

Sentencing Council

Sentencing Council meeting: 5 April 2019
Paper number: SC(19)APR03 – Arson & Criminal Damage
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1 ISSUE

1.1 This is the final meeting to discuss and agree the guideline ahead of publication. The definitive guideline will be published in July and come into force in October.

2 RECOMMENDATION

That the Council:

- Considers the proposed changes to sentence levels within the threat to destroy/damage property and criminal damage over £5000 offences
- Reviews and confirms that it is content with the guidance for these offences ahead of publication of the definitive guideline

3 CONSIDERATION

Sentence levels

3.1 At the last meeting the sentence levels across the offences were discussed. Following the discussion, only one change was made, to increase the top of the range in A3 in the arson to endanger life sentence range, from 3 to 4 years (**Annex A**).

3.2 The Council discussed comparisons between the criminal damage over £5000 offence (**Annex B**) and the threat to destroy or damage property offence (**Annex C**), given that they both have a statutory maximum of 10 years, but as currently drafted, have some differences in the sentence ranges and starting points.

A number of the ranges are the same between the two offences, but in places, the ranges within the threat offence are higher. However, the top of the range in C1, B2 and A3 in the threats offence, is slightly lower than the range in the criminal damage offence.

3.3 The discussion last month both considered whether the individual ranges within the two guidelines were correct, and, whether they were correct in comparison between one another, for example, should the top of the range in the criminal damage offence in A1, four years, match the top of the range in A1 in the threats offences, which is five years. The Council discussed how serious the threat to destroy or damage property is, particularly at the most serious end, an offender threatening to burn or bomb a victim's house for example. However, an equally serious offence could be a criminal damage case in which extensive damage was intended, carefully planned and *actually* (as opposed to threatened) caused.

3.4 On balance, the Council decided not to make any changes to the sentence ranges but asked that officials check the ranges again, given the anomaly of the lower ranges in one place described above. Accordingly, the ranges in both guidelines have been reconsidered. Looking at current sentencing data, attached at **Annex D** this shows that when comparing the two offences, sentencing is actually slightly more severe for the criminal damage offence, than it is for the threats offence, as shown below. This contrasts with the way the ranges are currently drafted, in which they are either the same, or more severe with the threats offence.

Threats to destroy/damage property, 2017		Criminal Damage over £5000, 2017	
Magistrates Court	401 (86%)	Magistrates Court	205 (72%)
Crown Court	66 (14%)	Crown Court	81 (28%)
Total	467 (100%)	Total	286 (100%)
Conditional Discharge	21%	Conditional Discharge	14%
Fine	16%	Fine	11%
Community order	24%	Community order	27%
Custody (immediate and suspended combined)	34%	Custody (immediate and suspended combined)	43%
Mean sentence (estimated pre guilty plea)	8 months	Mean sentence (estimated pre guilty plea)	1 year
Median sentence (estimated pre guilty plea)	3 months	Median sentence (estimated pre guilty plea)	6 months
Percentage of offenders receiving a pre guilty plea sentence 9 months or less	80%	Percentage of offenders receiving a pre guilty plea sentence 9 months or less	63%

3.5 In addition, as discussed in last month's paper, the resentencing of threat to destroy/damage cases using Crown Court transcripts did show that for some, the draft guideline may give slightly higher sentences than were given in the actual case. This is for some cases falling into A1, which tends to be due to the presence of the high culpability factor '*threat to burn or bomb property*' which, combined with serious distress caused to the victim, leads to cases falling into A1. It is suggested that the culpability factor is right, it captures the most serious offending behaviour by offenders, but that there is an argument for lowering the bottom of the range, currently at one year, to 6 months. It should be noted however that the sample of cases studied was small, as the majority of cases are sentenced in the magistrates' court.

3.6 Taking all of this evidence into account, it is recommended that there are some adjustments to the ranges. Sentencing data shows that between the two offences, criminal damage over £5000 offences are sentenced more severely than the threat offences, and the resentencing of cases showed that the ranges in the threat offence could give rise to slightly higher sentencing. Firstly, to deal with the risk of higher sentences under the guideline discussed in the preceding paragraph, it is recommended that the starting point and range in A1 for the threat offence are reduced so that they are the same as in criminal damage, as shown in track changes on page three of **Annex C**.

Question 1: Does the Council agree to reduce the sentence levels within A1 in the threat offence?

3.7 Secondly, it is recommended that the anomaly of the ranges in C1, B2 and A3 is fixed by bringing the top of the range in criminal damage down from one year to nine months, so that it is the same as that in the threat offence. It is not recommended that the anomaly is fixed by doing things the other way around, i.e. bringing the range up in the threats guideline to match the one in criminal damage, as there is already a slight risk of sentence inflation with the threats guideline.

Question 2: Does the Council agree to reduce the top of the ranges in C1, B2 and A3 in criminal damage from one year to 9 months?

3.8 This will still leave a number of starting points and ranges within the threat offence as slightly more severe than within criminal damage, in B1, A2, C2, B3 and C3. Given what current sentencing data shows, there is no evidence to support the ranges in the threats offence being higher than in criminal damage, so the recommendation is to reduce the ranges in the threats offence to match those in

criminal damage. These are quite small reductions, e.g reducing from a medium to a low level community order in C3, C2 and B3, from nine months to six months custody, and from six months custody to a high level community order in B1 and A2.

