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Misuse of Drugs Act Guidelines

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug

Misuse of Drugs Act 1971 (section 3)

Customs and Excise Management Act 1979 (section 170(2))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: Band A fine – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference only to the factors listed in the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage, (save where this advantage is limited to meeting the offender's own habit) whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Harm

In assessing harm, quantity is determined by the weight of the product.

Category of harm

Indicative quantities of some common drugs, upon which the starting point is to be based, are given in the table below. Where a drug (such as fentanyl or its agonists) is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 7,000 tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) –very large quantity indicative of an industrial scale operation
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 1,300 tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – large quantity indicative of a commercial operation
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy –200_tablets* • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – smaller quantity between categories 2 and 4
Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g

	<ul style="list-style-type: none"> • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet¹

STEP TWO			
Starting point and category range			
<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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.</p> <p>Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender’s role.</p> <p>Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.</p>			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years’ custody Category range 12 – 16 years’ custody	Starting point 10 years’ custody Category range 9 – 12 years’ custody	Starting point 8 years’ custody Category range 6 – 9 years’ custody
Category 2	Starting point 11 years’ custody Category range 9 – 13 years’ custody	Starting point 8 years’ custody Category range 6 years 6 months’ – 10 years’ custody	Starting point 6 years’ custody Category range 5 – 7 years’ custody
Category 3	Starting point 8 years 6 months’ custody Category range 6 years 6 months’ – 10 years’ custody	Starting point 6 years’ custody Category range 5 – 7 years’ custody	Starting point 3 years’ custody Category range 18 months’ – 5 years’ custody
Category 4	Starting point 5 years’ custody Category range 4 years 6 months’ – 7 years 6 months’ custody	Starting point 3 years’ custody Category range 18 months’ – 5 years’ custody	Starting point Low level community order Category range Band A fine – 18 months’ custody

¹ NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range 4 years 6 months' – 8 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 2 years' custody Category range 18 months' – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 2 years' custody Category range 18 months' – 3 years' custody	Starting point 9 months' custody Category range 12 weeks' – 18 months' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 9 months' custody	Starting point Band C fine Category range Discharge – 26 weeks' custody

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 - 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 - 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Medium level community order - 26 weeks' custody
Category 4	Starting point 9 months' custody Category range High level community order – 2 years' custody	Starting point High level community order Category range Medium level community order – 12 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward

adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offence committed on bail

Other aggravating factors:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Involving an innocent agent in the commission of the offence
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Use of sophisticated methods or technologies in order to avoid or impede detection
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Importation only of drug to which offender addicted and quantity consistent with personal use
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years for a third class **A** trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is on or after 1 June 2017, or first hearing before 1 June 2017).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

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 offending behaviour. See Totality guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Supplying or offering to supply a controlled drug

Misuse of Drugs Act 1971 (section 4(3))

Possession of a controlled drug with intent to supply it to another

Misuse of Drugs Act 1971 (section 5(3))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band B fine – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band A – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine the offence category

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrated the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Harm

In assessing harm, quantity is determined by the weight of the product. Where the offence is supply directly to users (including street dealing or supply in custodial institutions), the quantity of product is less indicative of the harm caused and therefore the starting point is not solely based on quantity. The court should consider all offences involving supplying directly to users as at least category 3 harm, and make an adjustment from the starting point within that category considering the quantity of drugs in the particular case.

Indicative quantities of the most common drugs, upon which the starting point is to be based) are given in the table below. Where a drug (such as fentanyl or its agonists) is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy – 7,000 tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – 200kg • Ketamine – 5kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very large quantity indicative of an industrial scale operation
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 1,300 tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – 40kg • Ketamine – 1kg • Synthetic cannabinoid receptor agonists (for example ‘spice’) – large quantity indicative of a commercial operation
Category 3	<p>Selling directly to users</p> <p>OR</p> <p>Supply of drugs in a custodial institution</p> <p>OR</p> <ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy – 200 tablets* • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 6kg • Ketamine – 150g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – smaller quantity between categories 2 and 4

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity <p>Note – where the offence is selling directly to users or supply in a custodial institution the starting point is not based on quantity – go to category 3</p>
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet²

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black and Asian offenders receive an immediate custodial sentence than White offenders and that for Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1*	Starting point 14 years' custody Category range 12 – 16 years' custody	Starting point 10 years' custody Category range 9 – 12 years' custody	Starting point 7 years' custody Category range 6 – 9 years' custody
Category 2	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 8 years' custody Category range 6 years 6 months' – 10 years' custody	Starting point 5 years' custody Category range 3 years 6 months' – 7 years' custody
Category 3	Starting point	Starting point	Starting point

² NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

	8 years 6 months' custody Category range 6 years 6 months' – 10 years' custody	4 years 6 months' custody Category range 3 years 6 months' – 7 years' custody	3 years' custody Category range 2 – 4 years 6 months' custody
Category 4	Starting point 5 years 6 months' custody Category range 4 years 6 months' – 7 years 6 months' custody	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range High level community order – 3 years' custody

*Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender's role.

CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 3 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range 4 years 6 months' – 8 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody
Category 4	Starting point 26 weeks' custody Category range High level community order – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody	Starting point Low level community order Category range Band A fine – medium level community order

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in and upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.

- Offence committed on bail

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity
- Involving an innocent agent in the commission of the offence
- Offender was supplying or involved in the supply of drugs into prison
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug
- Exposure of those involved in drug dealing to the risk of serious harm, for example through method of transporting drugs
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offending took place in prison (unless already taken into consideration at step 1)
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Supply only of drug to which offender addicted
- Mistaken belief of the offender regarding the type of drug, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years for a third class **A** trafficking offence except where the court is of the opinion that there are particular

circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

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 offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Production of a controlled drug

Misuse of Drugs Act 1971 (section 4(2)(a) or (b))

Cultivation of cannabis plant

Misuse of Drugs Act 1971 (section 6(2))

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Production of a controlled drug

Class A

Maximum: Life imprisonment

Offence range: High level community order – 16 years' custody

Class B

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Band B fine – 10 years' custody

Class C

Maximum: 14 years' custody and/ or unlimited fine

Offence range: Discharge – 8 years' custody

Cultivation of cannabis plant

Maximum: 14 years' custody

Offence range: Band A fine – 8 years' custody

This offence is subject to statutory minimum sentencing provisions.

See **STEP THREE** for further details.

STEP ONE

Determine the offence category

The court should determine the offender's culpability (role) and the harm caused (output or potential output) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, or where the level of the offender's role is affected by the scale of the operation, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising production/cultivation on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation

- If own operation, solely for own use (considering reasonableness of account in all the circumstances)
- Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)
-

Harm

In assessing harm, output or potential output are determined by the weight of the product or number of plants/scale of operation.

Indicative output or potential output, upon which the starting point is to be based, is given in the table below. Where a drug (such as fentanyl or its agonists) is not listed in the table below, sentencers should expect to be provided with expert evidence to assist in determining the potency of the particular drug and in equating the quantity in the case with the quantities set out in the guidelines in terms of the harm caused. There will often be no precise calculation possible, but courts are reminded that in cases of particularly potent drugs, even very small quantities may be held to be equivalent to large quantities of the drugs listed.

Category 1	<ul style="list-style-type: none"> • Heroin, cocaine – 5kg • Ecstasy –7,000 tablets* • MDMA – 5kg • LSD – 250,000 squares • Amphetamine – 20kg • Cannabis – operation capable of producing industrial quantities for commercial use • Ketamine – 5kg • Synthetic cannabinoid receptor agonists (for example 'spice') – very large quantity indicative of an industrial scale operation
Category 2	<ul style="list-style-type: none"> • Heroin, cocaine – 1kg • Ecstasy – 1,300 tablets* • MDMA – 1kg • LSD – 25,000 squares • Amphetamine – 4kg • Cannabis – operation capable of producing significant quantities for commercial use • Ketamine – 1kg • Synthetic cannabinoid receptor agonists (for example 'spice') – large quantity indicative of a commercial operation
Category 3	<ul style="list-style-type: none"> • Heroin, cocaine – 150g • Ecstasy –200 tablets (see note below) • MDMA – 150g • LSD – 2,500 squares • Amphetamine – 750g • Cannabis – 20 plants** • Ketamine – 150g • Synthetic cannabinoid receptor agonists (for example 'spice') – smaller quantity between categories 2 and 4

Category 4	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets* • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 7 plants** • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example ‘spice’) – very small quantity
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*Ecstasy tablet quantities based on a typical quantity of 150mg MDMA per tablet³

**with an assumed yield of 55g per plant

STEP TWO			
Starting point and category range			
<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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.</p> <p>Where the operation is on the most serious and commercial scale, involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above may be appropriate, depending on the offender’s role.</p>			
CLASS A	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 14 years’ custody Category range 12 – 16 years’ custody	Starting point 10 years’ custody Category range 9 – 12 years’ custody	Starting point 7 years’ custody Category range 6 – 9 years’ custody
Category 2	Starting point 11 years’ custody Category range 9 – 13 years’ custody	Starting point 8 years’ custody Category range 6 years 6 months’ – 10 years’ custody	Starting point 5 years’ custody Category range 3 years 6 months’ – 7 years’ custody
Category 3	Starting point 8 years 6 months’ custody Category range 6 years 6 months’ – 10 years’ custody	Starting point 4 years 6 months’ custody Category range 3 years 6 months’ – 7 years’ custody	Starting point 3 years’ custody Category range 2 – 4 years 6 months’ custody
Category 4	Starting point	Starting point	Starting point 18 months’ custody

