

## **Threat 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 development services, a medical practitioner, or where it is necessary, ordering a psychiatric report, so to both ascertain 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

<ul style="list-style-type: none"> <li>• <u>High level of consequential financial harm and inconvenience caused to the victim</u></li> </ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• Harm that falls between categories 1 and 3</li> </ul>
<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• No or minimal distress caused to the victim</li> </ul>
<p><b>STEP TWO</b> <b>Starting point and category range</b></p> <p>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.</p>

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 2 years 6 months' custody</p> <p><b>Category range</b> 1 year to 5 years' custody</p>	<p><b>Starting point</b> 9 months' custody</p> <p><b>Category range</b> 6 months to 1 year 6 months' custody</p>	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium level Community order-9 months' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 9 months' custody</p> <p><b>Category range</b> 6 months to 1 year 6 months' custody</p>	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium level Community order-9 months' custody</p>	<p><b>Starting point</b> Medium level Community order</p> <p><b>Category range</b> Band C fine-High level Community order</p>
<b>Category 3</b>	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium level Community order-9 months' custody</p>	<p><b>Starting point</b> Medium level Community order</p> <p><b>Category range</b> Band C fine- High level Community order</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category range</b> Discharge- Medium 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: 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.** Threats made in the presence of children

**A7.** Considerable damage threatened

**A8.** Established evidence of community/wider impact

**A9.** Failure to comply with current court orders

**A10.** Offence committed on licence or post sentence supervision

**A11.** 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 where it affects the responsibility of the offender

**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 *Offences Taken into Consideration and 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**

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

Blank page