3.9 If the Council feels that, notwithstanding the sentencing data, the threat offence is more serious than the criminal damage one, then the ranges in threats could be left unaltered, so that the ranges are either the same within both guidelines, or slightly more severe in the threats offence. If the Council decided to do this however, there would need to be explicit stated rationale to justify the decision to change sentencing practice, as current sentencing practice does not show that sentencing is more severe for threats compared to criminal damage.

Question 3: Does the Council agree to reduce the ranges in the threats guideline to match those in the criminal damage guideline, so that both guidelines are the same?

Question 4: If the Council does not agree with the recommendation, what is the rationale for changing sentencing practice?

Changes to the guidelines post consultation

3.10 There have been relatively few changes to the guidelines post consultation. As previous papers have noted, the response to the draft guidelines was generally very positive. A summary of the changes is set out below.

3.11 In the 'simple', aggravated arson and threat to destroy/damage guideline, the wording regarding consideration of reports has been amended and moved above step one of the guidelines. It can be seen on page two of **Annexes A, C and E**, and is shown below. It was previously underneath the sentence table.

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

3.12 New wording has also been included across the guidelines above the sentence table, regarding consideration of drug, alcohol or mental health treatment requirements as alternatives to a short or moderate custodial sentence. This can be seen on page three across the guidelines, and is shown below:

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.'

'Also, the qualifying wording that was included for the lesser culpability factor of mental disorder or learning disability, which read '*reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice*' has been removed across all the guidelines.

3.13 In the two criminal damage offences (**Annexes B and F**) there has been additional wording on the front of the guidelines, to provide guidance on the point raised by the Criminal Bar Association. This regarded cases where there has been no sending for trial on a charge of criminal damage, and the indictment is amended to add a count of criminal damage, in which case the maximum is 10 years custody even if the amount is less than £5000. The wording on the front of the over £5000 guideline says that in this scenario, regard should also be had to the under £5000 guideline. The wording on the front of the under £5000 guideline says that in this scenario the over £5000 guideline should be used, but that regard should also be had to the under £5000 guideline.

3.14 Minor changes to the guidance for the racially or religiously aggravated version of these offences was also made, a note to remind sentencers not to double count factors already considered at harm at step one, and emboldening of the words relating to distress '*over and above the distress already considered at step one*'. This can be seen on page five of both guidelines.

Question 5: Is the Council content with the summary of changes noted so far?

Changes to culpability

3.15 In arson and both criminal damage offences, references to recklessness have been removed from high culpability, and moved to medium culpability, there are only now references to 'intent' in high culpability. There are now additional factors/guidance in medium culpability, as shown below, and a new lesser culpability factor of '*recklessness as to whether some damage to property caused*.' These changes can be seen on page one of **Annexes B, E and F**.

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

3.16 In the threats to destroy/damage property offence (page one of **Annex C**), there is an additional high culpability factor of '*Offence committed to intimidate, coerce or control*', an additional lesser culpability factor of '*involved through coercion, intimidation or exploitation*' and some additional guidance in medium culpability, as shown below.

B - Medium culpability:

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

Changes to harm

3.17 In both criminal damage offences, (page two of **Annexes B and F**), one of the factors in category one harm has been amended to remove the reference to great sentimental value, so the factor just reads '*high value of damage*'. There is now instead an aggravating factor (A4) of '*damaged items of great value to the victim (whether economic, commercial, sentimental or personal value*', on page four of both guidelines. There is also an additional category one harm factor in the threats to destroy/damage offence, of '*high level of consequential financial harm and inconvenience caused to the victim*', page two of **Annex C**.

Question 6: Is the Council content with the summary of changes to harm and culpability?

Sentence levels

3.18 Subject to the Council's decisions on the sentence ranges in the criminal damage and threats offence discussed earlier in the paper, there has been only one change to the sentence ranges post consultation, to increase the top of the category in A3, in the sentence range for arson with intent. The Council did decide at the last meeting to add some additional wording in the arson guideline, stating that there could be an upward or downward adjustment from the starting point, including

outside the category range, for aggravating and mitigating factors. This wording in guidelines does not usually specify going outside the category range. This can be seen on page four of **Annex E**. This does mean that the guidance for upward or downwards adjustment for aggravating/mitigating factors will be different for this offence, compared to the other four offences.

Question 7: Is the Council content that the wording regarding going outside the category range is different in the arson guideline, compared to within the other four?

Aggravating and mitigating factors

3.19 Across all the guidelines, the aggravating factor that refers to damage to heritage assets, has been reworded to read '*damage caused to heritage and/or cultural assets*'. In arson, two new aggravating factors of '*offence committed for financial gain*' and '*offence committed to conceal other offences*' have been added.

3.20 Across all guidelines, the mitigating factor that refers to age and lack of maturity has been amended to remove the words '*where it affects the responsibility of the offender*', so it just now reads '*age and/or lack of maturity*'. This is done so that the consideration is not solely limited to responsibility for the offence.

3.21 In the aggravated arson offence, **Annex A**, a new mitigating factor of '*lack of premeditation*' was added, and a reference warning against double counting has been added above aggravating/mitigating factors. This was a suggestion that came out of road testing, and thought necessary due to the possibility of sentencers considering a factor both in the assessment of harm and at step two. The consultation version also contained a 'step three', which gave information on mental health disposals. This has been removed as it has been superseded by the development of the new mental health guideline, which all guidelines will link to in due course.

Question 8: Is the Council content with the summary of changes to aggravating and mitigating factors?

Question 9: Is the Council content to sign the guidelines off ahead of the publication of the definitive guideline?

