to come from a domestic burglary or robbery*' to '*advance knowledge of the primary offence*', as there is a harm factor of '*property stolen from a domestic burglary or robbery*'. In order to assist in the consideration of the sentence ranges, the guidelines were tested against some recent Court of Appeal cases, which were emailed to Council members. This analysis revealed the possession of recently stolen goods was a key factor in all the cases, and that without this factor being in culpability A, the guideline would give lower sentences than the sentences given in the courts for those cases. This was because the offenders in those cases would instead fall into culpability B, which did not contain the level of custodial sentences the courts gave in those cases.

3.2 Accordingly, the office's suggestion following this analysis was to increase the sentence ranges in culpability B to accommodate the levels of custody that offenders were getting in the courts, if this factor remained in culpability B in the new guideline.

3.3 Comments from Council members following this analysis however indicated that the majority preference was instead to retain this key factor in A, to reflect sentencing principles for handling cases as set out in *Webbe*¹. Council members also suggested that this factor is reworded to '*possession of very recently stolen goods from a domestic burglary or a robbery*' – this can be seen at page 2 of **Annex A**.

3.4 If the factor of '*possession of very recently stolen goods from a domestic burglary or robbery*' is to remain in culpability A, the office's suggested increases to the sentence ranges in culpability B, following the recent analysis are no longer necessary, this was only suggested to allow sentences seen in the courts to be given if offenders were not falling into A, but into B. However, a concern regarding placing the factor in A was raised by some Council members, in that it will capture many offenders and place them into A, perhaps more than was originally intended, an offender who buys a stolen watch for £50 from a man in a pub, which has been very recently stolen from a domestic burglary, but who has no other knowledge or involvement in the original offence, for example. Many domestic burglary cases involve goods being stolen and passed on to others within 24 hours, so concern was raised, that particularly within the magistrates courts, placing this factor in A may cause sentence inflation.

¹ R v Webbe and others [2001] EWCA Crim 1217

3.5 As the guideline already contains the additional harm factor of *'property stolen from a domestic burglary or a robbery'*, to avoid the risk of double counting following the rewording of the culpability factor, Council members suggested that this harm factor is reworded to *'property stolen from a domestic burglary or robbery (unless this has already been taken into account in assessing culpability)'*. This can be seen at page 3 of **Annex A**.

3.6 Also within the harm factors for this guideline there was a harm factor of *'items stolen of an economic, sentimental or personal value,'* this factor also appears in the general theft guideline, (and similar wording is also used in the burglary guideline).² It refers to any additional *non financial* harm caused by having certain items stolen, for example a laptop stolen with a student's PHD on, or critical work documents, which have economic value, or having a mobile phone stolen with all someone's telephone numbers stored in the memory, which has personal value. To avoid confusion and to clarify that this factor refers to any additional non financial harm caused by the offence (financial harm already being captured by the guideline) it is suggested that this is reworded to *'items stolen were of substantial (non financial) economic, sentimental or personal value to the owner'*. This can also be seen on page 3 of **Annex A**.

3.7 As set out in the last Council paper, these sentence ranges have been adjusted since the consultation. This is partly to take into account the fact that the assessment of harm within the guideline has changed since the consultation, cases can be moved up a category and sentences increased if there is significant additional harm, so some of the ranges have been slightly lowered to reflect this, to avoid escalation in sentencing due to any harm uplift. The lowering of the ranges also brings the guideline more into proportion with the money laundering guideline. Earlier work of testing the guideline post consultation against Court of Appeal cases had also showed that the ranges needed to be lowered. It is therefore recommended that Council consider and agree the proposed ranges on page 4 of **Annex A**.

Question 1: Does the Council wish to replace the reworded factor 'possession of very recently stolen goods from a domestic burglary or a robbery' into culpability A?

² The harm wording in burglary reads 'theft of/damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)

Question 2: Does the Council agree to the rewording of the harm factor relating to 'property stolen from a domestic burglary or robbery?'

Question 3: Does the Council agree to the rewording of the harm factor relating to items stolen of an economic, sentimental or personal value?

Question 4: Does the Council agree to the sentence levels for handling?

General theft guideline- Annex B

3.8 At the last Council meeting it was decided to further test the general theft guidelines using sentenced cases, with an emphasis on breach of trust and high value car theft cases, to assist in the consideration of the sentencing ranges. Accordingly a number of cases were circulated to Council members post Council.

