

# Sentencing Council

**Sentencing Council meeting:** 1 March 2019  
**Paper number:** SC(19)MAR04 – Arson & Criminal Damage  
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## 1 ISSUE

1.1 This is the third meeting to consider the consultation responses to the guideline, and will concentrate on sentence levels across all the offences. Consultation respondents generally agreed with the proposed sentence ranges, with some small suggestions and amendments, which are discussed within each individual guideline. The changes to the guidelines discussed at the last meeting have been made and can be seen within **Annexes B to G**.

1.2 The final meeting to discuss this guideline, and to sign it off ahead of publication will be the April meeting. The definitive guideline will then be published in July, and come into force in October.

## 2 RECOMMENDATION

That the Council:

- Considers the proposed changes to sentence levels within the individual guidelines
- Considers the findings regarding the level of alcohol/drug/mental health issues within criminal damage cases, and agrees to retain the proposed wording regarding community orders and alcohol/drug/mental health treatment orders

## 3 CONSIDERATION

*Sentencing data - Annex A*

3.1 Annex A contains updated sentencing data for 2017 (where possible) across the offences. The Council may recall that when drafting sentence ranges for consultation, both pre and post guilty plea (from 2016) was used. Sentencing data provided by the MOJ contains information on the length of immediate custodial sentences after any guilty plea reductions have been applied. In order to make this data more comparable to the pre-guilty plea starting points and sentence ranges included within guidelines, estimates of pre-guilty plea sentence lengths are computed using MOJ's data.

3.2 Over the last year, the A&R team have further developed the methodology used to estimate pre-guilty plea sentence lengths, to ensure it is as robust as possible, and encompasses the full range of data sources available. For arson and criminal damage offences, this includes sources such as the Crown Court Sentencing Survey (CCSS), along with the bespoke data collection carried out in a sample of magistrates' courts in 2017-18. Pre-guilty plea data shown in Annex A may therefore differ to that used prior to the consultation, due to the improved methodology which has been used to create these estimates.

3.3 As the Council are aware, a number of changes to the culpability/harm factors have been made post consultation. To examine the sentence ranges post consultation, the updated data contained in Annex A is used to indicate where any changes may need to be made, along with considering the responses from the consultation. The revised guidelines are then used to resentence cases from Crown Court transcripts, comparing what sentence the draft guideline would give rise to, compared to the actual sentence given in the real case. This exercise can indicate issues that may need addressing within the draft guidelines, perhaps a particular factor is causing an inappropriate number of cases to fall into too high a category, or a draft sentence range is not high enough. This process adds another layer of scrutiny and testing to the process of finalising robust guidelines.

#### *Annex B- arson offences*

3.4 This is a fairly low volume offence, with 406 adult offenders sentenced in 2017. The CPD data for 2017 shows that sentence severity for this offence has remained fairly stable over time; the mean sentence length (pre guilty plea) in 2017 was 2 years 4 months, and the median sentence length was 2 years (page 3 of Annex A). The Council will also note from table 5 on page 10 of Annex A that 75% of offenders sentenced to immediate custody in 2017 received a pre-guilty plea sentence of 3 years or less.

3.5 Generally, consultation respondents agreed with the proposed sentence ranges. The Council of Circuit Judges thought that there should be a custodial option within every custody range. The Legal Committee of the Council of District Judges commented that the wording above the sentence table (page 3 of Annex B) should not just refer to 'exceptional cases'. They argued that, because arson is such an easy crime to perpetuate, but that the effects can be devastating, going above the top of the range of eight years should be available for the most serious of cases – not just 'exceptional cases'.

3.6 Having taken these comments into account, along with the results of resentencing cases using the revised guideline, it is recommended that there are some slight increases across the sentence ranges. These can be seen in track changes on page three of Annex B, namely, to increase the top of the range in C3 to 6 months custody, to increase the top of the ranges in C2 and B3 to 1 years' custody, and to increase the top of the range in B1 to 4 years custody. This will broaden the ranges slightly to try to encompass better the varied types of offending behaviour seen in these offences. For example, an offender may commit an offence on impulse (low culpability) but great harm could be caused. Conversely, an offender may be highly culpable, have planned the offence, acting in revenge, intending to cause great harm but, due to the variability of fire, the competency of the offender, or chance, only low harm was caused.

3.7 It is recommended that the wording above the table is not changed, so it will only refer to exceptional cases. The top of the range in A1 goes to eight years custody, and although the maximum for this offence is life imprisonment, the sentencing data shows that very few offenders are getting sentences above eight years, so the wording seems appropriate.

***Question 1: Does the Council agree to the recommended increases to the ranges for this offence?***

*Annex C: criminal damage/arson with intent to endanger life or reckless as to whether life endangered*

3.8 Due to a change in the way arson endangering life offences are recorded, data for these cases 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' and 'reckless' offences together. The volumes for the separate intent / reckless arson cases shown on page one of Annex A are very low because courts have instead recorded these cases

using the new code (which groups intent and reckless together). Overall figures for arson endangering life (intent and reckless combined) are shown on pages 12-13 of Annex A. Pages 1-11 of the annex present figures for intent/reckless arson separately. Data on outcomes and sentence lengths relate to 2016, as this is the most recent year for which sufficient volumes are available to produce meaningful analysis for each type of offence individually.

3.9 Between 2007 and 2015, the number of adult offenders sentenced for arson endangering life was around 400-500 each year. Since 2015, volumes have been steadily decreasing, and around 280 offenders were sentenced in 2017. By comparison, criminal damage endangering life cases are much lower in volume, with around 30 offenders sentenced each year. Due to low volumes, data shown for criminal damage endangering life is not separated out by intent/reckless. In addition, data presented in Annex A for this offence relates to 2015, due to a data issue in the CPD which affected records in 2016 and 2017, which means data for this year are not reliable.

3.10 As Council may recall, the structure of this guideline reflects the fact that, although one offence, cases involving intent are treated by courts as the more serious of the two types, and are sentenced accordingly. The structure fixes the assessment of culpability, with intent culpability A, and reckless at B, which then allows for differences in sentencing between the two to be accommodated within one sentence table.

3.11 Page three of Annex A shows that, for intent, the pre-guilty plea mean sentence length in 2016 was 5 years 6 months, and the median, 5 years 2 months. For reckless, the pre-guilty plea mean sentence length was 4 years 4 months, and the median 4 years.