4 IMPACT/RISK

4.1 A final resource impact assessment will be prepared and circulated amongst the Council for comment in due course. The team will look at each of the offences in

turn and attempt to quantify any potential impacts, but this cannot be done until after today's meeting, as the decisions made today could have an impact on the assessments. It may be helpful to note that the resource assessment at consultation stage did not anticipate any significant impacts due to the draft guidelines.

4.2 For the final resource assessment the A&R team will have additional data sources available to help identify any potential impacts, the findings from the road testing, data from the Magistrates' Court data collection, and so on. It would be helpful for the final resource assessment if the Council could (further to any decision regarding sentence levels in the threats and criminal damage offence) confirm that overall their intention is to broadly reflect and maintain current sentence levels.

Question 10: Can the Council confirm that overall their intention with this guideline is to broadly reflect and maintain current sentence levels?

Question 11: Does the Council think that there any specific risks or impacts that should be considered at this stage?

Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

Criminal Damage Act 1971, s.1(2)

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: High level Community order- 12 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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**.

Within this offence, culpability is fixed: culpability A is for intent, culpability B is for recklessness.

Culpability A:

- Offender intended to endanger life

Culpability B:

- Offender was reckless as to whether life was endangered

Harm

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

Category 1

- Very serious physical and/or psychological harm caused
- High risk of very serious physical and/or psychological harm
- Serious consequential economic or social impact of offence caused
- Very high value of damage caused

Category 2

- Significant physical and/or psychological harm caused
- Significant risk of serious physical and/or psychological harm
- Significant value of damage caused
- All other harm that falls between categories 1 and 3

Category 3

- No or minimal physical and/or psychological harm caused
- Low risk of serious physical and/or psychological harm
- Low value of damage caused

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.

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	<p>Starting point 8 years' custody</p> <p>Category range 5 years to 12 years' custody</p>	<p>Starting point 6 years' custody</p> <p>Category range 4 years to 10 years' custody</p>
Category 2	<p>Starting point 6 years' custody</p> <p>Category range 4 to 8 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range 2 to 6 years' custody</p>
Category 3	<p>Starting point 2 years' custody</p> <p>Category range 6 months custody to 4 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category range High level Community order- 2 years 6 months' custody</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.

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

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: religion, race, disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4.** Commission of offence whilst under the influence of alcohol or drugs.
- A5.** Revenge attack
- A6.** Significant degree of planning or premeditation
- A7.** Use of accelerant
- A8.** Fire set in or near a public amenity
- A9.** Victim is particularly vulnerable
- A10.** Offence committed within a domestic abuse context
- A11.** Damage caused to heritage and/or cultural assets
- A12.** Multiple people endangered
- A13.** Significant impact on emergency services or resources
- A14.** Established evidence of community/wider impact
- A15.** Failure to comply with current court orders
- A16.** Offence committed on licence or post sentence supervision
- A17.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Offender's responsibility substantially reduced by mental disorder or learning disability
- M3.** Lack of premeditation
- M4.** Involved through coercion, intimidation or exploitation
- M5.** Remorse

- M6.** Good character and/or exemplary conduct
- M7.** Serious medical condition requiring urgent, intensive or long-term treatment
- M8.** Age and/or lack of maturity
- M9.** Sole or primary carer for dependent relatives
- M10.** 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions 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 overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN

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 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 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.

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

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
Category 1	<p>Starting point 1 year 6 months' custody</p> <p>Category range 6 months to 4 years' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range High level Community order to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium Level community order – <u>9 months</u> 1 years' custody</p>
Category 2	<p>Starting point 6 months' custody</p> <p>Category range High level Community order- 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order- <u>9 months</u> 1 year's custody</p>	<p>Starting point Low level Community order</p> <p>Category range Band C fine -High level Community order</p>
Category 3	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- <u>9 months</u> 1 year's 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- 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"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or 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"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<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"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one). 	<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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Threats to destroy or damage property

Criminal Damage Act 1971, s.2

Triable either way

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

Maximum when tried on indictment: 10 years custody

Offence range: Discharge to 5 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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:

- Significant planning or premeditation
- Offence motivated by revenge
- Offence committed to intimidate, coerce or control
- Threat to burn or bomb property

B - Medium culpability:

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
- 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 to the victim
- Serious disruption/inconvenience caused to others
- High level of consequential financial harm and inconvenience caused to the victim

Category 2

- Harm that falls between categories 1 and 3

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.

Category 3

- No or minimal distress caused to the victim

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.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 12 years 6 months' custody</p> <p>Category range 6 months 1 year to 45 years' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- 9 months' custody</p>
Category 2	<p>Starting point 9 months' custody</p> <p>Category range 6 months to 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- 9 months' custody</p>	<p>Starting point Medium level Community order</p> <p>Category range Band C fine -High level Community order</p>
Category 3	<p>Starting point High level Community order</p> <p>Category range</p>	<p>Starting point Medium level Community order</p> <p>Category range</p>	<p>Starting point Band B fine</p> <p>Category range</p>

	Medium level Community order- 9 months' custody	Band C fine- High level Community order	Discharge- Medium level Community order
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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: religion, race, disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4.** Commission of offence whilst under the influence of alcohol or drugs
- A5.** Victim is particularly vulnerable
- A6.** Offence committed in a domestic abuse context
- A7.** Threats made in the presence of children
- A8.** Considerable damage threatened
- A9.** Established evidence of community/wider impact
- A10.** Failure to comply with current court orders
- A11.** Offence committed on licence or post sentence supervision
- A12.** 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)

M6. Sole or primary carer for dependent relatives

M7. 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions 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 overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN

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 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 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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Table 1: Number of adult offenders sentenced for arson and criminal damage offences, 2007-2017¹