3.9 In order to provide appropriate sentencing levels for high value sophisticated car theft cases, in light of some of the sentenced cases studied, the office proposed that the ranges within category 1 shown at the last meeting were increased back to the levels used in the consultation, which can be seen at page 4 of **Annex B**.

3.10 Concern was raised at the last meeting regarding adequate sentencing for breach of trust cases involving carers, so following the last Council meeting a number of sentenced breach of trust cases concerning carers were circulated, which demonstrated that the guideline would give the appropriate sentence ranges in those cases. However, following consideration of these cases, some Council members then raised further concerns regarding breach of trust cases involving large sums in theft from employer cases, particularly with reference to *Clarke [1998] 2 Cr App R 137*, which gave indications as to the likely sentences in relation to the values stolen. These concerns raised by Council members were carefully considered, and further testing of a number of sentenced cases was conducted by the office staff.

3.11 This work has indicated that the guideline will provide the appropriate sentence levels for high value employee theft cases. There does not appear to be a risk that the guideline will provide lower sentences than currently given in the courts. However, this work across the general theft guideline has shown that there is a risk of escalation in sentencing with the guideline as drafted, due to the number of factors in culpability A. This issue is further discussed at para 3.21.

3.12 As part of the consideration of the robustness of the sentencing ranges following the last Council meeting, some Council members suggested that the values within the general theft guideline perhaps should be aligned to the values used in the

handling guideline (under £1000, £1,000 to £10,000, £10,000 to £100,000 and £100,000 and above). The Council will recall that these figures were only incorporated into the handling guideline at the last meeting, in order to reflect the principles for sentencing outlined in *Webbe*, and to deal with an issue in that particular guideline to prevent escalation by ensuring only the most serious offenders fell into category one, which has the highest sentences.

3.13 In the consultation version, the values used for both general theft and handling offences were the same. There was a lack of reliable data regarding the values involved in theft offences generally, as so many are sentenced in magistrates courts. The consultation sought to obtain views on the appropriateness or otherwise of the proposed values, and the majority of the responses (over 80 per cent) agreed with the values proposed in the general theft guideline. The general theft guideline is to be used for a number of offences, theft from person, bike theft as well as breach of trust cases, which is why the lower category is for offences under £500.

3.14 However, as part of the re testing of the general theft guideline against sentenced cases referred to in para 3.10, the guidelines was tested using the both the handling figures, and the figures in the SGC guideline for breach of trust cases (less than £2,000, £2,000 to £20,000, £20,000 to £125,000 and £125,000 and above). This analysis showed that using either of the different set of values would be of no substantial benefit to the guideline and would require revision of the sentencing ranges if current sentencing practice is to be maintained. Therefore, it is not recommended that the values in this guideline are altered. Using the values for breach of trust cases from the SGC guideline would not be appropriate in any case, given that this is just one offence within this guideline, and so it may alter sentencing for the rest of the non breach of trust cases. Accordingly, it is recommended that the values used within the general theft and handling guideline remain different.

3.15 Following consideration of the ranges after the last Council meeting, some Council members raised an issue regarding the wording at category 1 within the table at step 2 '*where the value greatly exceeds £50,000, it may be appropriate to go outside the category range*' (this wording is highlighted on page 4 of **Annex A**). Given that the top of the range is 6 years' custody and the statutory maximum is 7 years, this wording has no real effect.

3.16 This wording appeared within the consultation version, within the wording on harm. Due to the changes to the assessment of harm post consultation, this wording was then moved to within category 1 of the sentencing table for shop theft, general

theft, handling and making off without payment. The reason why this wording was included in the consultation version was primarily to deal with high value, sophisticated shop theft cases, considerably above £1,000. Within that context, the wording is appropriate as the top of that sentencing range is 3 years, against a statutory maximum of 7 years. It is also relevant within the handling and making off without payment guidelines as they both have ranges that stop some way before the maximum. However, it was an error to have included this wording in the general theft guideline at consultation, so it is suggested that the wording is removed from that guideline only.

3.17 With the top of the sentence range reaching 6 years and the statutory maximum being 7 years, there is little headroom. *Clarke* contemplated that consecutive sentences could be used to achieve sentences of 10 years or more. (prior to the maximum for theft being reduced from 10 to 7 years custody) when large sums were stolen. Accordingly a suggestion has been made by a Council member to include some new wording directly under the sentencing table at step 2, to read:

'The table above relates to single offences. Where there are multiple offences, consecutive sentences may be appropriate. Please refer to the Offences taken into Consideration and Totality guidelines. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1,000,000, then an aggregate sentence in excess of 7 years maximum may be appropriate.'