³ NB. In the earlier guidelines, published in 2012, ecstasy tablet quantities were based on a typical quantity of 100mg MDMA per tablet

	5 years 6 months' custody Category range 4 years 6 months' – 7 years 6 months' custody	3 years 6 months' custody Category range 2 – 5 years' custody	Category range High level community order – 3 years' custody
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CLASS B	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 8 years' custody Category range 7 – 10 years' custody	Starting point 5 years 6 months' custody Category range 5 – 7 years' custody	Starting point 3 years' custody Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 6 years' custody Category range 4 years 6 months' – 8 years' custody	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 years 6 months' – 5 years' custody	Starting point 1 year's custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 4	Starting point 18 months' custody Category range 26 weeks' – 3 years' custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

CLASS C	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years 6 months' custody Category range 2 – 5 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody
Category 3	Starting point 18 months' custody Category range 1 – 3 years' custody	Starting point 26 weeks' custody Category range 12 weeks' – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody
Category 4	Starting point 26 weeks' custody Category range High level community order – 18 months' custody	Starting point High level community order Category range Low level community order – 12 weeks' custody	Starting point Low level community order Category range Band A fine – medium level community order

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in and upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- *Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction*
- *Offence committed on bail*

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Exercising control over the home of another person for drug-related activity
- Nature of any likely supply
- Level of any profit element
- Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately
- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- Exposure of drug user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the drug

- Exposure of those involved in drug production/cultivation to the risk of serious harm, for example through method of production/cultivation
- Exposure of third parties to the risk of serious harm, for example, through the location of the drug-related activity
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offending took place in prison (unless already taken into consideration at step 1)
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Isolated incident
- No previous convictions **or** no relevant or recent convictions
- Offender's vulnerability was exploited
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years for a third class **A** trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between

offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

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 offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Permitting premises to be used

Misuse of Drugs Act 1971 (section 8)

Triable either way unless the defendant could receive the minimum sentence of seven years for a third drug trafficking offence under section 110 Powers of Criminal Courts (Sentencing) Act 2000 in which case the offence is triable only on indictment.

Class A

Maximum: 14 years' custody

Offence range: Low level community order – 4 years' custody

Class B

Maximum: 14 years' custody

Offence range: Band A fine – 18 months' custody

Class C

Maximum: 14 years' custody

Offence range: Discharge – 26 weeks' custody

This offence is subject to statutory minimum sentencing provisions.

See STEP THREE for further details.

STEP ONE

Determining the offence category

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

Culpability

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.

A - Higher culpability:

- Participates in the exploitation of a child or vulnerable person including one who is also involved in the drugs operation
- Permits premises to be used primarily for drug activity
- Permits use in expectation of substantial financial gain
- Uses legitimate business premises to aid and/or conceal illegal activity

B – Lower culpability

- Permits use for limited or no financial gain
- No active role in drug activity taking place
- Involved due to intimidation or coercion
- Offender's vulnerability has been exploited

Harm

Where there are characteristics present which fall under different levels of harm, the court should balance these characteristics to reach a fair assessment of the harm caused or likely to be caused

Category 1

- Regular drug-related activity and/or premises used for drug activity over a long period
- Higher quantity of drugs (substantially higher than the quantities given for Category 2)

Category 2

- Infrequent drug-related activity and/or premises used for drug activity over a short period
- Lower quantity of drugs

[Drop-down box] Indicative quantities

	<ul style="list-style-type: none"> • Heroin, cocaine – 5g • Ecstasy – 13 tablets • MDMA – 5g • LSD – 170 squares • Amphetamine – 20g • Cannabis – 100g • Ketamine – 5g • Synthetic cannabinoid receptor agonists (for example 'spice') – very small quantity
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STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

CLASS A	CULPABILITY	
	A	B
HARM 1	<p>Starting point 2 years 6 months' custody</p> <p>Category range 18 months' – 4 years' custody</p>	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order - 18 months' custody</p>
HARM 2	<p>Starting point 36 weeks' custody</p> <p>Category range High level community order - 18 months' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order - High level community order</p>

CLASS B	CULPABILITY	
	A	B
HARM 1	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' – 18 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order - 26 weeks' custody</p>
HARM 2	<p>Starting point High level community order</p>	<p>Starting point Band C fine</p>

	Category range Low level community order - 26 weeks' custody	Category range Band A fine - low level community order
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CLASS C	CULPABILITY	
	A	B
HARM 1	Starting point 12 weeks' custody Category range High level community order – 26 weeks' custody*	Starting point Low level community order Category range Band C fine - high level community order
HARM 2	Starting point Low level community order Category range Band C fine - high level community order	Starting point Band A fine Category range Discharge - low level community order

*When tried summarily, the maximum penalty is 12 weeks' custody.

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

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Premises adapted to facilitate drug activity
- Location of premises, for example proximity to school

- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Failure to comply with current court orders
- Other offences taken into consideration (TICs)
- Offence committed whilst on licence or subject to post sentence supervision
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Involved due to naivety
- Isolated incident
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relative(s)

STEP THREE

Minimum Terms

For class A cases, section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 provides that a court should impose an appropriate custodial sentence of at least seven years for a third class **A** trafficking offence except where the court is of the opinion that there are particular circumstances which (a) relate to any of the offences or to the offender; and (b) would make it unjust to do so in all the circumstances.

Unjust in all of the circumstances

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offences or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offences and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;

- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

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 offending behaviour. See [Totality](#) guideline.

STEP SEVEN

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Possession of a controlled drug

Misuse of Drugs Act 1971 (section 5(2))

Triable either way

Class A

Maximum: 7 years' custody

Offence range: Fine – 51 weeks' custody

Class B

Maximum: 5 years' custody

Offence range: Discharge – 26 weeks' custody

Class C

Maximum: 2 years' custody

Offence range: Discharge – Medium community order

STEP ONE
Determining the offence category

The court should identify the offence category based on the class of drug involved.

Category 1	Class A drug
Category 2	Class B drug
Category 3	Class C drug

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that for Black and Asian offenders custodial sentence lengths have on average been longer than for White offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 123 to 129 of the [Equal Treatment Bench Book](#).

Offence category	Starting Point (applicable to all offenders)	Category Range (applicable to all offenders)
Category 1 (class A)	Band C fine	Band A fine – 51 weeks’ custody
Category 2 (class B)	Band B fine	Discharge – 26 weeks’ custody*
Category 3 (class C)	Band A fine	Discharge – medium level community order

*NB where dealt with in the magistrates’ court the maximum is 3 months

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, possession of drugs in prison is likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) nature of the offence to which conviction relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail

Other aggravating factors

- Possession of drug in prison
- Presence of others, especially children and/or non-users
- Possession of drug in a school or licensed premises
- Large quantity*
- Failure to comply with current court orders
- Offence committed on licence
- Attempts to conceal or dispose of evidence, where not charged separately
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

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

*The court should bear in mind that different types of drug have different levels of potency and therefore the relevance of high or low quantity will depend on the drug concerned.

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

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 offending behaviour. See [Totality](#) guideline.

STEP SIX

Ancillary orders

In all cases, the court should consider whether to make ancillary orders.

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.

Psychoactive Substance Guidelines

Importing or exporting a psychoactive substance

Psychoactive Substances Act 2016 (section 8)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years' custody

STEP ONE**Determine the offence category**

The court should determine the offender's culpability (role) and the harm caused (quantity) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage, (save where this advantage is limited to meeting the offender's own habit) whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Harm	
In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.	
Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation
Category 2	<ul style="list-style-type: none"> • Quantity indicative of smaller-scale commercial operation
Category 3	<ul style="list-style-type: none"> • Very small quantity

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Band B fine Category range Discharge – high level community order

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction
- Offence committed on bail

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in the offending
- Involving an innocent agent in the commission of the offence
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of psychoactive substance user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the **substance**
- Exposure of those involved in dealing in the psychoactive substance to the risk of serious harm, for example through method of transporting the substance
- Exposure of third parties to the risk of serious harm
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Use of sophisticated methods or technologies in order to avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Importation only of psychoactive substance to which offender addicted and of quantity consistent with personal use
- Mistaken belief of the offender regarding the type of substance, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

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 offending behaviour. See [Totality](#) guideline.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Supplying, or offering to supply, a psychoactive substance

Psychoactive Substances Act 2016 (sections 5(1) or 5(2))

Possession of psychoactive substance with intent to supply

Psychoactive Substances Act 2016 (section 7(1))

Maximum: 7 years' custody
Offence range: Band B Fine – 6 years' custody

STEP ONE

Determine the offence category

The court should determine the offender's culpability (role) and the harm caused with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising buying and selling on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- Expectation of limited, if any, financial or other advantage (including meeting the offender's own habit)