Offence	Court type	Number of adult offenders sentenced										
		2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Arson, Criminal Damage Act 1971, S1(3)	MC	233	249	259	292	286	241	223	215	214	219	208
	CC	326	343	313	331	347	324	279	225	264	260	198
	Total	559	592	572	623	633	565	502	440	478	479	406
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ²	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	72	71	66	46	34	14	2
	Total	-	-	-	-	72	71	66	46	34	14	2
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ³	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	378	391	340	293	276	132	11
	Total	-	-	-	-	378	391	340	293	276	132	11
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	MC	-	-	-	-	246	234	199	230	208	252	205
	CC	-	-	-	-	36	44	40	48	71	82	81
	Total	-	-	-	-	282	278	239	278	279	334	286
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	MC	22,667	24,239	25,553	25,594	24,729	22,641	21,742	21,932	22,055	20,339	18,462
	CC	160	217	312	438	527	557	512	582	591	584	558
	Total	22,827	24,456	25,865	26,032	25,256	23,198	22,254	22,514	22,646	20,923	19,020
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)	MC	-	-	-	-	0	0	0	0	0	*	*
	CC	-	-	-	-	5	21	28	26	26	*	*
	Total	-	-	-	-	5	21	28	26	26	*	*
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	MC	335	314	298	355	367	369	369	438	436	422	401
	CC	73	75	79	83	91	66	66	84	113	84	66
	Total	408	389	377	438	458	435	435	522	549	506	467
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	MC	187	172	159	161	167	180	148	139	127	119	123
	CC	38	33	23	40	32	18	15	12	14	13	11
	Total	225	205	182	201	199	198	163	151	141	132	134

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Excludes data for Cardiff magistrates' court for April, July and August 2008

2) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

3) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.

- Data for this offence not available prior to 2011

* Figures have not been shown due to a data issue

Table 2: Sentence outcomes for adult offenders sentenced for arson and criminal damage offences, 2017

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Arson, Criminal Damage Act 1971, S1(3)	0	24	7	75	90	174	36	406
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{2,3}	0	0	0	0	2	9	3	14
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{3,4}	0	0	0	5	16	91	20	132
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	0	40	32	76	52	70	16	286
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	87	5,412	4,780	4,931	764	1,090	1,956	19,020
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ⁵	0	0	1	0	7	16	2	26
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	1	99	76	113	58	100	20	467
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	0	6	26	55	26	17	4	134

Source: Court Proceedings Database, Ministry of Justice

Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Arson, Criminal Damage Act 1971, S1(3)	0%	6%	2%	18%	22%	43%	9%	100%
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{2,3,6}	0%	0%	0%	0%	14%	64%	21%	100%
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{3,4}	0%	0%	0%	4%	12%	69%	15%	100%
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	0%	14%	11%	27%	18%	24%	6%	100%
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	0%	28%	25%	26%	4%	6%	10%	100%
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ⁵	0%	0%	4%	0%	27%	62%	8%	100%
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	0%	21%	16%	24%	12%	21%	4%	100%
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30	0%	4%	19%	41%	19%	13%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders
- 2) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 3) Data shown for this offence relates to 2016, due to the lack of data available for 2017
- 4) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 5) Data shown for this offence relates to 2015, due to data issues in 2016 and 2017
- 6) Proportions should be treated with caution, due to the low volumes for this offence in the data available

Table 3: Average and maximum custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, 2017

Offence	Post guilty plea			Pre guilty plea (estimated)		
	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length
Arson, Criminal Damage Act 1971, S1(3)	1 year 8 months	1 year 4 months	8 years (and Life)	2 years 4 months	2 years	12 years (and Life)
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) ^{4,5,6}	3 years 9 months	3 years 5 months	5 years 4 months (and Life)	5 years 6 months	5 years 2 months	8 years (and Life)
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) ^{5,7}	3 years 1 month	3 years	7 years 6 months	4 years 4 months	4 years	10 years 6 months
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)	9 months	6 months	9 years	1 year	6 months	9 years
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)	1 month	1 month	3 months	2 months	1 month	3 months
Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2) ^{8,9}	2 years 7 months	2 years 7 months	4 years	3 years 8 months	3 years 10 months	5 years 3 months
Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2	6 months	3 months	4 years	8 months	3 months	6 years
Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30 ⁹	2 months	3 months	4 months	3 months	4 months	6 months

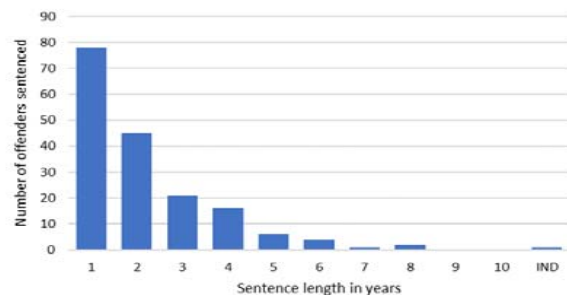
Source: Court Proceedings Database, Ministry of Justice