3.12 As with arson, the majority of the consultation respondents agreed with the proposed sentence ranges. The Council of Circuit Judges disagreed however, stating that the sentencing table starts far too low. They said that eight years as a starting point in A1 is not sufficiently high enough for the most serious cases of intent to endanger life, that most Judges would be looking at starting in double figures where there has been intent to endanger life, very serious physical/psychological harm caused or risked, and a great deal of damage caused. They suggest that the starting point in A1 should at least be 10 years, category 2 at least 7 years and category 3, three years. They state that they have less problem with the ranges in B, for reckless, although they think they should each start a year higher.

3.13 A summary of the findings of the road testing with Crown Court judges on this guideline is attached at Annex D. This showed no issues with the sentencing of intent cases. For one of the reckless scenarios, whilst most sentences stayed the same, some sentences were lower using the draft guideline and some judges felt the starting point under culpability B felt a little low, potentially pointing towards the need to increase the starting point. However, it should be remembered that the road testing only gives us a flavour of how sentencers *might* behave when using the guideline, as the sample size is small and scenarios are simplified.

3.14 When setting the ranges for consultation, alongside considering the CPD data, the Council was also mindful of *Myrie*<sup>1</sup>. In *Myrie*, the court said that the starting point for arson with intent was in the range of 8-10 years, following a trial, and in cases involving reckless arson, that the range would be rather below that. The starting point in A1 is at the lower end of the range suggested in *Myrie*, as the available sentencing data shows the majority of sentences given are eight years or less. The resentencing of cases using the revised guideline post consultation did not indicate the need to make any changes to the ranges, except to increase the top of the range in B3, from two years six months to three years.

3.15 If the Council wanted to increase the starting points for intent, to the top end of the range indicated in *Myrie*, and to deal with the concerns raised by the Council of Circuit Judges, then it may mean having very broad ranges. For example, if the starting point in A1 was increased from eight to 10 years, the category range would probably need to increase from 12 to 14 years, giving a range of nine years, from five years to 14 years. In A2, if the starting point was increased from six years to seven, then the top of the range would possibly need to be increased from eight to 10 years, giving a range of four to ten years. If the starting point in A3 was increased from two years to three, the top of the range would possibly need to be increased from three years to five years. The ranges then become so wide that they then offer little guidance. There is no evidence to suggest that the bottom of the ranges needs to be increased, which would have been a way of reducing the range, if the top of the range were to be increased.

3.16 There is a possible risk that making the increases to the top of the ranges for intent/reckless offences may increase sentencing severity, as the data on pages 12-13 for combined intent/reckless arson cases shows that 88% of all offenders sentenced to immediate custody received a pre-guilty plea sentence of 8 years or

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<sup>1</sup> AG's reference no 68 of 2008 (*Myrie*) [2008] EWCA Crim 3188

less, and 97% received a sentence of 12 years or less. The impact of any increase in severity, however, is likely to be low, due to low volumes.

3.17 Moreover, the starting points in the ranges for this guideline are less influential in terms of the final sentence arrived at, because there could be more of an upwards movement within the range from the starting point for these offences compared to within other offences, because the aggravating factors will be more influential. Given the structure of the guideline, with fixed culpability, the factors that can make offending more serious, revenge, drinking/drugs, use of accelerant, multiple people endangered, etc, are aggravating factors. So, a large number of the cases that fall into the top boxes may well end up higher in the range than remaining at the starting point, once aggravating factors are considered. Therefore, the argument to increase the starting point for these offences carries less weight, than it may have done for a guideline which has the standard assessment of culpability, with less influential aggravating factors, with a correspondingly pitched starting point.

3.18 Also, there is the wording above the table that says that for exceptional cases, sentences above the top of the range may be appropriate. Currently that wording just refers to A1, but it could be changed to include a reference to B1 as well, as a small number of offenders sentenced for reckless appear to have pre- GP sentences of over 10 years. The wording could read:

*'In exceptional cases within categories A1 and B1, sentences above the top of the ranges may be appropriate'*

3.19 In summary therefore, it is recommended that other than the one small change to B3, and potentially a change to the wording regarding exceptional cases, no other changes are made to the sentence table.

***Question 2: Does the Council agree to the recommendation not to make any changes to the sentence table, except to increase the top of the range in B3 to three years?***

***Question 3: Does the Council wish to amend the wording regarding exceptional cases to include a reference to B1 as well?***

*Annex E- Criminal damage over £5000*

3.20 This is quite a low volume offence, with 286 offenders sentenced in 2017. Page three of Annex A shows that the pre-guilty plea mean sentence length for this offence in 2017 was 1 year, and the median 6 months' custody. Figure two on page six shows that the vast majority of pre-guilty plea sentences were four years or less

in 2017, with one offender at the nine year mark. Comparing the data to that of the preceding year shows that sentence severity has remained fairly stable.

3.21 Consultation respondents generally agreed with the proposed sentence levels, except for the Legal Committee of District Judges, who argued that the starting points in categories one and two were a little too low. The ranges have been reconsidered, but it is proposed that no changes are warranted, the resentencing exercise conducted with the revised guideline against crown court transcripts did not indicate any problem with the sentence levels. In addition, the information within table five in Annex A (page 10) shows that 71% of all offenders sentenced to immediate custody received a sentence of one year or less.

***Question 4: Do the Council agree with the recommendation that no changes are made to the sentence table for this offence?***

*Annex F – Criminal damage under £5000*

3.22 This is a high volume offence, with 19,020 offenders sentenced in 2017, although numbers sentenced have been gradually dropping since 2010. The pre-guilty plea mean sentence length for this offence in 2017 was two months' custody, and the median was one months' custody. Sentencing for this offence has stayed fairly static over time. The maximum custodial sentence for this offence is three months' custody.

3.23 The vast majority of consultation respondents agreed with the proposed sentence levels, one of the few comments made was by a magistrate who stated he thought the starting point in A1 should cross the custody threshold. The ranges have been reconsidered, but it is proposed that no changes are necessary. The resentencing exercise did not show any problem with the sentence levels, and in any case, with a maximum of three months custody, it would be quite difficult to alter the ranges. Potentially the starting point in A1 could increase from a high level community order to six weeks custody, but that would be a very short custodial sentence, it may be more appropriate to leave the starting point as it is and have a reasonably wide sentencing range.

***Question 5: Does the Council agree with the recommendation that no changes are made to the sentence table?***

*Annex G: Threats to destroy or damage property*

3.24 This is a fairly low volume offence, with 467 offenders sentenced in 2017, numbers sentenced have been declining since 2015. The pre-guilty plea mean

sentence length in 2017 was eight months, with the median three months. Table 5 on page 11 of Annex A shows that 75% of offenders received a custodial sentence of six months or less (pre-guilty plea), and there was only one sentence over four years.