Harm	
<p><i>In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.</i></p> <p>Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.</p>	
Category 1	<ul style="list-style-type: none"> • Large quantity indicative of commercial-scale operation • Supply in a custodial institution
Category 2	<ul style="list-style-type: none"> • Supply directly to users
Category 3	<ul style="list-style-type: none"> • Very small quantity

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	<p>Starting point 4 years' custody</p> <p>Category range 3 – 6 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 12 months' – 3 years' 6 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' – 2 years' custody</p>
Category 2	<p>Starting point 2 years' custody</p> <p>Category range 12 months' – 3 years' 6 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' – 2 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order – 26 weeks' custody</p>
Category 3	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' – 2 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order – 26 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Category range Band B fine – medium level community order</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- *Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction*
- *In connection with the offence, the offender used a courier who, at the time of the commission of the offence, was aged under 18 (except where taken into account at Step 1)*
- *The offence was committed on or in the vicinity of school premises at a relevant time*
- *The offence was committed in a custodial institution*
- *Offence committed on bail*

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in the offending
- Exercising control over the home of another person for the purposes of the offending
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Exposure of psychoactive substance user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the substance
- Exposure of those involved in dealing in the psychoactive substance to the risk of serious harm, for example through method of transporting the substance
- Exposure of third parties to the risk of serious harm
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offending took place in prison (unless already taken into consideration at step 1)
- Offence committed on licence or post sentence supervision
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to avoid or impede detection

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

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

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

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.

- Supply only of psychoactive substance to which offender addicted
- Mistaken belief of the offender regarding the type of substance, taking into account the reasonableness of such belief in all the circumstances
- Isolated incident
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Offender's vulnerability was exploited

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

In circumstances where an appropriate custodial sentence of 7 years falls to be imposed under section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 (third Class A drug trafficking offences), the court may impose any sentence in accordance with this guideline which is not less than **80 per cent** of the **appropriate** custodial period.

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 offending behaviour. See [Totality](#) guideline.

STEP SIX

Confiscation and ancillary orders

In all cases, the court is required to consider confiscation where the Crown invokes the process or where the court considers it appropriate. It should also consider whether to make ancillary orders.

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.

Producing a psychoactive substance

Psychoactive Substances Act 2016 (section 4)

Triable either way

Maximum: 7 years' custody

Offence range: Band B Fine – 6 years' custody

STEP ONE

Determining the offence category

The court should determine the offender's culpability (role) and the harm caused (output or potential output) with reference to the tables below.

In assessing culpability, the sentencer should weigh up all the factors of the case to determine role. Where there are characteristics present which fall under different role categories, **or where the level of the offender's role is affected by the scale of the operation**, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by the offender's role

One or more of these characteristics may demonstrate the offender's role. These lists are not exhaustive.

Leading role:

- Directing or organising production on a commercial scale
- Substantial links to, and influence on, others in a chain
- Close links to original source
- Expectation of substantial financial or other advantage
- Uses business as cover
- Abuses a position of trust or responsibility

Significant role:

- Operational or management function within a chain
- Involves others in the operation whether by pressure, influence, intimidation or reward
- Expectation of significant financial or other advantage (save where this advantage is limited to meeting the offender's own habit), whether or not operating alone
- Some awareness and understanding of scale of operation

Lesser role:

- Performs a limited function under direction
- Engaged by pressure, coercion, intimidation, grooming and/ or control
- Involvement through naivety, immaturity or exploitation
- No influence on those above in a chain
- Very little, if any, awareness or understanding of the scale of operation
- Expectation of limited, if any, financial advantage, (including meeting the offender's own habit)
- If own operation, solely for own use (considering reasonableness of account in all the circumstances)

Harm

In assessing harm, the sentencer should consider the factors below. Where there are characteristics present which fall under different harm categories the court should balance these characteristics to reach a fair assessment of harm.

Where evidence is available as to the potential effects of the substance and harm likely to be caused by those effects, the court should consider whether this affects the category of harm. Where the harm is very great, or very small, this may lead the court to move the starting point for the offence up or down within the category, or to place the offence in a higher or lower category than that indicated by the other factors listed.

Category 1	<ul style="list-style-type: none"> • Large quantity indicative of industrial scale operation
Category 2	<ul style="list-style-type: none"> • Quantity indicative of smaller-scale commercial operation
Category 3	<ul style="list-style-type: none"> • Very small quantity

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	LEADING ROLE	SIGNIFICANT ROLE	LESSER ROLE
Category 1	Starting point 4 years' custody Category range 3 – 6 years' custody	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody Category range 12 months' – 3 years' 6 months' custody	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody Category range 26 weeks' – 2 years' custody	Starting point High level community order Category range Low level community order – 26 weeks' custody	Starting point Low level community order Category range Band B fine – medium level community order

The table below

contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- *Previous convictions, having regard to a) nature of the offence to which condition relates and relevance to current offence; and b) time elapsed since conviction*
- *Offence committed on bail*

Other aggravating factors include:

- Exploitation of children and/or vulnerable persons to assist in the offending
- Exercising control over the home of another person for the purposes of the offending
- Nature of any likely supply
- Level of any profit element
- Use of premises accompanied by unlawful access to electricity/other utility supply of others, where not charged separately
- Ongoing/large scale operation as evidenced by presence and nature of specialist equipment
- Exposure of psychoactive substance user to the risk of serious harm over and above that expected by the user, for example, through the method of production or subsequent adulteration of the substance
- Exposure of those involved in producing the psychoactive substances to the risk of serious harm, for example through method of production
- Exposure of third parties to the risk of serious harm
- Attempts to conceal or dispose of evidence, where not charged separately
- Presence of others, especially children and/or non-users
- Presence of weapons, where not charged separately
- Use of violence (where not charged as separate offence or taken into account at step one)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offending took place in prison (unless already taken into consideration at step 1)
- Established evidence of community impact
- Use of sophisticated methods or technologies in order to avoid or impede detection

Factors reducing seriousness or reflecting personal mitigation

- Involvement due to pressure, intimidation or coercion falling short of duress, except where already taken into account at step one.
- Isolated incident
- No previous convictions **or** no relevant or recent convictions
- Offender's vulnerability was exploited
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

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 guideline for Reduction in Sentence for a Guilty Plea (where first hearing is [on or after 1 June 2017](#), or first hearing [before 1 June 2017](#)).

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 offending behaviour. See [Totality](#) guideline.

STEP SIX**Ancillary orders**

In all cases, the court should consider whether to make ancillary orders.

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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Final Resource Assessment

Drug Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In February 2012, the Sentencing Council's definitive *Drug Offences* guideline came into force. An assessment of the guideline published in June 2018² found that the nature of drug offending had changed since the guideline came into force, with the research suggesting that some drug offending was becoming more serious. The Council therefore decided to revise the existing guideline, to ensure that it fully reflects the type of offending currently coming before the courts.

In addition, in May 2016 a number of new offences were created under the Psychoactive Substances Act 2016, for which no current guideline exists.

The Council has now produced sentencing guidelines covering these new offences, along with revised guidelines for all of the offences covered by the existing guideline, for use in all courts in England and Wales.

The Council's aim in developing the guidelines has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/publications/item/drug-offences-assessment-of-guideline/>

This resource assessment covers the following offences³:

- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug, Misuse of Drugs Act 1971 (section 3) and Customs and Excise Management Act 1979 (section 170(2));
- Supplying or offering to supply a controlled drug, Misuse of Drugs Act 1971 (section 4(3));
- Possession of a controlled drug with intent to supply it to another, Misuse of Drugs Act 1971 (section 5(3));
- Production of a controlled drug, Misuse of Drugs Act 1971 (section 4(2)(a) or (b))
- Cultivation of cannabis plant, Misuse of Drugs Act 1971 (section 6(2));
- Possession of a controlled drug, Misuse of Drugs Act 1971 (section 5(2));
- Permitting premises to be used, Misuse of Drugs Act 1971 (section 8);
- Importing or exporting a psychoactive substance, Psychoactive Substances Act 2016 (section 8);
- Supplying, or offering to supply, a psychoactive substance, Psychoactive Substances Act 2016 (sections 5(1) or 5(2));
- Possession of psychoactive substance with intent to supply, Psychoactive Substances Act 2016 (section 7(1));
- Producing a psychoactive substance, Psychoactive Substances Act 2016 (section 4).

The *Drug Offences* guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the revised guidelines will encourage consistency of sentencing and in the majority of cases will not change overall sentencing practice. In order to develop guidelines that maintain current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks, sentencing data from the Court Proceedings Database, findings from the *Drug Offences* guideline assessment⁴, and references to case law and news articles. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Research was conducted with sentencers to explore whether the guidelines will work as anticipated. This research provided some further understanding of the likely

³ The Sentencing Council consulted on a draft guideline for 'Possession of a psychoactive substance in a custodial institution' (Psychoactive Substances Act 2016 – Section 9) and so this was included in the draft resource assessment. However, the Council decided not to include this offence in the definitive guidelines due to low volumes and therefore, it is not included in the final resource assessment.