Notes

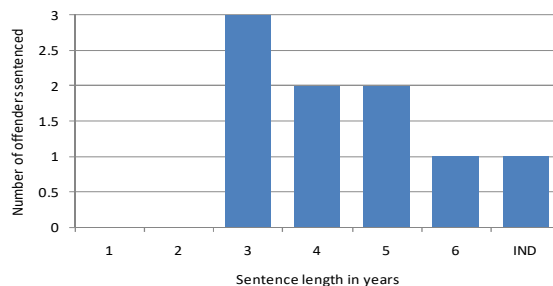
- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order
- 3) Excludes life and indeterminate sentences
- 4) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson with intent to endanger life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 5) Sentence length information for this offence relates to 2016, due to a lack of data available for this offence in 2017
- 6) Mean and median should be treated with caution, due to the low volumes for this offence in the data available
- 7) Due to a change in the way arson endangering life offences are recorded, data for the specific offence of 'Arson recklessly endangering life' is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.
- 8) Data shown for this offence relates to 2015, due to data issues in 2016 and 2017
- 9) Mean and median should be treated with caution, due to the relatively low number of offenders sentenced to immediate custody for this offence

Figure 1: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, after any reduction for guilty plea, 2017

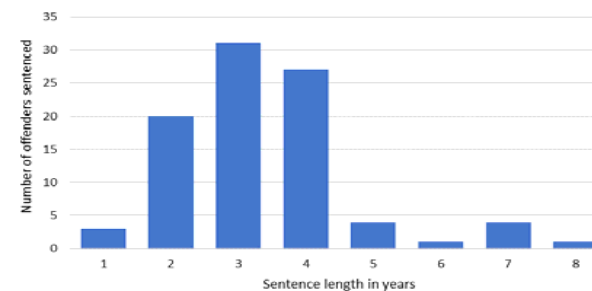
Arson, Criminal Damage Act 1971, S1(3)



Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)



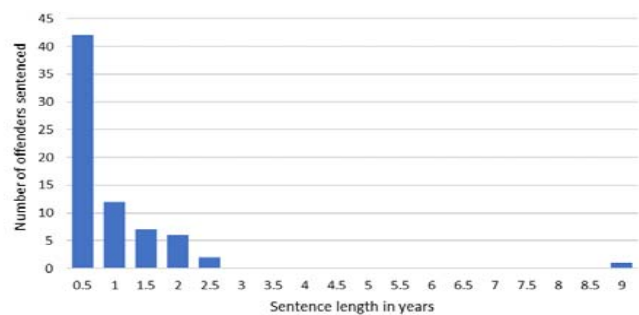
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



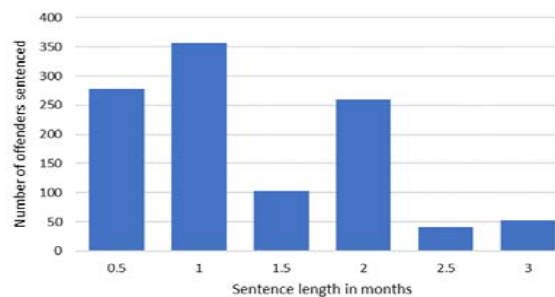
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

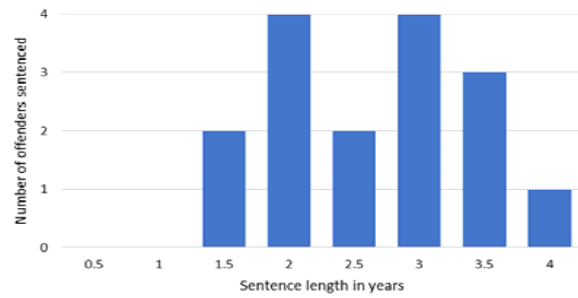
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)



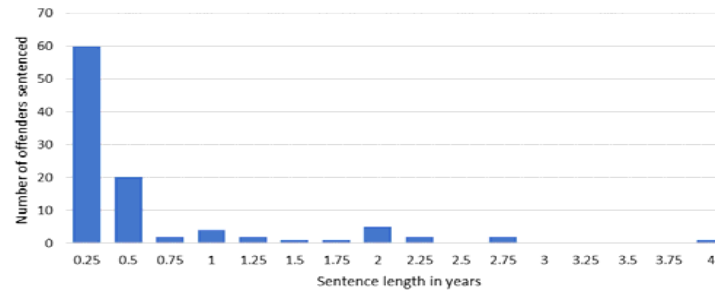
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)



Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

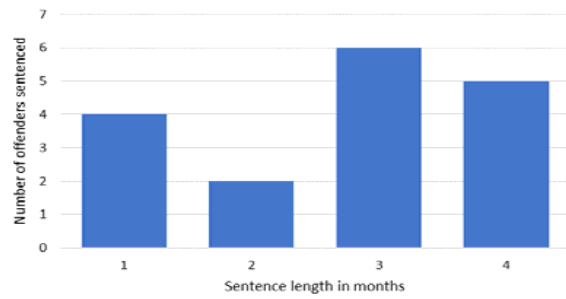


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

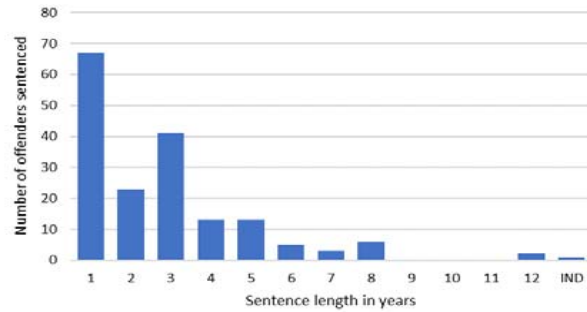


Source: Court Proceedings Database, Ministry of Justice

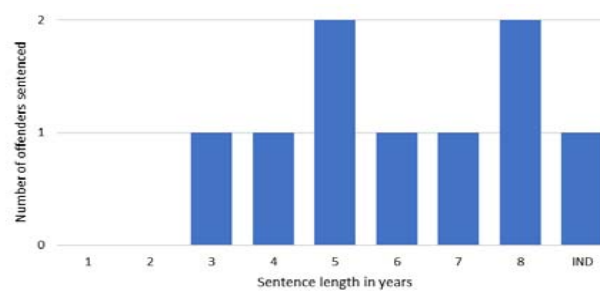
Note
Sentence length intervals include the upper bound sentence length (i.e. that shown on the chart). For example, the category '1' includes sentence lengths less than and equal to 1 year, and '2' includes sentence lengths over 1 year, and up to and including 2 years.