3.18 This wording has been included in tracked changes under the table on page 4 of **Annex A**. Alternatively, the wording used throughout the fraud guideline could be inserted into this guideline: *'consecutive sentences for multiple offences may be appropriate where large sums are involved'*.

3.19 It may also be helpful to note the reason why the financial starting points no longer appear within the text. As discussed at the April Council meeting, one of the findings of the road testing of the guidelines showed that the wording around adjusting the starting point for value caused confusion to sentencers, and/or was ignored. In the second round of road testing the wording regarding how to adjust the starting point based on value was clarified and given more prominence within the text, but the new wording still caused confusion. Given this, and the over-riding concern that the dual method of assessing harm consulted on was a factor in the inconsistency in sentencing, one integrated method of assessing harm was created, which meant the reference to starting points were removed. At the April meeting the

use of additional aggravating and mitigating factors (*higher value within category range/ lower value within category range*) to differentiate between values in the categories was suggested, but the Council felt this was unnecessary. This option could be reconsidered if the Council wished as a way to differentiate between values within the categories.

3.20 The Council may recall that the findings of the road testing and transcript exercises discussed at earlier Council meetings revealed that the consultation version of the guideline was having an inflationary effect for breach of trust cases, causing an average increase in sentencing of around 7 months. As a result of the earlier research work, two culpability A factors were removed, and one added to B '*Breach of degree of trust or responsibility*', to differentiate between different levels of breaches of trust, otherwise all breaches of trust would tend to fall into culpability A.

3.21 Our recent analysis has suggested that the guideline as currently drafted is still liable to have an inflationary effect in some cases, as discussed above in paragraph 3.11. It is recommended that a further two factors currently in culpability A are removed. The first is '*Offence conducted over a sustained period of time*'. The recent analysis of cases showed that where this factor applied but no other culpability A factors were present, sentences would be higher under the draft guideline than currently sentenced. It is therefore suggested that this factor is moved to culpability B, or is added as an aggravating factor. Serious, high value breach of trust cases (both employees/carer type cases) will still fall into culpability A due to the presence of other culpability A factors, namely '*breach of a high degree of trust or responsibility*', '*sophisticated nature of offence/significant planning*' or '*deliberately targeting victim on basis of vulnerability*'.

3.22 Also, it is suggested that '*large number or persons affected by the offence*' is removed from culpability A as the presence of this factor could lead to double counting. One of the reasons this factor was included was to reflect metal thefts, however the harm factors of '*damage to heritage assets*' and '*disruption caused to infrastructure*' adequately capture this. This factor does not tend to be a significant factor in breach of trust cases.

3.23 Removing these two factors from culpability A will still allow the most serious cases to be captured within culpability A, but will help to address the risk of escalation of sentencing within this guideline, making the culpability factors more balanced, (as the more culpability factors there are, the more likely it is that offenders will fall into that category). In addition, there are a number of aggravating factors that

could be used if appropriate to increase a sentence, including outside the category range.

3.24 Further to the adjustments to the sentence ranges described in paragraph 3.9, it is also recommended that the top of the ranges in 1C and 2B are increased to one years' custody in both, in order to meet the bottom of the range in the next category of culpability (1B and 2A respectively). By doing so this provides transition between the categories which is important due to the blurring of levels of culpability for some offenders, so offenders may sit on the cusp of culpability between the two boxes.

Question 5: Does the Council wish to add either the new wording proposed regarding consecutive sentences or the wording from the fraud guideline into general theft?

Question 6: Does the Council agree to remove the wording regarding moving outside the range in category 1 from the box in the table?

Question 7: Does the Council wish to add aggravating or mitigating factors to reflect different financial values within the ranges?

Question 8: Does the Council agree to remove the factor of 'large number of persons affected by the offence' and 'offence conducted over a sustained period of time' from culpability A? If so, does the Council wish to add them as aggravating factors instead?

Question 9- Does the Council agree to the sentence ranges for general theft?