3.25 The majority of responses agreed with the proposed ranges, two magistrates who did comment on the ranges said they thought they were too high. Re-examining the ranges using 2017 data, and conducting the resentencing exercise has indicated that there may be justification for reducing some of the ranges, potentially in A1. A fair proportion of the cases resentenced fell into A1, frequently due to the presence of the high culpability factor of '*threat to burn or bomb property*', which often causes serious distress to the victim. Using the draft guideline to resentence did give slightly higher sentences that were given in the actual cases. Possibly the bottom of the range in A1 could be lowered from 1 year to 9 months, however, this would make the range quite wide, 9 months to 5 years, and may cause a presentational issue, for a serious offence with a ten year maximum, the bottom of the sentencing range in the highest category starting at nine months. It should be noted that the sample of resentenced cases was small, so may not be representative of sentencing overall.

***Question 6: Does the Council wish to lower any of the sentence ranges for this offence?***

*Community order/treatment requirements wording within the guidelines*

3.26 At the last meeting the Council considered the recommendation to insert the wording suggesting community orders with drug/alcohol or mental health treatment requirements as alternatives to a short or moderate sentence, within both criminal damage and the threats to destroy/damage offences. The Council had previously agreed to include it within both 'simple' and aggravated arson, and this can be seen on page three of Annex B. The Council were concerned as to whether this was appropriate or not, thinking that mental health considerations in particular were no more relevant for criminal damage than for other offences, and asked that the A&R team check any information on the prevalence of mental health issues in criminal damage cases.

3.27 This has been done, and the findings show that although mental health, drug and alcohol issues are not as common within criminal damage as for arson, on average they are more common than within most other offences. It is therefore recommended that this wording is included across all the offences within this guideline, there seems to be no obvious risk to including the wording. Take up of community orders generally is low, as the Council are aware, so it seems reasonable



to add in a slight prompt to sentencers to consider them, especially to help tackle one of the causes of offending, which certainly within criminal damage seems to be excessive intake of alcohol. Including this wording would also mean that there is consistency across all the offences.

***Question 7: Does the Council agree with the recommendation to include the wording relating to community orders across all the offences within this guideline?***

*Changes agreed at the last meeting- criminal damage guidelines- Annexes E and F*

3.28 At the last meeting the Council agreed to add wording within both criminal damage offences to provide guidance on the point raised by the Criminal Bar Association. This has been done, and can be seen on the front of both criminal damage guidelines, the last line of the wording slightly differs, as appropriate between the two guidelines. The Council also agreed to make similar changes to the culpability factors that had already been agreed with the arson offence, these can be seen on page two within the guidelines. The reference to great sentimental value has been removed from harm, and instead there is a new aggravating factor, (page four within both guidelines) using the wording from the burglary guideline.

*Changes agreed to the threats to destroy/damage property guideline-Annex G*

3.29 The two new factors, one in higher and one in lower culpability agreed at the last meeting have been added, and can be seen on page two of the guideline, also the new harm factor has been added.

#### **4 IMPACT/RISK**

4.1 A final resource impact assessment will be prepared and circulated amongst the Council for comment in due course.

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Table 1: Number of adult offenders sentenced for arson and criminal damage offences, 2007-2017<sup>1</sup>

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
	<b>Total</b>	<b>559</b>	<b>592</b>	<b>572</b>	<b>623</b>	<b>633</b>	<b>565</b>	<b>502</b>	<b>440</b>	<b>478</b>	<b>479</b>	<b>406</b>
Arson with intent to endanger life, Criminal Damage Act 1971, S1(2) <sup>2</sup>	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	72	71	66	46	34	14	2
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>72</b>	<b>71</b>	<b>66</b>	<b>46</b>	<b>34</b>	<b>14</b>	<b>2</b>
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) <sup>3</sup>	MC	-	-	-	-	0	0	0	0	0	0	0
	CC	-	-	-	-	378	391	340	293	276	132	11
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>378</b>	<b>391</b>	<b>340</b>	<b>293</b>	<b>276</b>	<b>132</b>	<b>11</b>
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
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>282</b>	<b>278</b>	<b>239</b>	<b>278</b>	<b>279</b>	<b>334</b>	<b>286</b>
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
	<b>Total</b>	<b>22,827</b>	<b>24,456</b>	<b>25,865</b>	<b>26,032</b>	<b>25,256</b>	<b>23,198</b>	<b>22,254</b>	<b>22,514</b>	<b>22,646</b>	<b>20,923</b>	<b>19,020</b>
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	*	*
	<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>21</b>	<b>28</b>	<b>26</b>	<b>26</b>	<b>*</b>	<b>*</b>
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
	<b>Total</b>	<b>408</b>	<b>389</b>	<b>377</b>	<b>438</b>	<b>458</b>	<b>435</b>	<b>435</b>	<b>522</b>	<b>549</b>	<b>506</b>	<b>467</b>
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
	<b>Total</b>	<b>225</b>	<b>205</b>	<b>182</b>	<b>201</b>	<b>199</b>	<b>198</b>	<b>163</b>	<b>151</b>	<b>141</b>	<b>132</b>	<b>134</b>

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 <sup>1</sup>	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) <sup>2,3</sup>	0	0	0	0	2	9	3	14
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) <sup>3,4</sup>	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) <sup>5</sup>	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 <sup>1</sup>	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) <sup>2,3,6</sup>	0%	0%	0%	0%	14%	64%	21%	100%
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2) <sup>3,4</sup>	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) <sup>5</sup>	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 <sup>1,3</sup>	Median sentence length <sup>2,3</sup>	Maximum sentence length	Mean sentence length <sup>1,3</sup>	Median sentence length <sup>2,3</sup>	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) <sup>4,5,6</sup>	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) <sup>5,7</sup>	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) <sup>8,9</sup>	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 <sup>9</sup>	2 months	3 months	4 months	3 months	4 months	6 months

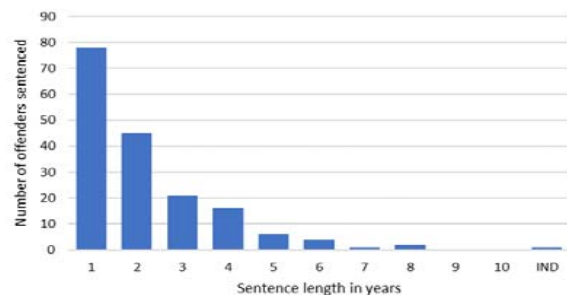
Source: Court Proceedings Database, Ministry of Justice