Figure 2: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, before any reduction for guilty plea, 2017

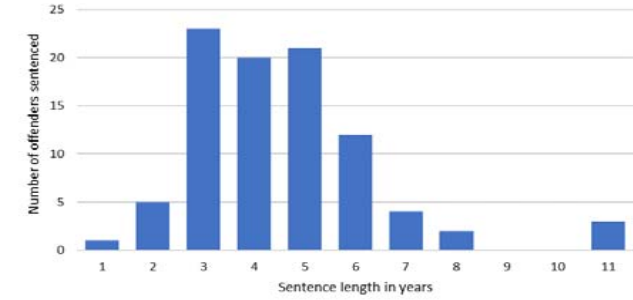
Arson, Criminal Damage Act 1971, S1(3)



Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)



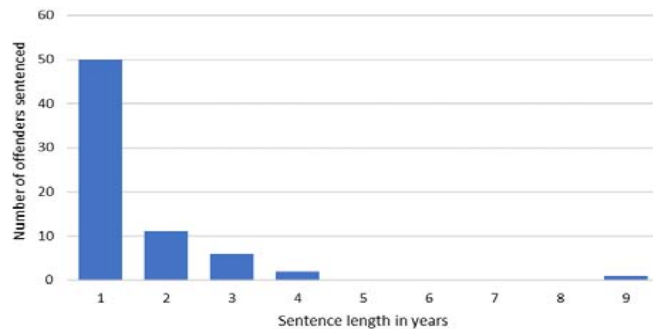
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



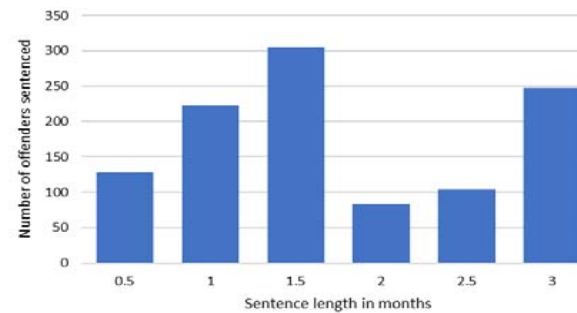
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

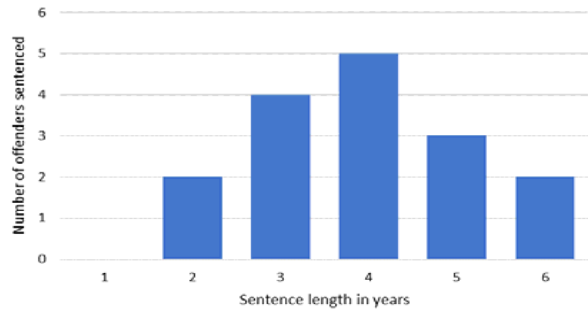
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)



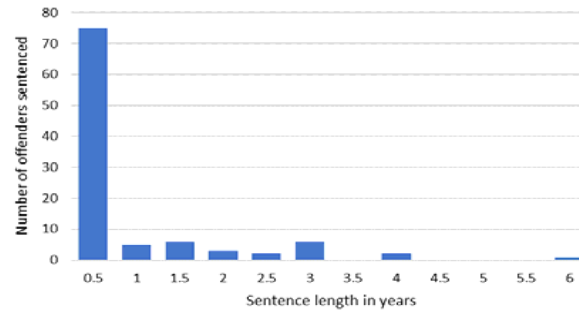
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)



Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

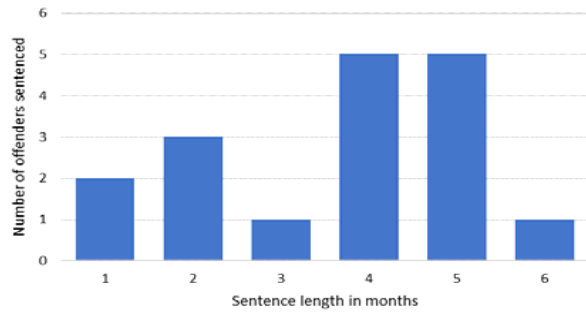


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30



Source: Court Proceedings Database, Ministry of Justice

Note
Sentence length intervals include the upper bound sentence length (i.e. that shown on the chart). For example, the category '1' includes sentence lengths less than and equal to 1 year, and '2' includes sentence lengths over 1 year, and up to and including 2 years.