Shop theft- Annex C

3.25 At the last meeting it was agreed to include some additional wording regarding short custodial sentences within the text relating to relevant and recent convictions in the aggravating factors. The suggested wording can be seen at page 4 of **Annex C**, and reads: '*Any custodial sentence should be for the shortest possible term*'. This reflects the wording in the statute³ :

'...The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.'

³³ Criminal Justice Act 2003 c. 44 Part 12 Chapter One 153 (2)

Question 10: Does the Council agree to the proposed wording regarding short custodial sentences?

3.26 The Council indicated that they were content with the sentence levels for shop theft at the last meeting, therefore no amendments have been made.

Question 11: Does the Council agree to retain the sentence levels at page 3 of Annex C?

Going equipped – Annex D

3.27 At the last meeting it was agreed to remove the word ‘*Circumstances suggest*’ from the fifth factor in culpability A, so that the factor now reads ‘*Offender equipped for robbery or domestic burglary*’. This can be seen at page 2 of **Annex D**. At the meeting the Council also decided to change some of the sentences in greater harm, culpability A and B, these have been changed and can be seen in track changes on page 3 of **Annex D**.

Question 12- Does the Council agree to retain the sentence levels at Annex D?

Abstracting Electricity (Annex E) and Making off without Payment (Annex F)

3.28 At the last meeting the Council had no comments on the sentence ranges within these two guidelines, therefore no amendments have been made.

Question 13 – Does the Council agree to retain the sentence levels at annexes E and F?

Proposed outline of the response to the consultation paper – Annex G

3.29 A proposed outline of the response to the consultation paper is attached at **Annex G**. Any comments on the outline should be provided by email by the **24th July**. Once the paper has been drafted it will be circulated around all Council members for comments in the week commencing **3rd August**. The paper and guidelines will need to be finalised 6 weeks before publication, by the **25th August**, in order for the proof reading, printing processes and so on to take place.

Style/layout of the definitive guideline

3.30 All the drafting suggestions made at the last meeting have been made, such as ensuring that there is consistency throughout with headings, and with placement of key text (the wording regarding how to assess culpability had previously appeared in different places, and so on). Another suggestion was to separate the sections on culpability and harm, so that harm appears on the third page of the guidelines, rather than immediately under culpability on page 2, in order to give the harm wording

prominence. This has been done and can be seen throughout the guidelines (except for shop theft) at **Annexes A-F**. For some guidelines the sentencing tables sit underneath the harm section on the third page, for others it will not fit on one page and it appears on page 4.

3.31 Previously the emphasis had been to make the guidelines as streamlined and as short as possible, following feedback during the consultation that the guidelines were too lengthy, and that sentencers wanted it to run to as few pages as possible. This more concise way of presenting the text can still be seen in the shop theft guideline at **Annex C**, which has harm and culpability on one page. This aim of conciseness should not be at the expense of making the guideline difficult to use because the information is crammed together in a short space, however. It would be helpful if the Council could indicate their preference to having harm on a separate page or not (the final exact layout of the guidelines will be dependant on the technical templates used by the printers however.) Any further style or drafting comments on the guidelines should be made via email before the **24th July**.

3.32 At the last meeting the reference to 13 weeks custody throughout the theft guidelines was discussed, given that 12 weeks is used elsewhere within recent guidelines (fraud and assault). It was agreed that all references to 13 weeks would be altered to 12 weeks, and this has been done throughout the guidelines.

4 IMPACT/RISKS

4.1 There were clear risks in producing a new theft guideline, due to the very high volumes of theft offences sentenced in the courts, and the potential impact any change to sentencing practice for these offences could have. During the work on the draft guideline it became apparent that there were inconsistencies within current sentencing practice for theft offences, particularly in relation to shop theft. The aim of the work has been to focus on consistency of approach to sentencing theft offences, not consistency of outcome. Care has been taken to avoid escalation of sentencing within the new guideline, for example by carefully controlling the effects of taking into account any additional harm to victims other than the financial harm of offences within the guidelines.

4.2 The resource impact published alongside the consultation stated that it was anticipated that there would be no effect on custodial sentence lengths, or numbers of community orders, and as a result no significant impact on prison or probation services was anticipated. A new resource assessment will be produced alongside the definitive guideline when published which will reflect the sentence levels in this

guideline. Therefore, if for example, the Council wished to change current sentencing practice for breach of trust cases by making sentences more severe, the impact of this on correctional resources would need to be estimated and the resource assessment would need to be updated.