⁴ <https://www.sentencingcouncil.org.uk/publications/item/drug-offences-assessment-of-guideline/>

impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for drug offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/publications/item/drug-offences-statistical-bulletin/>

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug (“importation offences”)⁵

The statutory maximum sentence for these offences is life imprisonment for class A and 14 years’ custody for classes B and C. In 2019, around 240 offenders were sentenced for these offences.^{6,7} Nearly three quarters of offenders (71 per cent) were sentenced for class A offences, 24 per cent for class B, and 5 per cent for class C.

In 2019, the vast majority of offenders sentenced for class A offences were sentenced to immediate custody (96 per cent). The average (mean) custodial sentence length (ACSL) for those sentenced to immediate custody was 8 years 2 months, after any reduction for guilty plea.

For offenders sentenced for class B offences, 69% were sentenced to immediate custody in 2019 and a further 24 per cent received a suspended sentence order. The ACSL in 2019 was 3 years 6 months.

Sixty-four per cent of offenders sentenced for class C offences in 2019 were sentenced to immediate custody, and a further 36 per cent received a suspended sentence order. The ACSL in 2019 was 3 years 3 months.

Supplying or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another (“supply/PWITS”)

The statutory maximum sentence for class A offences is life imprisonment, and for classes B and C it is 14 years’ custody. Around 10,500 offenders were sentenced for these offences in 2019. The majority were sentenced for class A (71 per cent), followed by class B (28 per cent) and class C (one per cent).

⁵ The figures provided for fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug include other sections of legislation not specifically covered by the revised guideline, but for which the guideline could still be applied, such as sections 50(2), 170(1). In 2018, these other offences comprised 28 per cent of the total.

⁶ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

⁷ Cannabis was reclassified from class C to class B in January 2009, and ketamine was reclassified from class C to class B in June 2014. Figures shown here categorise cannabis and ketamine as per their legal drug classification. The figures for classes B and C may therefore differ from figures published by the MoJ, which are based on how drug offences were coded by the courts.

The vast majority of offenders sentenced for class A offences in 2019 received a custodial sentence, either immediate (82 per cent) or suspended (14 per cent). The ACSL for class A in 2019 was 4 years.

Just under half of offenders sentenced for class B offences in 2019 received a suspended sentence order (46 per cent). A further 29 per cent were sentenced to immediate custody, and 20 per cent received a community order. The ACSL in 2019 was 1 year 6 months.

The most common sentencing outcome in 2019 for class C offenders was a suspended sentence order (45 per cent), followed by immediate custody (25 per cent) and a community order (13 per cent). The ACSL for class C in 2019 was 1 year 2 months.

Production of a controlled drug/cultivation of cannabis plant (“production/cultivation offences”)

The statutory maximum sentence for production/cultivation offences is life imprisonment for class A, and 14 years’ custody for classes B and C. Around 2,100 offenders were sentenced for these offences in 2019, and the vast majority were sentenced for class B (12 offenders were sentenced for classes A and C combined).

For class B offences, 35 per cent of offenders in 2019 were sentenced to immediate custody. A further 21 per cent received a suspended sentence order, 20 per cent received a community order, and 16 per cent received a fine. The ACSL in 2019 for class B offences was 1 year 10 months.

Possession of a controlled drug

Possession of a controlled drug is the highest volume offence covered by the revised guideline, with around 23,000 offenders sentenced in 2019. Just under two thirds of offenders were sentenced for class B offences (63 per cent), around one third were sentenced for class A (35 per cent) and two per cent for class C.

Most offenders sentenced for class A offences in 2019 received a fine (63 per cent). A further 13 per cent received a discharge, and 10 per cent received a community order. Six per cent of offenders were sentenced to immediate custody, and the ACSL was three months.

The majority of offenders sentenced for class B offences in 2019 received either a fine or a discharge (59 per cent and 23 per cent, respectively). Three per cent of offenders were sentenced to immediate custody, and the ACSL was two months.

For class C offences, the most frequently used sentence outcome in 2019 was a discharge (37 per cent) and 35 per cent received a fine. Six per cent of offenders were sentenced to immediate custody, and the ACSL was three months.

Permitting premises to be used

In 2019 around 210 offenders were sentenced for permitting premises to be used. The majority were sentenced for class B (57 per cent), while 41 per cent were sentenced for class A, and one per cent for class C.

For class A offences, the most common sentencing outcome in 2019 was a suspended sentence order (40 per cent), followed by a community order (27 per cent) and immediate custody (20 per cent). The ACSL in 2019 was 17 months.

For class B offences, 40 per cent of offenders sentenced in 2019 received a community order, 28 per cent received a suspended sentence order and 13 per cent were 'otherwise dealt with'⁸. Four per cent of offenders were sentenced to immediate custody in 2019 (five offenders), and the ACSL in 2019 was five months.

Importing or exporting a psychoactive substance (“importation offences”)/supplying, or offering to supply, a psychoactive substance/possession of psychoactive substance with intent to supply (“supply/PWITS”)/producing a psychoactive substance (“production offences”)

There were around 50 offenders sentenced in 2019 for these offences; all of which were sentenced for supply/PWITS. No offenders were sentenced for production or importation in 2019.

Importation and production offences are very low volume. Since they came into force in May 2016, fewer than 10 offenders have been sentenced for these offences combined.

For supply/PWITS, 35 per cent of offenders received a community order in 2019, 33 per cent were sentenced to a suspended sentence, 15 per cent received a fine, 13 per cent were sentenced to immediate custody and four per cent received a discharge. The statutory maximum sentence for these offences is 7 years' custody, and in 2019 the ACSL for supply/PWITS was 12 months, for those who were sentenced to immediate custody.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the definitive guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the definitive guideline are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, the data available are limited. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed definitive guidelines, and an assessment of the

⁸ The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

effects of changes to the structure and wording of the guidelines where previous guidelines existed.

The resource impact of the definitive guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the guidelines are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance, evaluation evidence and data on current sentence levels has been considered.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm in the guidelines, due to a lack of data available regarding the seriousness of current cases. Analysis of transcripts of judges' sentencing remarks has helped to inform guideline development and the resource assessment by providing some details of the factors taken into account by sentencers. However, it has only been possible to analyse a sample of transcripts, and as transcripts are only available for offenders sentenced at the Crown Court there is less information about sentencing at magistrates' courts. Therefore, it is difficult to ascertain how sentence levels may change under the guidelines.

It remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, research interviews were undertaken with sentencers, to provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/crown-court/>.

Summary

The expected impact of each guideline is provided in detail below. Overall, the guidelines aim to improve consistency of sentencing, but not to change average sentencing practice.

For importation of a class A drug, there may be a decrease in sentences for offenders categorised as lesser role culpability and harm level 3, due to a reduction in the starting point sentence when compared with the existing guideline. It is estimated that this may lead to a need for around 10 fewer prison places per year.

For importation offences, supply/PWITS and production/cultivation offences, there have been some changes to the quantities provided in the revised guidelines (see section below for further details). These changes mean that it is possible the guidelines may have an impact on correctional resources (although it is not possible to quantify what this impact might be).

Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug (“importation offences”), supplying or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another (“supply/PWITS”), production of a controlled drug/cultivation of cannabis plant (“production/cultivation offences”)

The revised guidelines for these offences are broadly similar to the existing guidelines. A number of changes have, however, been made in relation to the culpability factors listed in the guidelines,⁹ and wording around sentences over 20 years has been moved to a different position within the guidelines.

An analysis of transcripts of Crown Court judges’ sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. Based on this analysis of a sample of cases, most of the changes in the revised guidelines are not expected to result in an impact on prison and probation resources. However, there are two changes in the importation guideline which may lead to decreases in sentences for a small number of offenders, and there are some changes to the quantities of drugs specified within the categorisation of harm for all three guidelines (importation, supply/PWITS and production) which may also lead to changes. These are detailed separately below.

Changes specific to the guideline for importation offences

The existing guideline for importation offences contains wording in harm category 4, directing sentencers to either the possession or supply/PWITS guideline. The revised guideline for these offences has replaced this wording with sentence levels, which are broadly similar to the sentence levels in harm category 4 of the possession or supply/PWITS guideline.

While no recent data are available on the number of offenders that are categorised at each level of harm for this offence, data from the Crown Court Sentencing Survey (CCSS)¹⁰ from 2014 suggest that very few offenders are categorised at harm category 4. For the small number of offenders for whom data were available, sentences under the existing guideline were broadly similar to those that would be expected to be imposed under the revised guideline, with decreases for a very small number of offenders (fewer than five). It is therefore expected that this change would have at most a minimal impact on decreasing sentences for this offence, with a negligible impact on prison and probation resources.

The starting point sentence for an offender sentenced for importation of a class A drug, categorised as lesser role culpability and harm category 3 has been lowered in the revised guideline (from 4 years 6 months in the existing guideline to 3 years in the revised guideline). This change was found to lower sentence starting points in research interviews, a change met favourably by most Crown Court judges who took

⁹ For more details of these changes, please refer to the consultation response document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

¹⁰ During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see: <https://www.sentencingcouncil.org.uk/research-and-resources/data-collections/crowncourt-sentencing-survey/>

part. While no recent data are available on the number of offenders placed in this category, data from the CCSS from 2014 suggests that of adult offenders sentenced for importation class A, around 12 per cent were categorised as lesser role culpability and harm category 3. Assuming that approximately the same proportion would be categorised in the same way under the revised guideline, analysis suggests that the new guideline may lead to a reduction in the need for approximately 10 prison places per year.