## Notes

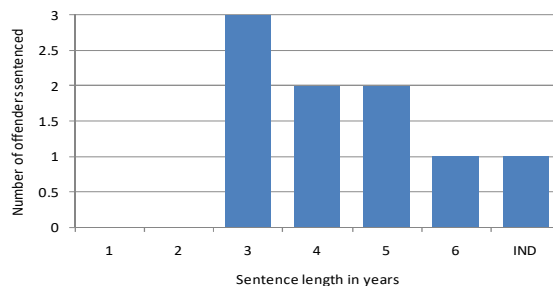
- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order
- 3) Excludes life and indeterminate sentences
- 4) Due to a change 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**

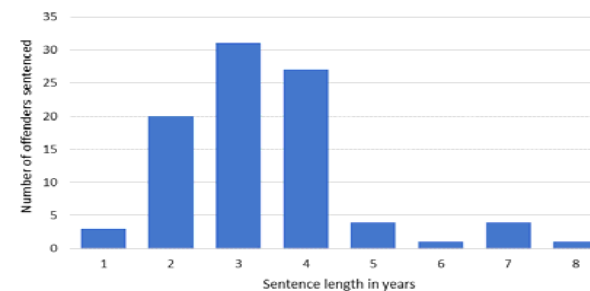
Arson, Criminal Damage Act 1971, S1(3)



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



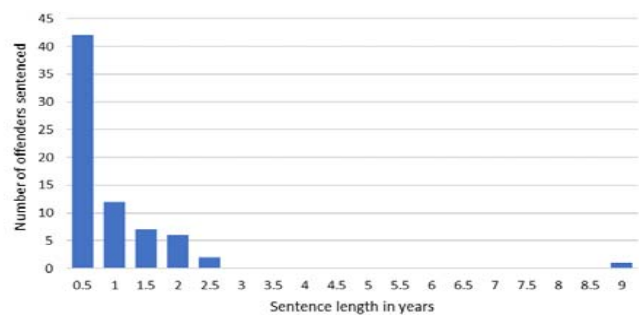
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



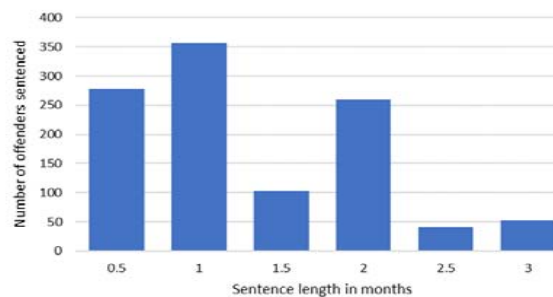
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however,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

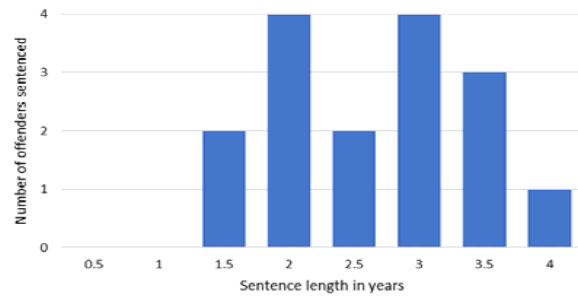
Criminal damage to property over £5,000, Criminal Damage Act 1971, S1(1)



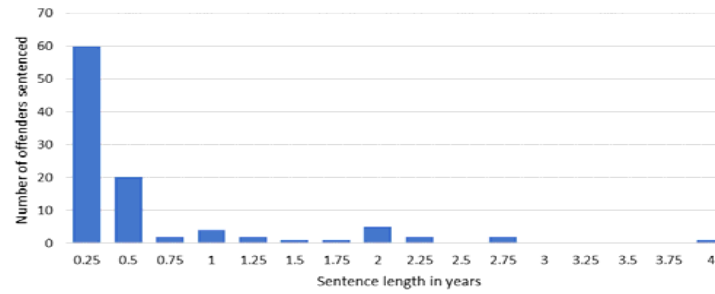
Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)



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

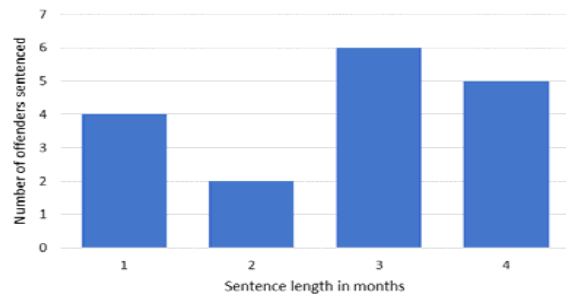


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



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

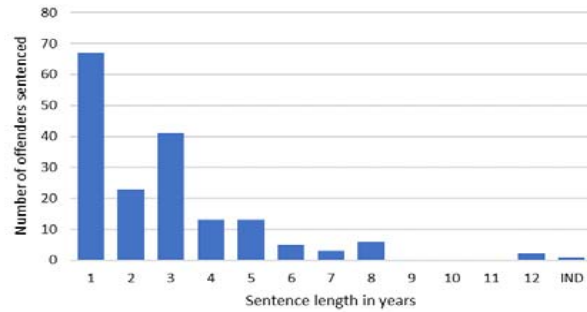


Source: Court Proceedings Database, Ministry of Justice

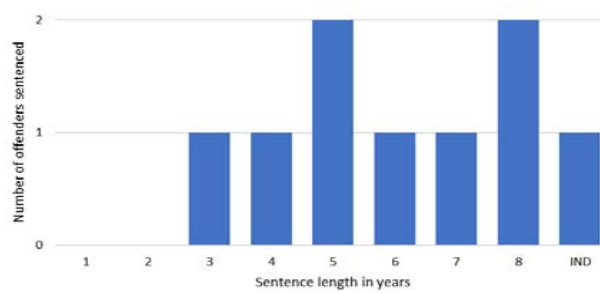
Note  
Sentence length intervals include the upper bound sentence length (i.e. that shown on the chart). For example, the category '1' includes sentence lengths less than and equal to 1 year, and '2' includes sentence lengths over 1 year, and up to and including 2 years.