4.3 We are also currently commissioning some work to support an evaluation of the theft guideline and will start collecting data for this from the courts in the autumn. This will enable us to identify if there are any potential impacts of the guideline on sentencing outcomes; however, it should be noted that findings from the evaluation will not be available until later in 2016 due to the need to also collect data from courts after the guideline has been in force for a period of time.

4.4 The communications team will prepare a plan to handle the launch of this guideline in October, taking into consideration likely areas of interest for the media and other stakeholders for example, how prolific offenders are dealt with by the courts. We will consider the likely reaction of stakeholder groups such as retailers and will seek quotes from those who will support the guidelines' publication.

Question 14 - Are the Council content that the impact and risks have been adequately considered and mitigated against? If not, are there any other actions or considerations that should be undertaken prior to publication?

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Annex A

Handling stolen goods

Theft Act 1968 (section 22)

Triable either way

Maximum: 14 years' custody

Offence range: Discharge - 8 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> ▪ A leading role where offending is part of a group activity ▪ Involvement of others through coercion, intimidation or exploitation ▪ Abuse of position of power or trust or responsibility ▪ Professional and sophisticated offence ▪ Advance knowledge of the primary offence ▪ Possession of very recently stolen goods from a domestic burglary or robbery 	
B - Medium culpability:	
<ul style="list-style-type: none"> ▪ Other cases where characteristics for categories A or C are not present ▪ A significant role where offending is part of a group activity ▪ Offender acquires goods for resale ▪ Some degree of planning involved 	
C - Lesser culpability:	
<ul style="list-style-type: none"> ▪ Performed limited function under direction ▪ Involved through coercion, intimidation or exploitation ▪ Little or no planning/sophistication ▪ Limited awareness or understanding of offence ▪ Goods acquired for offender's own personal use 	

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 <#>Closeness in time or place to the underlying offence ¶
 <#>The provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property¶
- Deleted:** Advance knowledge that the stolen goods were to come from a domestic burglary or a robbery¶
 Possession of recently stolen goods
- Deleted:** <#>Possession of recently stolen goods¶
- Deleted:** <#>Offender makes self available to other criminals as willing to handle the proceeds of crime¶
 <#>Offences are committed by offender as part of commercial activity¶
 <#>¶
 <#>Other cases where characteristics for categories A or C are not present¶

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

The handling of stolen goods is ancillary to other offences, often to a serious underlying offence

Harm is assessed by reference to the **financial value** (to the loser) of the stolen goods **and any significant additional harm** associated with the underlying offence on the victim or others – examples of additional harm may include but are not limited to:

Property stolen from a domestic burglary or a robbery [\(unless this has already been taken into account in assessing culpability\)](#)

Items stolen [were](#) of [substantial \(non financial\) value](#), economic, sentimental or personal [to the owner](#)

Metal theft causing disruption to infrastructure

Damage to heritage assets

Items stolen which may endanger life

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HARM	
Category 1	Very high value goods stolen (above £100,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£10,000 to £100,000) and no significant additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£1000 to £10,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £1000) and Little or no significant additional harm to the victim or others

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<p>Category 1 Where the value greatly exceeds £100,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where very high value <u>stolen</u> goods are <u>handled</u>.</p>	<p>Starting point 5 years' custody</p> <p>Category range 3-8 years' custody</p>	<p>Starting point 2 years' 6 months custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 12 weeks custody-1 year 6 months custody</p>
<p>Category 2</p>	<p>Starting point 3 years' custody</p> <p>Category range 1 year 6 months -4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range 26 weeks-1 year 6 months custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order-26 weeks custody</p>
<p>Category 3</p>	<p>Starting point 1 years' custody</p> <p>Category range 36 weeks'-2 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order-36 weeks custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine –Low level community order</p>
<p>Category 4</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 36 weeks custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine –High level community order</p>	<p>Starting point Band B fine</p> <p>Category range Discharge –Band C fine</p>

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Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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.

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:

- Seriousness of the underlying offence, for example, armed robbery
- Deliberate destruction, disposal or defacing of stolen property
- Damage to third party for example, loss of employment to legitimate employees
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

General Theft

Including:

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of pedal bicycles

and all other section 1 Theft Act 1968 offences, excluding theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge - 6 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Breach of a high degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Theft involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

Deleted: Significant

Deleted: <#>Offence conducted over sustained period of time¶
<#>Large number of persons affected by the offence¶

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Offence conducted over sustained period of time
- Breach of degree of trust or responsibility
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of significant additional harm may include but are not limited to: items stolen of an economic, sentimental or personal value; high level of inconvenience caused to the victim or others; consequential financial harm to victim or others; emotional distress, fear/loss of confidence caused by the crime; risk of or actual injury to persons or damage to property; impact of theft on a business; damage to heritage assets; disruption caused to infrastructure

Intended loss should be used where actual loss has been prevented.