A similar change has been made to the starting point for the same categories of culpability and harm (lesser role and harm category 3) for class B drugs, decreasing from 1 year in the existing guideline to 9 months under the revised guideline. Data from the CCSS from 2014 suggests that very few offenders are placed in this category, partly due to the lower volumes for this offence for class B drugs. Additionally, the data suggests that offenders placed in this category generally already receive sentences below the existing guideline's starting point. It is therefore unlikely that this change will have any impact on aggregate sentences for this offence, and so no impact on prison or probation resources is expected.

Ecstasy tablets

The current guideline for importation offences, supply/PWITS, and production/cultivation offences provides numbers of ecstasy tablets based on an average purity of 100mg of MDMA per tablet. Evidence from the Metropolitan Police and National Crime Agency suggests that the average purity has now increased to 150mg per tablet. The indicative numbers of ecstasy tablets in the revised guideline have therefore been adjusted accordingly.¹¹

It seems likely that changing the quantities of ecstasy tablets given in the guideline may result in an increase in sentences in some cases as, for example, in category 1 harm the indicative quantity has been lowered from 10,000 tablets to 7,000 tablets. However transcript analysis of Crown Court judges' sentencing remarks showed that on occasion sentencers adjusted the starting point due to the actual quantity of drugs in the case being slightly different to the indicative quantity in the guideline. This is corroborated by the findings from early research undertaken with a small number of Crown Court judges, which also found that sentencers use the indicative quantities and then adjust the starting point according to the quantities in the case.

As the new guideline takes account of the fact that the average purity is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.¹²

MDMA

The revised guideline for importation offences, supply/PWITS and production/cultivation offences also includes quantities in grams/kilograms for MDMA

¹¹ For example, category 1 harm in the current guideline gives an indicative quantity of 10,000 ecstasy tablets (based on an average purity of 100mg per tablet). Given that average purity is now around 150mg per tablet (i.e. it has increased by a factor of 1.5), the revised guideline gives the quantity of 7,000 tablets in category 1 harm, as 10,000 tablets at a purity of 100mg roughly equates to 7,000 tablets at a purity of 150mg.

¹² The factor of "High purity" has been removed from the revised guideline.

(the current guideline does not include this).¹³ Analysis of sentencing transcripts found that in a small proportion of cases, the new MDMA weights given in the guideline might result in different categorisations or adjustments from the new indicative quantity starting points, but it is expected that any impact would be small.

Cannabis plants

In the current production/cultivation guideline, indicative numbers of cannabis plants are given based on the assumption that the average yield of a plant is 40g. Evidence has shown that over time, the average yield of a cannabis plant has increased and is now around 55g. Therefore, similarly to ecstasy tablets, the indicative numbers of cannabis plants indicated in the revised guideline have been adjusted.¹⁴

It therefore seems likely that, as with ecstasy tablets, changing the number of plants indicated in the guideline may result in an increase in sentences in some cases as, for example, in category 3 harm the indicative quantity has been lowered from 28 plants to 20 plants.

However, analysis of transcripts suggested that in some cases, sentencers adjusted the starting point according to the actual number of plants in the case. As the new guideline takes account of the fact that the average yield is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.

Given the changes to indicative quantities for ecstasy tablets and cannabis plants, along with the additional indicative quantities for MDMA, it is possible that the revised guidelines for these offences may have an impact on correctional resources (although it is not possible to quantify what this impact might be).

Synthetic Cannabinoid Receptor Agonists (SCRAs)

Harm categorisation in the revised guidelines for importation offences, supply/PWITS, and production/cultivation offences now also includes descriptive factors for synthetic cannabinoid receptor agonists (SCRAs), also known by the street name 'spice'.¹⁵

Analysis of a small number of transcripts for SCRA offences found that information relating to weights or quantities was rarely mentioned. It therefore remains difficult to estimate whether the guideline will result in any changes to sentencing practice for these offences.

The lack of data available means it is not possible to say whether there will be an impact on prison and probation resources for SCRA offences. However, given that

¹³ Methylenedioxyamphetamine (MDMA) can be found in powder form, whereas ecstasy is often used to refer to MDMA in tablet or capsule form.

¹⁴ For example, category 4 harm in the current guideline gives an indicative quantity of 9 plants, and in the revised guideline this has been adjusted to 7 plants, as 9 plants with a yield of 40g each roughly equates to 7 plants with a yield of 55g each.

¹⁵ Quantities for SCRAs are also included within the permitting premises guideline. Details of this are covered within the 'Permitting premises' section below.

there is currently no guideline for these offences, it is likely that sentencing will become more consistent following the introduction of the guideline.

Possession of a controlled drug

The revised possession guideline is very similar to the existing guideline; both the structure of the guideline (where the offence category is determined by the class of drug) and the sentence levels have remained unchanged.

It is therefore not anticipated that this guideline will have an impact on prison and probation resources.

Permitting premises to be used

The revised guideline for permitting premises to be used contains two levels of culpability and two levels of harm (as per the existing guideline). The combination of these two components determines the appropriate offence category, in the form of a two by two sentencing table (for each class of drug). This differs from the existing guideline which contains three offence categories for each class of drug.

As with the importation offences, supply/PWITS, and production/cultivation guidelines, the guideline for permitting premises to be used now also includes descriptive factors for synthetic cannabinoid receptor agonists (SCRAs). As mentioned previously in relation to those guidelines, it is not possible to say whether this will have an impact on resources, however it is likely that sentencing will become more consistent for these offences.

There have, however, been some small changes to the culpability and harm categories in the revised guideline for this offence.¹⁶ Transcripts of judges' sentencing remarks were analysed for a sample of these cases, to assess how sentences might change under the revised guideline. This analysis of a small sample of cases indicated that sentence levels would remain either the same or broadly similar under the revised guideline. It is therefore not anticipated that this guideline will have an impact on prison and probation resources.

Psychoactive substances¹⁷importation offences"/supplying, or offering to supply, a psychoactive substance/possession of psychoactive substance with intent to supply ("supply/PWITS")/producing a psychoactive substance ("production")

There is currently no guideline for these offences, which cover psychoactive substances (harmful substances which are not controlled under the Misuse of Drugs Act 1971). These offences are relatively low in volume, with around 50 offenders sentenced in total in 2019.

The definitive guidelines for importation and production offences have three levels of culpability and three levels of harm. These offences have a statutory maximum sentence of 7 years' custody. The sentencing table in the importation offences

¹⁶ For more details of these changes, please refer to the consultation document, available here: <https://www.sentencingcouncil.org.uk/publications?s&cat=consultations>

guideline spans from a discharge to 6 years' custody, whereas for production the range is a fine to 6 years' custody.

Fewer than 10 offenders have been sentenced in total for importation and production offences since they came into force in 2016 and no adults were sentenced for these offences in 2019. Due to the limited information available it is not possible to say whether the definitive guideline for these offences will have an impact on correctional resources. It is anticipated, however, that sentencing will become more consistent following the introduction of the definitive guideline, and given the very low number of offenders sentenced for these offences, any impact on resources is likely to be minimal.

The definitive guideline for supply/PWITS has three levels of culpability and three levels of harm, with a sentencing range from a fine to 6 years' custody. The statutory maximum sentence for these offences is 7 years' custody.

Transcripts of judges' sentencing remarks for these offences were used to assess how sentences might change under the revised guidelines. The analysis indicated that overall, some sentences would be likely to increase under the revised guidelines. Based on the data available, however, it is not possible to estimate the potential resource impact, as the transcripts analysed include substances which are now controlled under the Misuse of Drugs Act 1971 (such as some variants of 'spice' which are now classified as class B drugs). The transcripts do not therefore provide sufficient evidence upon which to calculate a robust estimate. It is anticipated, however, that sentencing of these offences will become more consistent following the introduction of the guidelines.

Risks

In attempting to estimate the likely resource impacts of these guidelines, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines come into effect.

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This includes research interviews which were undertaken with sentencers, where case scenarios were used to test whether the guidelines had the intended effect. However, there were limitations on the number of scenarios which could be explored, so the risk could not be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information provided further information on which the final resource assessment has been based.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret it as intended. Sentencing ranges have been agreed on by considering sentencing ranges in the existing *Drug Offences* guidelines, in conjunction with Council members' experience of sentencing. Sentencing data have also been considered, and transcripts of Crown Court judges' sentencing remarks for drugs cases have been studied to gain a greater understanding of current sentencing practice. Research carried out with sentencers also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees have also given feedback on their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

Annex A

Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: x – xx years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and section [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation• Highly dangerous weapon e.g firearm, blade, axe
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• All other weapons• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ 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- Lower culpability	<ul style="list-style-type: none">• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

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

Category 1	<ul style="list-style-type: none">• Substantial physical or psychological injury or other substantial impact on the victim• Victim at home or on the premises (or returns) while offender present• Violence used or threatened against the victim, particularly involving a weapon• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Some psychological injury or some other impact on the victim

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • No violence used or threatened and a weapon is not produced • Limited psychological injury or other limited impact on the victim

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 10 years' custody Category Range 9 -13 years' custody	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 year's custody Category Range 4 – 9 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 year's custody Category Range 4– 9 years' custody	Starting Point 4 years' custody Category Range 2-6 year's custody
Category 3	Starting Point 6 year's custody Category Range 4-9 years' custody	Starting Point 4 years' custody Category Range 2-6 years custody	Starting Point 2 years custody Category Range 1-4 years custody

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/>

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- 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:

- Use of disguise
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not captured at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under section 314 of the Sentencing Code, the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#)). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 52 of the Sentencing Code 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 and section 325 of the Sentencing Code.