**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**

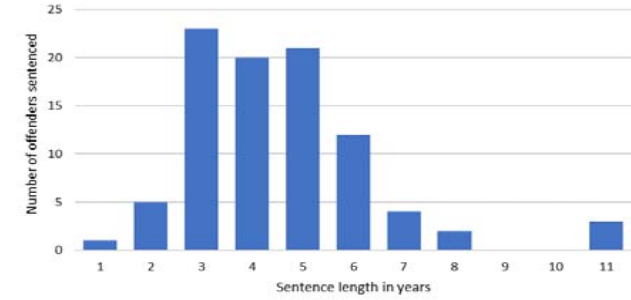
Arson, Criminal Damage Act 1971, S1(3)



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



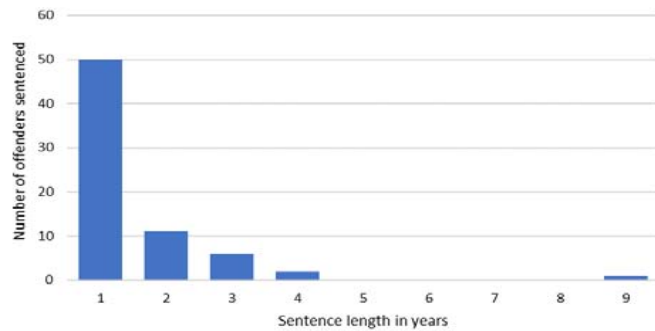
Arson recklessly endangering life, Criminal Damage Act 1971, S1(2)



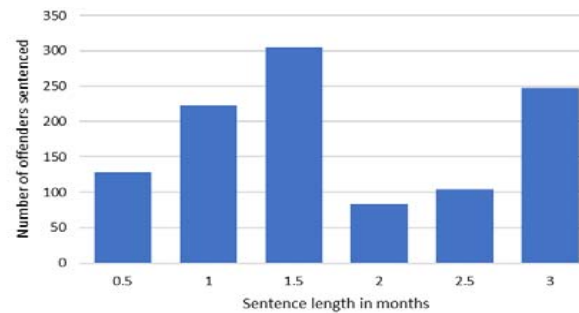
Note: Figures shown relate to 2016, due to the lack of data available for 2017. (Due to a change in the way arson endangering life offences are recorded, data for this specific offence is limited. Prior to 2014, data for these offences were recorded under separate codes for 'intent' and 'reckless', however,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

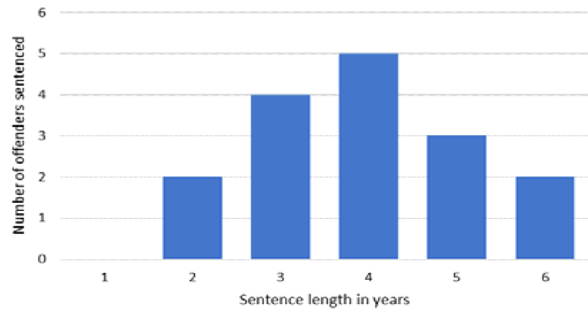


Criminal damage to property under £5,000, Criminal Damage Act 1971, S1(1)

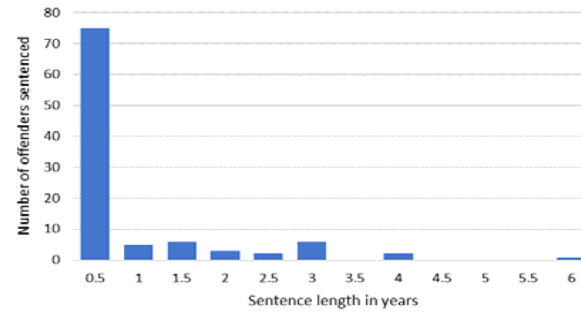




Criminal damage endangering life (intent and reckless), Criminal Damage Act 1971, S1(2)

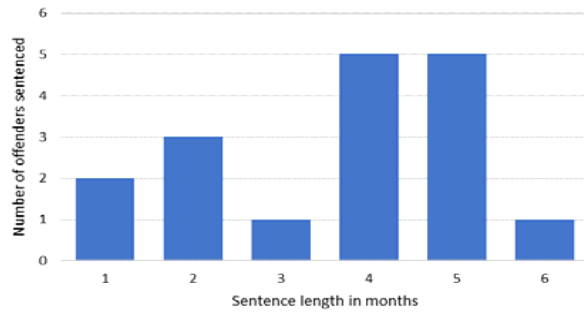


Threats to destroy/damage property (includes intent to endanger life), Criminal Damage Act 1971, S2



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%
<b>Total</b>	<b>174</b>	<b>100%</b>

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%
<b>Total</b>	<b>9</b>	<b>100%</b>

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%
<b>Total</b>	<b>91</b>	<b>100%</b>

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%
<b>Total</b>	<b>70</b>	<b>100%</b>

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%
<b>Total</b>	<b>1,090</b>	<b>100%</b>

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%
<b>Total</b>	<b>16</b>	<b>100%</b>

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%
<b>Total</b>	<b>17</b>	<b>100%</b>

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%
<b>Total</b>	<b>100</b>	<b>100%</b>

**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%
<b>Total</b>	<b>174</b>	<b>100%</b>

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%
<b>Total</b>	<b>9</b>	<b>100%</b>

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%
<b>Total</b>	<b>91</b>	<b>100%</b>

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%
<b>Total</b>	<b>70</b>	<b>100%</b>

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%
<b>Total</b>	<b>1,090</b>	<b>100%</b>

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%
<b>Total</b>	<b>16</b>	<b>100%</b>

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%
<b>Total</b>	<b>100</b>	<b>100%</b>

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%
<b>Total</b>	<b>17</b>	<b>100%</b>

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
<b>Total</b>	<b>388</b>	<b>404</b>	<b>449</b>	<b>432</b>	<b>461</b>	<b>486</b>	<b>421</b>	<b>393</b>	<b>420</b>	<b>355</b>	<b>278</b>

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 <sup>1</sup>	Total
1	0	0	3	46	200	28	<b>278</b>
<0.5%	0%	0%	1%	17%	72%	10%	<b>100%</b>

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 <sup>1,3</sup>	Median sentence length <sup>2,3</sup>	Maximum sentence length	Mean sentence length <sup>1,3</sup>	Median sentence length <sup>2,3</sup>	Maximum sentence length
3 years 9 months	3 years 2 months	12 years	5 years	4 years	15 years