HARM

Category 1	Very high value goods stolen (above £50,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£5,000 to £50,000) and no additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£500 to £5,000) and no additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £500) and Little or no significant additional harm to the victim or others

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £50,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm factors where very high value goods are stolen.	Starting point 4 years' custody Category range 3 - 6 years' custody	Starting point 2 years 6 months' custody Category range 1 - 4 years' custody	Starting point 36 weeks' custody Category range High level community order – 1 year's custody
Category 2	Starting point 2 years' custody Category range 1 - 3 years' custody	Starting point 36 weeks' custody Category range 12 weeks' - 1 years' custody	Starting point Medium level community order Category range Low level community order - 12 weeks' custody
Category 3	Starting point 36 weeks' custody Category range 12 weeks' - 1 year 6 months' custody	Starting point Medium level community order Category range Low level community order - 12 weeks' custody	Starting point Band C fine Category range Band B fine – Low level community order
Category 4	Starting point High level community order Category range Medium level community order – 12 weeks' custody	Starting point Low level community order Category range Band C fine – Medium level community order	Starting point Band B fine Category range Discharge – Band C fine

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The above table refers to single offences. Where there are multiple offences, consecutive sentences may be appropriate; please refer to the Offences Taken Into Consideration and Totality Definitive Guideline. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1 million, then an aggregate sentence in excess of 7 years may be appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

- Deleted: Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.¶

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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 sentence arrived at so far.

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:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Offender motivated by intention to cause harm or out of revenge
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others
- Established evidence of community/wider impact (for issues other than prevalence)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

(Except for an offence of low-value shoplifting which is treated as a summary only offence in accordance with section 22A of the Magistrates' Courts Act 1980 where the maximum is 6 months' custody.)

Offence range: Discharge – 3 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Significant use or threat of force
- Offender subject to a banning order from the relevant store
- Child accompanying offender is actively used to **facilitate** the offence (not merely present when offence is committed)

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Limited use or threat of force
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Mental disorder/learning disability where linked to commission of the offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of additional harm may include but are not limited to: emotional distress, damage to property, effect on business, a greater impact on the victim due to the size of their business, or a particularly vulnerable victim.

Intended loss should be used where actual loss has been prevented.

HARM

Category 1	High value goods stolen (above £1,000) or Medium value with significant additional harm to the victim or others
Category 2	Medium value goods stolen (£200 to £1,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 3	Low value goods stolen (up to £200) and Little or no significant additional harm to the victim or others

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.			
The starting point applies to all offenders irrespective of plea or previous convictions.			
Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where high value goods are stolen	Starting point 26 weeks' custody Category range 12 weeks' - 3 years' custody	Starting point Medium level community order Category range Low level community order – 12 weeks' custody	Starting point Band C fine Category range Band B fine - Low level community order
Category 2	Starting point 12 weeks' custody Category range High level community order - 26 weeks' custody	Starting point Low level community order Category range Band C fine – Medium level community order	Starting point Band B fine Category range Band A fine – Band C fine
Category 3	Starting point High level community order Category range Low level community order-12 weeks' custody	Starting point Band C fine Category range Band B fine - Low level community order	Starting point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

Previous diversionary work with an offender does not preclude the court from considering this type of sentencing option again if appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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 sentence arrived at so far.

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.
- [Relevant recent convictions may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence;](#)
- [Any custodial sentence should be for the shortest possible term](#)
- Offence committed whilst on bail

Other aggravating factors:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on, characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Offender motivated by intention to seek revenge
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact
- Prevalence - see below

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not linked to the commission of the offence)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Offender experiencing **exceptional** financial hardship

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Going equipped for theft or burglary

Theft Act 1968 (section 25)

Triable either way

Maximum: 3 years' custody

Offence range: Discharge - 18 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant steps taken to conceal identity and/or avoid detection
- Sophisticated nature of offence/significant planning
- Offender equipped for robbery or domestic burglary

B - Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence
- Little or no planning

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

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HARM

This guideline refers to preparatory offences where no theft has been committed. The level of harm is determined by weighing up all the factors of the case to determine the harm that would be caused if the item(s) were used to commit a substantive offence.