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Non-domestic burglary

- Tab 1.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 1.2 Post guideline Seriousness. (CCSS data)
- Tab 1.3 Post guideline factors. (CCSS data)
- Tab 1.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 1.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 1.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 1.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Domestic burglary

- Tab 2.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 2.2 Post guideline Seriousness. (CCSS data)
- Tab 2.3 Post guideline factors. (CCSS data)
- Tab 2.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 2.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 2.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 2.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Aggravated burglary

- Tab 3.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 3.2 Post guideline Seriousness. (CCSS data)
- Tab 3.3 Post guideline factors. (CCSS data)
- Tab 3.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 3.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 3.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 3.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Sentencing trends for non-domestic burglary, 2009-2019¹

Number and proportion of adult offenders sentenced for non-domestic burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	5,699	5,848	6,394	5,468	4,995	4,414	3,942	3,856	4,031	3,703	3,364
Crown Court	1,757	1,789	2,103	2,195	2,043	2,139	2,094	1,849	1,771	1,759	1,879
Total	7,456	7,637	8,497	7,663	7,038	6,553	6,036	5,705	5,802	5,462	5,243

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	76%	77%	75%	71%	71%	67%	65%	68%	69%	68%	64%
Crown Court	24%	23%	25%	29%	29%	33%	35%	32%	31%	32%	36%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

The number of offenders sentenced for non-domestic burglary has decreased from a high of 8,500 in 2011 to 5,200 in 2019. In 2019, 64 per cent of offenders were sentenced in magistrates' courts.

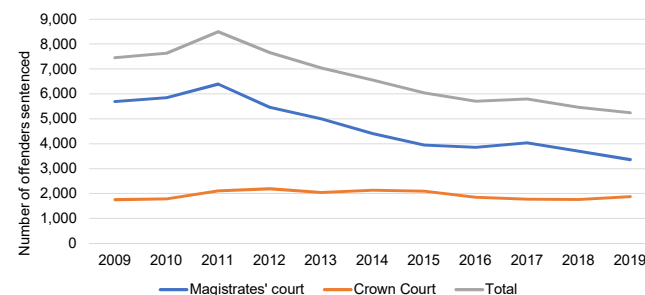
Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute discharge	4	5	5	3	4	4	10	6	5	2	1
Conditional discharge	350	324	350	230	205	226	187	133	97	107	90
Fine	255	318	340	234	218	259	205	168	188	157	113
Community sentence	3,023	3,107	3,187	2,526	1,911	1,462	1,375	1,132	1,122	1,163	1,147
Suspended sentence	956	1,014	1,158	1,072	1,169	1,209	1,227	1,211	1,205	1,034	912
Immediate custody	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881
Otherwise dealt with	121	133	176	251	381	389	121	75	76	103	99
Total	7,456	7,637	8,497	7,663	7,038	6,553	6,036	5,705	5,802	5,462	5,243

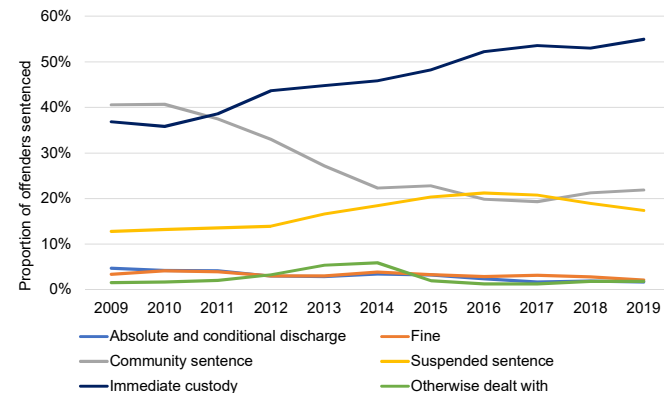
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	5%	4%	4%	3%	3%	4%	3%	2%	2%	2%	2%
Fine	3%	4%	4%	3%	3%	4%	3%	3%	3%	3%	2%
Community sentence	41%	41%	38%	33%	27%	22%	23%	20%	19%	21%	22%
Suspended sentence	13%	13%	14%	14%	17%	18%	20%	21%	21%	19%	17%
Immediate custody	37%	36%	39%	44%	45%	46%	48%	52%	54%	53%	55%
Otherwise dealt with	2%	2%	2%	3%	5%	6%	2%	1%	1%	2%	2%

Between 2010 and 2017, the proportion of offenders receiving a CO decreased from 41 per cent to 19 per cent. In 2018 and 2019 this increased slightly, to 21 and 22 per cent. The proportion of offenders receiving a custodial sentence (either immediate or suspended) increased during the period 2010 and 2017, and has since remained stable. In 2019, 17 per cent of offenders were given a suspended sentence, and 55 per cent were sentenced to immediate custody.

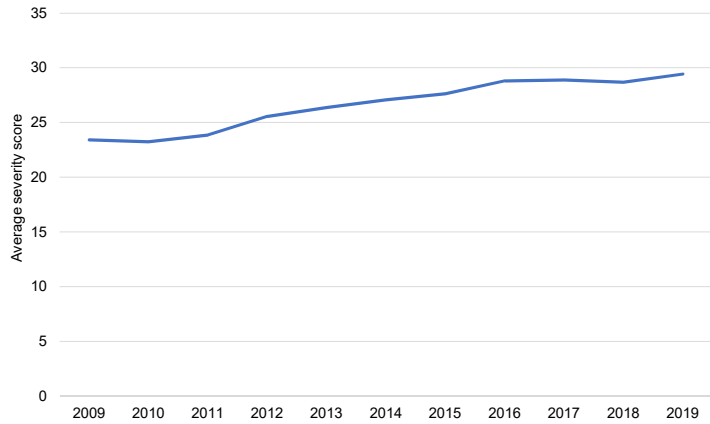
Number of adult offenders sentenced for non-domestic burglary, by court type, 2009-2019



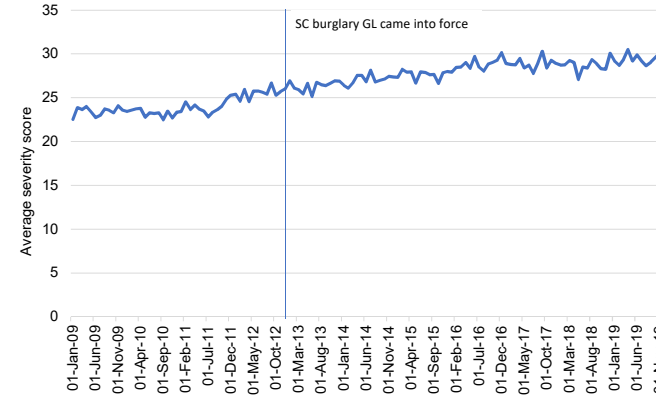
Sentence outcomes for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019



Average sentencing severity per year for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019

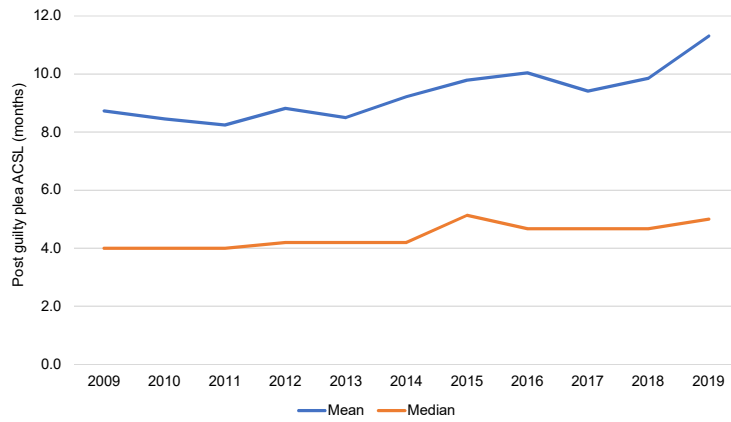


Average sentencing severity per month for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019

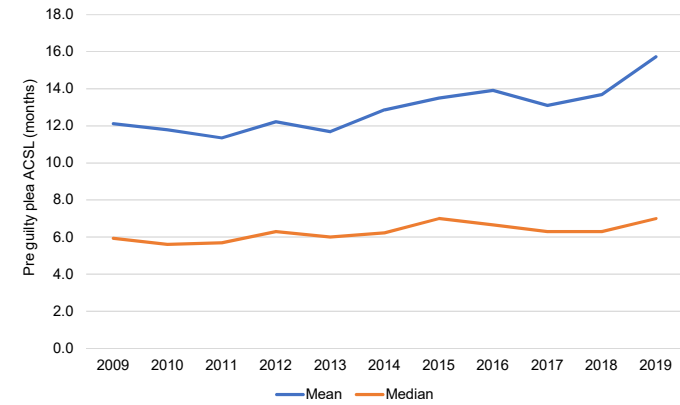


Between 2010 and 2016 there was an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders receiving a custodial sentence (either immediate or suspended), and a reduction in the proportion of offenders receiving a CO. Severity remained stable between 2016 and 2018 but in 2019 started to rise again.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019



Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 8 months in 2011 to 11 months in 2019 (post guilty plea).

Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	2,222	2,282	2,714	2,702	2,587	2,352	2,238	2,263	2,413	2,203	2,090
Between 1 and 2 years	331	247	359	416	352	413	412	434	422	399	438
Between 2 and 3 years	109	125	120	133	128	138	160	175	188	200	211
Between 3 and 4 years	56	39	44	59	46	71	63	57	50	65	66
Between 4 and 5 years	12	26	25	17	22	15	25	25	22	17	37
More than 5 years	17	17	19	20	15	15	13	26	14	12	39
Total	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	81%	83%	83%	81%	82%	78%	77%	76%	78%	76%	73%
Between 1 and 2 years	12%	9%	11%	12%	11%	14%	14%	15%	14%	14%	15%
Between 2 and 3 years	4%	5%	4%	4%	4%	5%	5%	6%	6%	7%	7%
Between 3 and 4 years	2%	1%	1%	2%	1%	2%	2%	2%	2%	2%	2%
Between 4 and 5 years	0%	1%	1%	1%	1%	0%	1%	1%	1%	1%	1%
More than 5 years	1%	1%	1%	1%	0%	0%	0%	1%	0%	0%	1%

Over time, the proportion of offenders receiving a final sentence of 1 year or less has declined, and a higher proportion now receive sentences between 2 and 3 years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	1,985	2,043	2,442	2,402	2,353	2,130	1,991	2,044	2,213	2,009	1,903
Between 1 and 2 years	386	362	449	527	423	414	445	429	369	368	372
Between 2 and 3 years	195	135	200	208	183	249	249	263	282	267	289
Between 3 and 4 years	69	81	81	99	98	94	115	116	130	130	156
Between 4 and 5 years	46	47	48	44	36	48	53	61	67	70	61
Between 5 and 6 years	40	30	30	39	29	44	34	22	22	27	32
Between 6 and 7 years	9	16	14	7	11	7	8	15	9	6	22
More than 7 years	17	22	17	21	17	18	16	30	17	19	46
Total	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	72%	75%	74%	72%	75%	71%	68%	69%	71%	69%	66%
Between 1 and 2 years	14%	13%	14%	16%	13%	14%	15%	14%	12%	13%	13%
Between 2 and 3 years	7%	5%	6%	6%	6%	8%	9%	9%	9%	9%	10%
Between 3 and 4 years	3%	3%	2%	3%	3%	3%	4%	4%	4%	4%	5%
Between 4 and 5 years	2%	2%	1%	1%	1%	2%	2%	2%	2%	2%	2%
Between 5 and 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Between 6 and 7 years	0%	1%	0%	0%	0%	0%	0%	1%	0%	0%	1%
More than 7 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence)

Sentence outcomes and ACSLs for non-domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234 (n=749)	2013 (n=1,108)	2014 (n=1,238)	2015 Q1 (n=282)
Level 1 (most)	28%	29%	36%	35%
Level 2	46%	49%	47%	51%
Level 3 (least)	26%	22%	17%	14%
Total	100%	100%	100%	100%

Based on the most recent data available, 35 per cent of offenders currently fall in the highest category of seriousness, and 14% fall in the lowest category.

Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=211)	2013 (n=325)	2014 (n=450)	2015 Q1 (n=98)
Immediate custody	85%	82%	83%	74%
SSO	11%	18%	17%	24%
CO	4%	1%	0%	1%
Total	100%	100%	100%	100%

In category 1 there has been a decrease in the use of immediate custody over time, and an increase in SSOs. The ACSL in category 1 has remained relatively stable since the guideline came into force, and was around 1 year 10 months in 2015 Q1 (post guilty plea) or 2 years 6 months pre guilty plea (note: the starting point for this category is 2 years).

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	24.2	23.9	23.5	21.5
Median	21.0	20.0	22.0	21.0

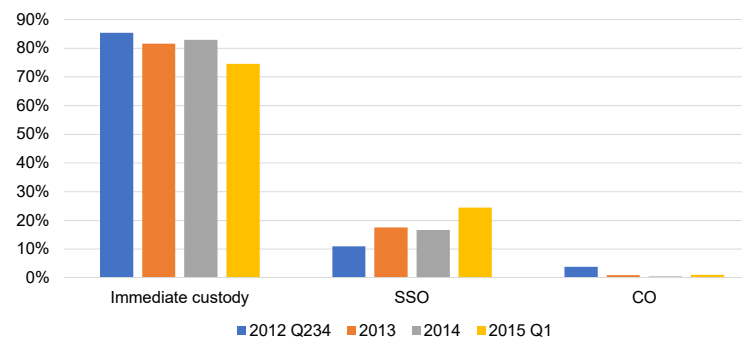
Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	33.6	33.2	32.8	29.7
Median	29.9	28.0	29.9	26.9

Offence categories in Sentencing Council non-domestic burglary definitive guideline

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	2 years' custody	1–5 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

Proportion of adult offenders, by sentence outcome, category 1 (most serious), 2012 to 2015



	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.0	2.0	2.0	1.8
Median	1.8	1.7	1.8	1.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.8	2.8	2.7	2.5
Median	2.5	2.3	2.5	2.2

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234	2013	2014	2015 Q1
	(n=347)	(n=541)	(n=577)	(n=144)
Immediate custody	58%	60%	59%	60%
SSO	29%	30%	30%	31%
CO	11%	10%	11%	8%
Conditional discharge	0%	0%	0%	0%
Other	1%	0%	0%	0%
Total	100%	100%	100%	100%

The proportion of offenders placed in category 2 has fluctuated between 46 and 51 per cent since the guideline came into force. Both the use of disposal types and the ACSL in category 2 have remained broadly stable over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	13.0	11.1	10.9	11.6
Median	12.0	9.0	9.0	9.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	18.5	15.7	15.4	16.0
Median	17.9	11.9	11.9	11.9

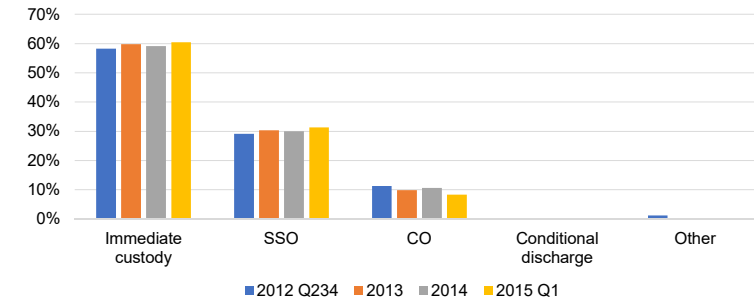
Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234	2013	2014	2015 Q1
	(n=191)	(n=242)	(n=211)	(n=40)
Immediate custody	46%	43%	49%	55%
SSO	18%	25%	22%	15%
CO	35%	29%	27%	28%
Fine	0%	1%	0%	0%
Conditional discharge	1%	2%	0%	0%
Other	0%	0%	1%	3%
Total	100%	100%	100%	100%

In category 3, the various disposal types and the ACSL have fluctuated over time.

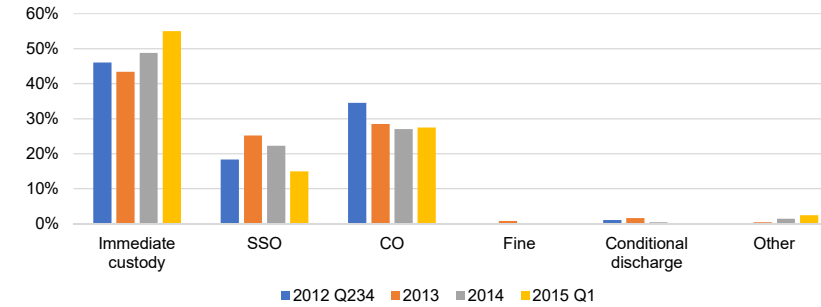
Proportion of adult offenders, by sentence outcome, category 2 (middle category), 2012 to 2015



	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.1	0.9	0.9	1.0
Median	1.0	0.8	0.8	0.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.5	1.3	1.3	1.3
Median	1.5	1.0	1.0	1.0

Proportion of adult offenders, by sentence outcome, category 3 (least serious), 2012 to 2015



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	8.9	7.7	8.3	5.8
Median	8.0	6.0	6.0	4.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	0.7	0.6	0.7	0.5
Median	0.7	0.5	0.5	0.3

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	12.5	11.0	11.5	7.9
Median	10.6	9.0	8.6	5.3

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.0	0.9	1.0	0.7
Median	0.9	0.7	0.7	0.4

Source: Crown Court Sentencing Survey

Notes:

1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence).