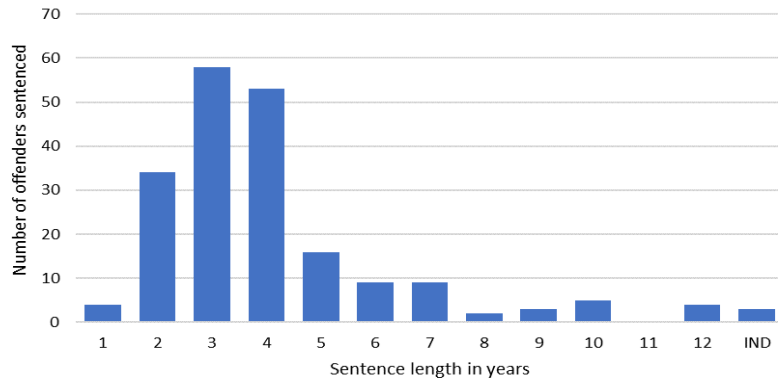
Notes

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

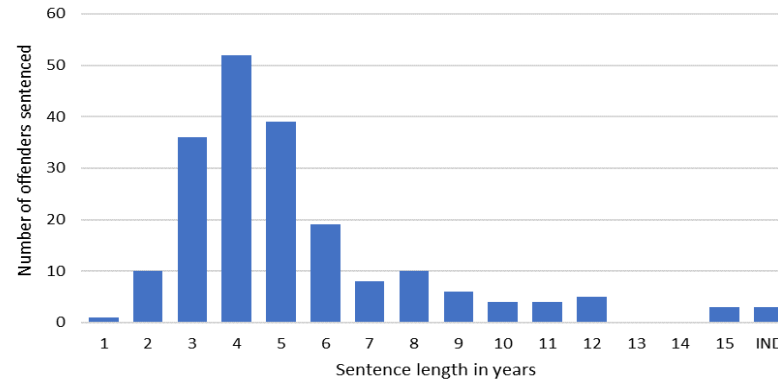
2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order

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%
<b>Total</b>	<b>200</b>	<b>100%</b>

**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%
<b>Total</b>	<b>200</b>	<b>100%</b>

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

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**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:**

- 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:**

- 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
- Some planning
- Recklessness as to whether very serious damage to property caused
- Recklessness as to whether serious injury to persons caused

##### **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

<ul style="list-style-type: none"> <li>• High value of damage caused</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 physical and/or psychological harm caused</li> <li>• Low value of damage caused</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>

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
<p><b>Category 1</b></p>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 2 to 8 years' custody</p>	<p><b>Starting point</b> 1 year 6 months' custody</p> <p><b>Category range</b> 9 months to <del>4</del> 3 years' custody</p>	<p><b>Starting point</b> 9 months' custody</p> <p><b>Category range</b> 6 months – 1 year 6 months' custody</p>
<p><b>Category 2</b></p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 1 to 4 years' custody</p>	<p><b>Starting point</b> 9 months' custody</p> <p><b>Category range</b> 6 months- 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-<del>1</del> years 9 months'</p>

			custody
<b>Category 3</b>	<b>Starting point</b> 1 years' custody  <b>Category range</b> 6 months - 2 years' custody	<b>Starting point</b> High level Community order  <b>Category range</b> Medium level Community order- <u>1 years 9 months'</u> custody	<b>Starting point</b> Low level Community order  <b>Category range</b> Discharge- <u>6</u> <u>months custody</u> High level Community order

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.** Offence committed for financial gain
- A6.** Offence committed to conceal other offences
- A7.** Victim is particularly vulnerable
- A8.** Fire set in or near a public amenity
- A9.** Damage caused to heritage and /or cultural assets
- A10.** Significant impact on emergency services or resources
- A11.** Established evidence of community/wider impact
- A12.** Failure to comply with current court orders
- A13.** Offence committed on licence or post sentence supervision
- A14.** 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 fire 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 where it affects the responsibility of the offender
- M7.** Sole or primary carer for dependent relatives
- M8.** 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 (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/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

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**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**.

**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
<b>Category 1</b>	<b>Starting point</b> 8 years' custody  <b>Category range</b> 5 years to 12 years' custody	<b>Starting point</b> 6 years' custody  <b>Category range</b> 4 years to 10 years' custody
<b>Category 2</b>	<b>Starting point</b> 6 years' custody  <b>Category range</b> 4 to 8 years' custody	<b>Starting point</b> 4 years' custody  <b>Category range</b> 2 to 6 years' custody
<b>Category 3</b>	<b>Starting point</b> 2 years' custody  <b>Category range</b> 6 months custody to 3 years' custody	<b>Starting point</b> 1 years' custody  <b>Category range</b> High level Community order- <u>3</u> <del>2</del> years <u>6</u> <del>months</del> ' custody

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.** Damage caused to heritage assets
- A11.** Multiple people endangered
- A12.** Significant impact on emergency services or resources
- A13.** Established evidence of community/wider impact
- A14.** Failure to comply with current court orders
- A15.** Offence committed on licence or post sentence supervision
- A16.** 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 where it affects the responsibility of the offender
- 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**

#### **Consideration of mental health disposals**

##### **Where custody is being considered:**

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) that the offending is wholly or in significant part attributable to that disorder,
- (iii) treatment is available, and
- (iv) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

##### **Section 45A hospital and limitation direction**

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

##### **Section 37 hospital order and s41 restriction order**

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether: (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

##### **Section 47 transfer to hospital**

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

##### **Non-custodial option:**

If a non-custodial option is considered, and where an 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 appropriate. The offender should express a willingness to comply with the requirement.

#### **STEP FOUR**

##### **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 FIVE**

##### **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 SIX**

##### **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 SEVEN**

##### **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 EIGHT**

##### **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 NINE**

##### **Reasons**

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

**STEP TEN**

**Consideration for time spent on bail**

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

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Criminal Damage/Arson with Intent to Endanger Life or Reckless as to Whether Life Endangered: Road testing with Crown Court judges

## Introduction

Twelve interviews were conducted with Crown Court judges to test the *Criminal Damage/Arson with Intent to Endanger Life or Reckless as to Whether Life Endangered* draft guideline. These interviews were conducted either by telephone or face to face with judges across England and Wales. Each judge considered two scenarios (as summarised below)<sup>1</sup>, sentencing the scenarios as if they were in court today (without the draft guideline) and then sentencing using the draft guideline. The research has provided valuable information on how the guideline might work in practice to support development of the Arson and Criminal Damage Guideline. However, there are limitations to the work<sup>2</sup>, and as a result the research findings presented below should be regarded as **indicative** only and not conclusive.