Table 4: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, after any reduction for guilty plea, 2017

Arson, Criminal Damage Act 1971, S1(3)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	78	45%
1-2	45	26%
2-3	21	12%
3-4	16	9%
4-5	6	3%
5-6	4	2%
6-7	1	1%
7-8	2	1%
8-9	0	0%
9-10	0	0%
Indeterminate	1	1%
Total	174	100%

Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	0	0%
2-3	3	33%
3-4	2	22%
4-5	2	22%
5-6	1	11%
6-7	0	0%
7-8	0	0%
Indeterminate	1	11%
Total	9	100%

Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	3	3%
1-2	20	22%
2-3	31	34%
3-4	27	30%
4-5	4	4%
5-6	1	1%
6-7	4	4%
7-8	1	1%
Total	91	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	54	77%
1-2	13	19%
2-3	2	3%
3-4	0	0%
4-5	0	0%
5-6	0	0%
6-7	0	0%
7-8	0	0%
8-9	1	1%
Total	70	100%

Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	278	26%
0.5-1	356	33%
1-1.5	103	9%
1.5-2	259	24%
2-2.5	41	4%
2.5-3	53	5%
Total	1,090	100%

Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	0	0%
0.5-1	0	0%
1-1.5	2	13%
1.5-2	4	25%
2-2.5	2	13%
2.5-3	4	25%
3-3.5	3	19%
3.5-4	1	6%
Total	16	100%

Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	4	24%
1-2	2	12%
2-3	6	35%
3-4	5	29%
Total	17	100%

Source: Court Proceedings Database, Ministry of Justice

Note

Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '<=1' includes sentence lengths less than and equal to 1 year, and '1-2' includes sentence lengths over 1 year, and up to and including 2 years.

Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	80	80%
0.5-1	6	6%
1-1.5	3	3%
1.5-2	6	6%
2-2.5	2	2%
2.5-3	2	2%
3-3.5	0	0%
3.5-4	1	1%
Total	100	100%

Table 5: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson and criminal damage offences, before any reduction for guilty plea, 2017

Arson, Criminal Damage Act 1971, S1(3)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	67	39%
1-2	23	13%
2-3	41	24%
3-4	13	7%
4-5	13	7%
5-6	5	3%
6-7	3	2%
7-8	6	3%
8-9	0	0%
9-10	0	0%
10-11	0	0%
11-12	2	1%
Indeterminate	1	1%
Total	174	100%

Arson with intent to endanger life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	0	0%
2-3	1	11%
3-4	1	11%
4-5	2	22%
5-6	1	11%
6-7	1	11%
7-8	2	22%
Indeterminate	1	11%
Total	9	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	1	1%
1-2	5	5%
2-3	23	25%
3-4	20	22%
4-5	21	23%
5-6	12	13%
6-7	4	4%
7-8	2	2%
8-9	0	0%
9-10	0	0%
10-11	3	3%
Total	91	100%

Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however, most of these offences are now captured under a new code which groups 'intent/reckless' offences together.)

Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	50	71%
1-2	11	16%
2-3	6	9%
3-4	2	3%
4-5	0	0%
5-6	0	0%
6-7	0	0%
7-8	0	0%
8-9	1	1%
Total	70	100%

Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	128	12%
0.5-1	222	20%
1-1.5	305	28%
1.5-2	83	8%
2-2.5	104	10%
2.5-3	248	23%
Total	1,090	100%

Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	0	0%
1-2	2	13%
2-3	4	25%
3-4	5	31%
4-5	3	19%
5-6	2	13%
Total	16	100%

Note: Figures shown relate to 2015, due to data issues in 2016 and 2017.

Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=0.5	75	75%
0.5-1	5	5%
1-1.5	6	6%
1.5-2	3	3%
2-2.5	2	2%
2.5-3	6	6%
3-3.5	0	0%
3.5-4	2	2%
4-4.5	0	0%
4.5-5	0	0%
5-5.5	0	0%
5.5-6	1	1%
Total	100	100%

Racially/religiously aggravated criminal damage, Crime and Disorder Act 1998, S30

Sentence length (months)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	2	12%
1-2	3	18%
2-3	1	6%
3-4	5	29%
4-5	5	29%
5-6	1	6%
Total	17	100%

Source: Court Proceedings Database, Ministry of Justice

Note

Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '<=1' includes sentence lengths less than and equal to 1 year, and '1-2' includes sentence lengths over 1 year, and up to and including 2 years.

Combined data for arson endangering life offences (intent and reckless)

Table 6: Number of adult offenders sentenced for arson endangering life offences, 2007-2017

Court type	Number of adult offenders sentenced										
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
MC	0	0	0	0	0	0	0	0	0	0	0
CC	388	404	449	432	461	486	421	393	420	355	278
Total	388	404	449	432	461	486	421	393	420	355	278

Table 7: Sentence outcomes for adult offenders sentenced for arson endangering life offences, 2017

Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
1	0	0	3	46	200	28	278
<0.5%	0%	0%	1%	17%	72%	10%	100%

Note

1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders

Table 8: Average and maximum custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, 2017

Post guilty plea			Pre guilty plea (estimated)		
Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Maximum sentence length
3 years 9 months	3 years 2 months	12 years	5 years	4 years	15 years

Notes

1) The mean is calculated by taking the sum of all values and then dividing by the number of values

2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order

3) Excludes life and indeterminate sentences

Figure 3: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, after any reduction for guilty plea, 2017

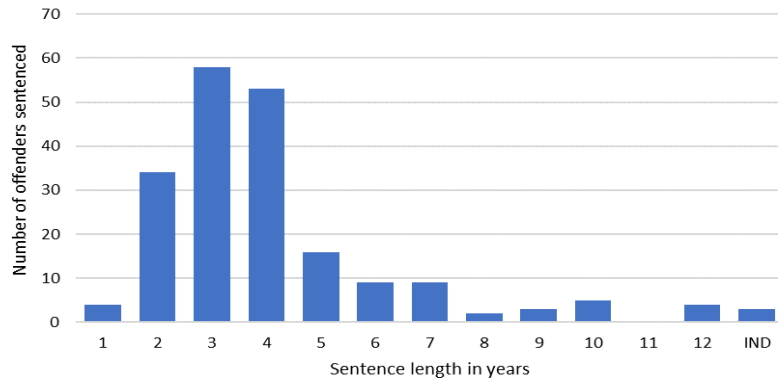


Figure 4: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, before any reduction for guilty plea, 2017