Greater harm:

Possession of item(s) which have the potential to facilitate an offence affecting a large number of victims

Possession of item(s) which have the potential to facilitate an offence involving high value items

Lesser harm

All other cases.

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	Starting point 1 years' custody	Starting point 18 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' -1 year 6 months custody	Category range High level community order – 36 weeks custody	Category range Low level community order – High level community order
Lesser	Starting point 26 weeks' custody	Starting point High level community order	Starting point Band C fine
	Category range 12 weeks custody- 36 weeks custody	Category range Medium level community order – 12 weeks custody	Category range Discharge – Medium level community order

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Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is 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.

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

- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders, such as a deprivation order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Abstracting electricity

Theft Act 1968 (section 13)

Triable either way

Maximum: 5 years' custody

Offence range: Discharge -1 year's custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Abuse of position of power or trust or responsibility
- Commission of offence in association with or to further criminal activity

B : Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

HARM

The level of harm is assessed by weighing up all the factors of the case to determine the level of harm caused.

Greater harm:

A significant risk of, or actual injury to persons or damage to property.

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used.

Lesser harm:

All other cases.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order- 1 year's custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – 12 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine –Low level community order</p>
Lesser	<p>Starting point High level community order</p> <p>Category range Medium level community order- 12 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine – Medium level community order</p>	<p>Starting point Band A fine</p> <p>Category range Discharge –Band C fine</p>

The court should then consider further adjustment for any aggravating or mitigating factors. 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.

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:

- Electricity extracted from another person's property
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Annex F

Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge- 9 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Offence involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

B - Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present
- Some degree of planning involved

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim or others – examples of additional harm may include **but are not limited to**: a high level of inconvenience caused to the victim, emotional distress, fear/loss of confidence caused by crime, a greater impact on the victim due to the size or type of their business.

HARM

Category 1	Goods or services obtained above £200 or goods/services up to £200 with significant additional harm to the victim or others
Category 2	Goods or services obtained up to £200 and Little or no significant additional harm to the victim or others

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200	Starting point 12 weeks custody Category range High level community order -9 months custody	Starting point Low level community order Category range Band C fine -High level community order	Starting point Band B fine Category range Band A fine- Low level community order
Category 2	Starting Point Medium level community order Category range Low level community order-12 weeks custody	Starting Point Band C fine Category range Band B fine – Low level community order	Starting Point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is 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.

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:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Failure to comply with current orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

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**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 overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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ANNEX G

PROPOSED STRUCTURE OF RESPONSE TO CONSULTATION ON THEFT OFFENCES

FOREWORD

To be agreed with Chairman

INTRODUCTION

Outline of why a new definitive theft guideline is being produced, to: provide updated guidance for a very high volume offence within one document; the existing theft SGC guideline contains the out of date burglary guideline; and to provide guidance for offences for which currently no guidance exists such as bike/car theft.

- Scope of offences/what is covered by the offences and rationale for groupings
- Applicability of guidelines
- Research
- How consultation was run (online/hardcopy/events)

SUMMARY OF RESPONSES

- Who responded and how
- General themes – e.g. positive responses to the proposed increased focus on the additional impact of thefts on victims other than just the financial value of the item
- A revised approach to the assessment of harm through the guidelines (merging of harm A and B) in order to make the process simpler, in light of concerns raised that the process was too complex
- Rewording of some of the culpability factors across the guidelines which responses showed had caused confusion
- Responses to key questions for each guideline, on culpability, harm, step two factors, sentence levels
- Rationale of approach taken to definitive guideline i.e. where position maintained despite requests for the proposals to be re considered (e.g prevalence wording)
- and where proposals suggested during the consultation were adopted (e.g additional wording now included regarding alcohol and mental health treatment orders)
- Explanation for the new placement of, and revised wording, regarding previous convictions within shop theft, and the removal of the wording within the rest of the guidelines from the consultation version
- A focus on avoiding escalation in sentencing, explanation regarding the new wording in shop theft to remind courts that all sentencing options are open, even if previous diversionary work with offenders before court had already been undertaken.

ANNEX A

Summary of consultation questions

ANNEX B

List of respondents

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