Scenario	Summary of scenario
1 – arson with intent	P took off her jumper, set light to it, and pushed it through the letter box. She and the friend, who had left the scene and then returned, both then walked away. Children were in the house, P was aware of this.
1A – arson with intent	P was caught on CCTV setting alight rubbish he had piled against the fire exit of a crowded pub, using matches. This was the second time he had set fire to the same pub, he had previously done so in 2004. The fire was spotted in its early stages by a member of pub staff who put the fire out using a fire extinguisher.
2 - reckless	W, aged 30 had been drinking all day. On his way home in the afternoon he passed by a house in which a number of students lived. He took out a bag of rubbish from a wheelie bin, placed it outside the door of the property, and set it alight with matches he had in his pocket. He then left. The fire did not really take hold partly as the material in the bag was not particularly flammable, and partly as one of the students came and put the fire out.
2A – reckless	H, aged 28 shared a caravan with another man, they both lived and worked on a poultry farm. The pair had been drinking in a group earlier in the day, and had a disagreement about some beer that had gone missing. The victim was asleep in bed in the caravan in the early hours when H set fire to his empty bed, using an aerosol and a lighter. The victim awoke to thick black smoke and flames, and had to escape the caravan through a small window, dressed only in his boxer shorts, dropping to gravel below. A neighbour saw the flames and called the emergency services, but the fire had spread to two other caravans.

<sup>1</sup> The scenarios consisted of shortened versions of two reckless cases and two intent cases at varying levels of seriousness. Each scenario was sentenced by six judges.

<sup>2</sup> Limitations include: this is a small sample which is not necessarily representative; the guidelines were out for consultation at the time of the research which means judges may have seen the guideline before this exercise (biasing the 'pre-guideline' sentence); and the scenarios only include limited detail of the actual case, which makes comparison with the sentence given by the judge in the actual case difficult.

## Key Points

- Most judges see arson with intent to endanger life/reckless as to whether life is endangered cases a few times a year, and reported that these frequently involve an offender with mental health difficulties. 'Reckless' offences are reported as more common than 'with intent'. Criminal damage with intent or reckless as to whether life is endangered is rarely seen in the Crown Court.
- The guideline road tested well and judges found it clear and easy to use. For the most part, scenarios were sentenced consistently across judges, and the hypothetical sentences judges gave under the new draft guideline were largely consistent with the sentence they gave 'as if it came before them today'. There was no indication that the guideline would raise sentencing levels.
- Three small issues were raised, which the Council may wish to consider:
  - When sentencing one of the 'reckless' scenarios, several judges observed that the starting point under culpability B felt a little low, insufficiently reflecting the dangerousness of an offence where a life has been endangered by something as unpredictable as a fire. Moreover, in another 'reckless' scenario, a few judges gave a lower sentence under the new draft guideline than their current sentence. This may suggest an appetite for slightly increasing the starting point sentences for culpability B ('reckless' offences).
  - Although judges were generally happy with the aggravating and mitigating section, several felt that a number of aggravating factors (e.g. multiple people endangered) would be considered when determining the harm category and a flag to remind judges not to double count would be beneficial. Council may wish to add a line on double counting into the aggravating and mitigating factors section of the guideline.
  - Currently there is no aggravating factor that increases the seriousness of an offence in which victims are not able to get away from the fire easily, for example because the main exits are blocked. Several judges felt that if fire exits or main exits are blocked, this is an important aggravating factor.



## Sentence Levels, Consistency, Starting Points and Ranges

- In all four scenarios, the vast majority of judges categorised the culpability consistently and as expected by policy. This shows that judges understand that the culpability section is determined by the charging of the offence. Categorisation of harm was fairly consistent across judges and concurred with the expectations of policy, with one exception: in one scenario (the most serious 'intent' case – 1A), there was some tendency to categorise risk of harm at a lower level than expected.
- The road testing suggests that the draft guideline is unlikely to increase sentencing for criminal damage/arson with intent to endanger life or reckless as to whether life endangered offence. Across multiple scenarios and multiple judges, there were only two instances where judges gave a higher sentence (by one year) using the draft guideline than the sentence they would give under current practice.
- For criminal damage/arson with intent (those offences going into culpability A) most sentences stayed the same when judges sentenced as they would 'as if it came before them today' and then using the new guideline.
- For reckless criminal damage/arson offences (those offences going into culpability B) whilst most sentences stayed the same, some sentences were lower using the draft guideline (between 1.5 to 5 years' decrease). Some of the judges who gave lower sentences using the draft guideline for scenario 2 (culpability B, category 3 – students' house) felt that these sentences were too low. The road testing identified two main reasons why these sentences were perceived as low:
  - Firstly, these judges felt that regardless of whether it had been reckless, a life had been endangered and the sentence needed to reflect this. All of these judges gave a sentence of below two years on this scenario with the draft guideline and some judges did not deem this appropriate: *"This is too low for a case that recklessly puts lives in danger, this does not feel right"*.
  - Secondly, some judges felt that due to the unpredictable nature of fire there is always a high risk of harm as the offender does not know the extent of the damage that the fire will cause. Again, they felt this needed to be reflected in the sentence: *"Fire is unpredictable. So, if you set any fire however minor in circumstances where you are guilty of recklessness as to whether life is*

*endangered, if you come into contact with it, then there's a significant risk of serious harm”.*

- At the higher harm level in culpability B (scenario 2A, caravan) the guideline took some judges to an appreciably lighter sentence than they had reached without the guideline, inferring that sentence levels at the higher harm levels may be a little light as well.

### **Views on Culpability**

- Most judges were happy with the culpability step, words such as *clear*, *simple* and *sensible* were used to describe the structure. Judges were particularly keen on the simplicity of the culpability section and some judges suggested that there would not be another way of structuring it appropriately.
- For a couple of judges at first, they felt that the culpability section did not allow for a determination of seriousness (further than just distinguishing between reckless and intent offences). They felt that the factors included in the aggravating factors section which were used to potentially increase the seriousness of the offence were too important to be just aggravating factors and should be included in the culpability section of the guideline. This was no longer an issue when they realised that the seriousness of the case would largely be decided in the harm section.