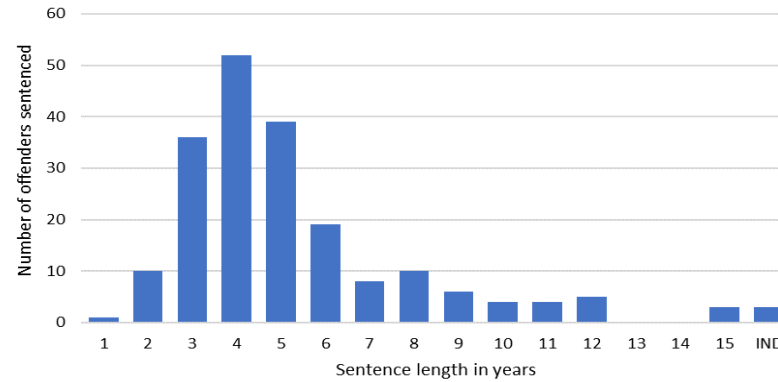


Table 9: Distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, after any reduction for guilty plea, 2017

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	4	2%
1-2	34	17%
2-3	58	29%
3-4	53	27%
4-5	16	8%
5-6	9	5%
6-7	9	5%
7-8	2	1%
8-9	3	2%
9-10	5	3%
10-11	0	0%
11-12	4	2%
Indeterminate	3	2%
Total	200	100%

Table 10: Distribution of estimated custodial sentence lengths for adult offenders sentenced to immediate custody for arson endangering life offences, before any reduction for guilty plea, 2017

Sentence length (years)	No. of offenders sentenced	Proportion of offenders sentenced
<=1	1	1%
1-2	10	5%
2-3	36	18%
3-4	52	26%
4-5	39	20%
5-6	19	10%
6-7	8	4%
7-8	10	5%
8-9	6	3%
9-10	4	2%
10-11	4	2%
11-12	5	3%
12-13	0	0%
13-14	0	0%
14-15	3	2%
Indeterminate	3	2%
Total	200	100%

Source: Court Proceedings Database, Ministry of Justice

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Arson (criminal damage by fire)

Criminal Damage Act 1971, s.1

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

Triable either way

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

Maximum when tried on indictment: Life

Offence range: Discharge – 8 years' custody

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

Courts should consider requesting a report from: liaison and diversion services, a medical practitioner, or where it is necessary, ordering a psychiatric report, to ascertain both whether the offence is linked to a mental disorder or learning disability (to assist in the assessment of culpability) and whether any mental health disposal should be considered.

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
- Use of accelerant
- 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 physical and/or psychological harm caused
- Serious consequential economic or social impact of offence
- High value of damage caused

Category 2

- Harm that falls between categories 1 and 3

Category 3

- No or minimal physical and/or psychological harm caused
- Low value of damage caused

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.

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 4 years' custody</p> <p>Category range 2 to 8 years' custody</p>	<p>Starting point 1 year 6 months' custody</p> <p>Category range 9 months to 3 years' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months – 1 year 6 months' custody</p>
Category 2	<p>Starting point 2 years' custody</p> <p>Category range 1 to 4 years' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range 6 months- 1 year 6 months' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order-9 months' custody</p>
Category 3	<p>Starting point 1 year's custody</p> <p>Category range 6 months - 2 years' custody</p>	<p>Starting point High level Community order</p> <p>Category range Medium level Community order-9 months' custod</p>	<p>Starting point Low level Community order</p> <p>Category range Discharge- High 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, including outside the category range.

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: religion, race, disability, sexual orientation, or transgender identity.

Other aggravating factors:

- A4.** Commission of offence whilst under the influence of alcohol or drugs
- A5.** Offence committed for financial gain
- A6.** Offence committed to conceal other offences
- A7.** Victim is particularly vulnerable
- A8.** Offence committed within a domestic abuse context
- A9.** Fire set in or near a public amenity
- A10.** Damage caused to heritage and /or cultural assets
- A11.** Significant impact on emergency services or resources
- A12.** Established evidence of community/wider impact
- A13.** Failure to comply with current court orders
- A14.** Offence committed on licence or post sentence supervision
- A15.** Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- M1.** No previous convictions **or** no relevant/recent convictions
- M2.** Steps taken to minimise the effect of the offence or summon assistance
- M3.** Remorse
- M4.** Good character and/or exemplary conduct
- M5.** Serious medical condition requiring urgent, intensive or long-term treatment
- M6.** Age and/or lack of maturity

- M7.** Mental disorder or learning disability (where not taken into account at step one)
- M8.** Sole or primary carer for dependent relatives
- M9.** 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

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions 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 overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN

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 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 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.

Criminal damage (other than by fire) value under £5,000

Criminal Damage Act 1971, s.1 (1)

Triable only summarily:

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge to 3 months' 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

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, the over £5,000 guideline should be used but regard should also be had to this 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

- All other cases

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 Level 4 fine and/or 3 months custody (basic offence)

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point High level Community order</p> <p>Category range Medium level Community order- 3 months' 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-Low level Community order</p>
Category 2	<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- Low level Community order</p>	<p>Starting point Band A fine</p> <p>Category range Discharge- Band B fine</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 within 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’ custody)

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"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or 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"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<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>
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one). 	<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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