

## **Criminal damage (other than by fire) value over £5,000**

### **Criminal Damage Act 1971, s.1 (1)**

**Triable either way**

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

Offence range: Discharge – 4 years' custody

## **Racially or religiously aggravated criminal damage**

### **Crime and Disorder Act 1998, s.30**

**Triable either way**

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 14 years

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**Note:**

Where an offence of criminal damage is added to the indictment at the Crown Court the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value is under £5,000 regard should also be had to the under £5,000 guideline.

**Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline**

## STEP ONE

### Determining the offence category

The court should determine the offence category with reference only to the factors 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. **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.**

**Culpability** demonstrated by one or more of the following:

#### A - High culpability:

- High degree of planning or premeditation
- Revenge attack
- Intention to cause very serious damage to property
- Intention to create a high risk of injury to persons

#### B - Medium culpability:

- Some planning
- Recklessness as to whether very serious damage caused to property
- Recklessness as to whether serious injury caused to persons
- Other cases that fall between categories A and C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors described in A and C

#### C - Lesser culpability:

- Little or no planning; offence committed on impulse
- Recklessness as to whether some damage to property caused
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Involved through coercion, intimidation or exploitation

## Harm

**The level of harm is assessed by weighing up all the factors of the case.**

#### Category 1

- Serious distress caused
- Serious consequential economic or social impact of offence
- High value of damage

#### Category 2

- Harm that falls between categories 1 and 3

#### Category 3

- No or minimal distress caused
- Low value damage

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

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

Where the offender is dependent on or has a propensity to misuse drugs or alcohol, which **is linked to the offending**, 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.

**Maximum when tried on indictment: 10 years' custody (basic offence)**

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 1 year 6 months' custody</p> <p><b>Category range</b> 6 months to 4 years' custody</p>	<p><b>Starting point</b> 6 months' custody</p> <p><b>Category range</b> High level Community order to 1 year 6 months' custody</p>	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium Level community order – <u>9 months</u> <del>1-year's</del> custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 6 months' custody</p> <p><b>Category range</b> High level Community order- 1 year 6 months' custody</p>	<p><b>Starting point</b> High level community order</p> <p><b>Category range</b> Medium level community order- <u>9 months</u> <del>1-year's</del> custody</p>	<p><b>Starting point</b> Low level Community order</p> <p><b>Category range</b> Band C fine -High level Community order</p>
<b>Category 3</b>	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium level Community order- <u>9 months</u> <del>1-year's</del> custody</p>	<p><b>Starting point</b> Low level Community order</p> <p><b>Category range</b> Band C fine- High level Community order</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category range</b> Discharge- Low level Community order</p>

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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:**

- A1.** 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
- A2.** Offence committed whilst on bail
- A3.** Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity.

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

- A4.** Damaged items of great value to the victim (whether economic, commercial, sentimental or personal value)
- A5.** Commission of offence whilst under the influence of alcohol or drugs
- A6.** Victim is particularly vulnerable
- A7.** Offence committed in a domestic abuse context
- A8.** Damage caused to heritage and/or cultural assets
- A9.** Significant impact on emergency services or resources
- A10.** Established evidence of community/wider impact
- A11.** Failure to comply with current court orders
- A12.** Offence committed on licence or post sentence supervision
- A13.** Offences taken into consideration

### **Factors reducing seriousness or reflecting personal mitigation**

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Remorse
- M3.** Good character and/or exemplary conduct
- M4.** Serious medical condition requiring urgent, intensive or long-term treatment
- M5.** Age and/or lack of maturity
- M6.** Mental disorder or learning disability (where not taken into account at step one)
- M7.** Sole or primary carer for dependent relatives

**M8.** Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

**RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY**

Having determined the category of the basic offence to identify the sentence of a non aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

**Maximum sentence for the aggravated offence on indictment is 14 years’ custody (maximum when tried summarily is a level 5 fine and/or 6 months)**

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation was the predominant motivation for the offence.</li> <li>▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.</li> <li>▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.</li> </ul>	<p>Increase the length of custodial sentence if already considered for the basic offence <b>or</b> consider a custodial sentence, if not already considered for the basic offence.</p>

MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Racial or religious aggravation formed a significant proportion of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (<b>over and above the distress already considered at step one</b>).</li> <li>▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.</li> </ul>	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (<b>over and above the distress already considered at step one</b>).</li> </ul>	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

**The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.**

**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 in accordance with the *Totality* guideline.

**STEP SIX****Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

***Compensation order***

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

**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 (tagged curfew)**

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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