### **Views on Harm**

- There was a general recognition of difficulty when assessing risk due to the unpredictable nature of fire, and the offender not knowing the level of harm they could end up causing. That being said, the scenarios found that judges were generally comfortable with placing the offender in harm categories and were able to use the facts in the scenario to justify this placement.
- Several judges suggested that the ‘serious consequential economic or social impact of offence caused’ and ‘value of damage caused’ factors need more context to clarify their meaning and to ensure that ‘value of damage caused’ is known by judges to be relative to the individual/company.
- A few other observations were made:
  - One judge queried why the word ‘very’ is included in category 1 (very serious physical and psychological harm caused and very high value of damage caused) when it is not referred to in category 2.
  - One judge felt that ‘some’ risk was not covered in the three categories (very serious, significant, no or minimal)

- One judge felt that category 3 was an oxymoron because if there is an endangerment of life then it will not get into category 3 as low risk.

## Views on Aggravating and Mitigating Factors

Judges were generally happy with the aggravating and mitigating section. There were the following observations:

- A few judges mentioned that previous convictions for arson were more relevant than other offences, even a historical conviction. One judge suggested making it clearer in the guideline that previous convictions for arson are of particular relevance, regardless of the time passed.
- Some of the judges considered 'victim is particularly vulnerable' to be applicable for a victim sleeping. One judge suggested that referring to a sleeping victim as 'vulnerable' could cause some issues in court but as it is an important factor this could be added to the list separately.
- When judges were asked to consider important factors in each scenario without the draft guideline a few judges referred to the ability of the victim to get away from the fire if the key entry/exit to the premises was obstructed and how this would aggravate the sentence, *"Outside the door so main point of exit or entrance potentially blocked"*.
- Several judges highlighted the risk of double counting with this guideline. Judges felt that a number of aggravating factors (e.g. multiple people endangered) would be considered when determining the harm category and a flag to remind judges not to double count would be beneficial *"I just think that it needs a note of caution, some factors which would determine the risk of serious harm may be factors which are aggravating features, be careful not to use them twice"*. Council may wish to add a line on double counting into the aggravating and mitigating section of the guideline.
- Other suggestions for aggravating and mitigating factors were<sup>3</sup>: lack of premeditation (mitigating), offender calls emergency services (mitigating), committed in the context of public order (aggravating), children being present (aggravating), danger to firefighters specifically (aggravating) and financial gain (aggravating).

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<sup>3</sup> These were mentioned by one judge only.

## **Other points**

- Judges were supportive of the 'in exceptional cases within category 1A' text that sits above the starting point table.
- Judges were also supportive of the mental health disposal step, stating that it was very helpful and relevant for the offence. Some judges queried the details in this step (especially around ordering of the different disposals) and this is being looked at again by policy.
- Of the judges that expressed an opinion it was generally felt that there would not be any issues by having arson and criminal damage in the same guideline.

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

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

**Triable either way**

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

Maximum when tried on indictment: 10 years

Offence range: Discharge – 4 years' custody

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

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

**Triable either way**

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

Maximum when tried on indictment: 14 years

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**Note:**

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

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

## STEP ONE

### Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

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

#### A - High culpability:

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

#### B - Medium culpability:

- 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
- Some planning
- Recklessness as to whether very serious damage to property caused
- Recklessness as to whether serious injury to persons caused

#### 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

<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• No or minimal distress caused</li> <li>• Low value damage</li> </ul>
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**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.

**Maximum when tried on indictment: 10 years' custody**

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

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

### Factors increasing seriousness

#### Statutory aggravating factors:

- A1. Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- A2. Offence committed whilst on bail
- A3. Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity.

#### Other aggravating factors:

- A4. Damaged items of great value to the victim (whether economic, commercial, sentimental or personal value)
- A5. Commission of offence whilst under the influence of alcohol or drugs
- A6. Victim is particularly vulnerable
- A7. Damage caused to heritage and or cultural assets
- 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

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



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

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

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

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

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

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

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

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

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

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

**STEP FIVE****Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and 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**

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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## **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

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

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

**Triable either way**

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

Maximum when tried on indictment: 14 years

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**Note:**

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

<p><b>STEP ONE</b>  <b>Determining the offence category</b></p> <p>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 <b>culpability</b> and <b>harm</b>.</p>
<p>The level of <b>culpability</b> is determined by weighing up all the factors of the case. <b>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.</b></p>
<p><b>Culpability</b> demonstrated by one or more of the following:</p>
<p><b>A - High culpability:</b></p> <ul style="list-style-type: none"> <li>• High degree of planning or premeditation</li> <li>• Revenge attack</li> <li>• Intention to cause very serious damage to property</li> <li>• Intention to create a high risk of injury to persons</li> </ul>
<p><b>B – Medium culpability</b></p> <ul style="list-style-type: none"> <li>• <u>All other cases that fall between categories A and C because:</u></li> <li>• <u>Factors are present in A and C which balance each other out and/or</u></li> <li>• <u>The offender’s culpability falls between the factors described in A and C</u></li> <li>• Some planning</li> <li>• Recklessness as to whether very serious damage to property caused</li> <li>• Recklessness as to whether serious injury to persons caused</li> </ul>
<p><b>C - Lesser culpability:</b></p> <ul style="list-style-type: none"> <li>• Little or no planning; offence committed on impulse</li> <li>• Recklessness as to whether some damage to property caused</li> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> <li>• Involved through coercion, intimidation or exploitation</li> </ul>
<p><b>Harm</b>  The level of harm is assessed by weighing up all the factors of the case.</p>
<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Serious distress caused</li> <li>• Serious consequential economic or social impact of offence</li> <li>• High value of damage</li> </ul>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**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.

**Under £5,000 maximum Level 4 fine and/or 3 months**

Harm	Culpability		
	A	B	C
Category 1	<p><b>Starting point</b> High level Community order</p> <p><b>Category range</b> Medium level Community order- 3 months' custody</p>	<p><b>Starting point</b> Low level community order</p> <p><b>Category range</b> Band C fine- High level Community order</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category range</b> Discharge-Low level Community order</p>
Category 2	<p><b>Starting point</b> Low level Community order</p> <p><b>Category range</b> Band C fine- High level Community order</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category range</b> Discharge- Low level Community order</p>	<p><b>Starting point</b> Band A fine</p> <p><b>Category range</b> 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. Damage caused to heritage and or cultural assets**

**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

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

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

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

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



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

<b>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</b>	<b>SENTENCE UPLIFT</b>
<ul style="list-style-type: none"> <li>▪ Aggravated element formed a minimal part of the offence as a whole.</li> <li>▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (<b>over and above the distress already considered at step one</b>).</li> </ul>	Consider a more onerous penalty of the same type identified for the basic offence.

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 *Offences Taken into Consideration and 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**

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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## **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

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**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.

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