2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for non-domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2,3}

	2012 Q234	2013	2014	2015 Q1		
Total forms included in analysis:	910	1,293	1,392	330		
So 10% is approximately:	91	129	139	33		
And 1% is approximately:	9	13	14	3		
Factors indicating greater harm						
Theft of/damage to property causing significant degree of loss	30%	31%	35%	32%	This has consistently been the most frequently used greater harm factor.	
Soiling/ransacking/vandalism of property	11%	11%	10%	12%		
Victim on/returns to premises while offender present	7%	9%	11%	8%		
Significant physical/psychological injury or trauma	2%	2%	2%	1%		
Violence used/threatened particularly involving a weapon	2%	1%	2%	2%		
Context of general public disorder	12%	3%	1%	0%		
None stated	52%	54%	53%	53%		
Factors indicating lesser harm						
No physical/psychological injury or trauma:	17%	16%	16%	12%		
No violence used/threatened and a weapon not produced	18%	16%	18%	15%		
Nothing stolen or of very low value	17%	18%	16%	13%		
Limited damage/disturbance to property	14%	15%	15%	16%		
None stated	66%	67%	67%	73%		
Factors indicating higher culpability						
Deliberately targeted	33%	33%	38%	30%	This factor has been used frequently over time.	
Significant degree of planning	23%	27%	35%	29%		
Weapon present on entry or carried	2%	2%	1%	2%	This factor has been used frequently over time.	
Equipped for burglary	25%	25%	32%	30%		
Member of group or gang	31%	31%	36%	33%	This factor has been used frequently over time.	
None stated	44%	43%	35%	36%		
Factors indicating lower culpability						
Offender exploited by others:	2%	2%	3%	3%	Most frequently used lower culpability factor.	
Offence committed on impulse/limited intrusiveness	9%	10%	8%	7%		
Mental disorder/learning disability where linked to the offence	1%	1%	1%	0%		
None stated	88%	88%	90%	90%		
Factors increasing seriousness						
<i>Statutory aggravating factors:</i>						
Previous relevant conviction:	70%	74%	80%	76%	High proportion of cases with previous convictions.	
Offence committed on bail	8%	7%	6%	5%		
None stated	28%	25%	19%	23%		
<i>Other aggravating factors include:</i>						
Child at home/returns	0%	1%	0%	0%	Frequently used aggravating factor.	
Committed at night	21%	24%	29%	23%		
Abuse of power/trust	2%	2%	2%	2%		
Gratuitous degradator	0%	0%	0%	0%		
Steps taken to prevent reporting/assisting prosecution	0%	0%	0%	0%		
Established evidence of community impact	3%	2%	3%	2%		
Offender was under the influence of alcohol/drug	12%	11%	13%	11%		
Failure to comply with current court order:	16%	12%	13%	15%		
On licence	9%	10%	11%	10%		
TIC's	4%	7%	5%	2%		
High level of gain/level of profit element/financially motivated offence	1%	0%	0%	1%		
Multiple/previous attempts at same type of offence	2%	1%	0%	1%		
Speed of reoffending	0%	1%	1%	0%		
No factors stated	49%	51%	48%	49%		
Factors reducing seriousness or reflecting personal mitigation						
Made voluntary reparation	0%	1%	1%	1%		Most frequently used mitigating factor.
Subordinate role in group or gang	7%	5%	7%	6%		
No previous relevant conviction:	7%	7%	6%	5%		
Remorse	16%	18%	15%	16%		
Good character/exemplary conduct	5%	4%	3%	2%		
Determination/demonstration to address addiction/behaviour	10%	11%	9%	13%		
Serious medical condition:	2%	2%	2%	3%		
Age/lack of maturity affecting responsibility:	6%	5%	3%	3%		
Lapse of time not fault of offender	2%	1%	1%	1%		
Mental disorder/learning disability where not linked to the commission of the offence	3%	2%	2%	2%		
Sole/primary career for dependant relatives	2%	2%	1%	3%		
Nothing stolen or of very little value	12%	9%	9%	8%		
Long gap between offences/lived legally in-between reoffending	1%	1%	0%	0%		
Suffering stress/under pressure at time of offence/family problems at time of offence	1%	1%	0%	0%		
Property recovered	0%	1%	0%	1%		
Is an addict	0%	0%	1%	1%		
Co-operation with authorities	1%	1%	0%	1%		
Offender responding well to existing order/sentence	1%	1%	1%	0%		
Currently in, or prospects of work/training	0%	0%	1%	1%		
No Factors stated	58%	62%	62%	62%		

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence).
- 2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.
- 3) Factors in blue are those which are not specifically listed in the non-domestic burglary guideline, but were on the CCSS form, because they were in either the domestic or aggravated burglary guidelines.
- 4) The factor 'Nothing stolen or of very little value' is not actually a mitigating factor in the non-domestic burglary guideline (it is a lesser harm factor). It is, however, a mitigating factor for aggravated burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for Non-domestic Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	4,994	96
Female	208	4
Not recorded/not known	41	
Total	5,243	100

96% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	378	7
22 to 29 years	1,004	19
30 to 39 years	2,118	40
40 to 49 years	1,430	27
50 to 59 years	284	5
60 years or older	28	1
Not recorded/not known	1	
Total	5,243	100

40% of the adults sentenced were in the 30 to 39 age group.

Perceived Ethnicity ²	Number of adults sentenced	Percentage of all adults sentenced ¹
White	4,009	88
Black	358	8
Asian	125	3
Other	64	1
Not recorded/not known	687	
Total	5,243	100

88% of adults sentenced had 'white' recorded as their perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for non-domestic burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Number of adults sentenced								Proportion of adults sentenced							
Sex	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total	Sex	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
Male	81	107	1060	857	2797	92	4994	Male	2%	2%	21%	17%	56%	2%	100%
Female	9	4	78	44	68	5	208	Female	4%	2%	38%	21%	33%	2%	100%
Not recorded/not known	1	2	9	11	16	2	41	Not recorded/not known	2%	5%	22%	27%	39%	5%	100%
Age Group	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total	Age Group	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	20	16	152	58	121	11	378	18 to 21 years	5%	4%	40%	15%	32%	3%	100%
22 to 29 years ²	13	35	221	181	539	16	1005	22 to 29 years ²	1%	3%	22%	18%	54%	2%	100%
30 to 39 years	29	30	395	346	1287	31	2118	30 to 39 years	1%	1%	19%	16%	61%	1%	100%
40 to 49 years	18	23	300	272	785	32	1430	40 to 49 years	1%	2%	21%	19%	55%	2%	100%
50 to 59 years	9	8	74	52	132	9	284	50 to 59 years	3%	3%	26%	18%	46%	3%	100%
60 years or older	2	1	5	3	17	0	28	60 years or older	7%	4%	18%	11%	61%	0%	100%
Not recorded /not known	0	0	0	0	0	0	0	Not recorded /not known	-	-	-	-	-	-	-
Perceived Ethnicity ³	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total	Perceived Ethnicity ³	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
White	66	86	922	684	2179	72	4009	White	2%	2%	23%	17%	54%	2%	100%
Black	9	5	60	70	209	5	358	Black	3%	1%	17%	20%	58%	1%	100%
Asian	1	2	28	19	72	3	125	Asian	1%	2%	22%	15%	58%	2%	100%
Other	1	0	13	8	39	3	64	Other	2%	0%	20%	13%	61%	5%	100%
Not recorded/not known	14	20	124	131	382	16	687	Not recorded/not known	2%	3%	18%	19%	56%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

Footnotes.

1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

2) The 22-29 age group includes an adult whose age was unknown.

3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (months)¹	
	Mean	Median
Male	11.5	5.4
Female	6.9	3.7
Not recorded/not known	3.23	3.03

Age	Mean	Median
18 to 21 years	13.1	6.0
22 to 29 years	12.5	6.0
30 to 39 years	11.4	4.7
40 to 49 years	10.0	5.1
50 to 59 years	11.0	4.7
60 years or older	20.2	9.0
Not recorded /not known	-	-

Perceived Ethnicity²	Mean	Median
White	11.3	4.7
Black	8.8	4.0
Asian	9.8	4.7
Other	13.0	8.0
Not recorded/not known	13.0	7.5

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Excludes life and indeterminate sentences.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	2018	428	209	66	37	13	26	2797
Female	56	10	2	0	0	0	0	68
Not recorded /not known	16	0	0	0	0	0	0	16

Age Group	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	83	21	10	2	1	1	3	121
22 to 29 years	365	97	45	10	14	4	4	539
30 to 39 years	938	186	93	35	14	7	14	1287
40 to 49 years	597	113	49	15	8	1	2	785
50 to 59 years	98	19	9	4	0	0	2	132
60 years or older	9	2	5	0	0	0	1	17
Not recorded /not known	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	1590	327	151	50	32	7	22	2179
Black	168	24	10	3	2	1	1	209
Asian	56	8	3	4	1	0	0	72
Other	24	8	5	2	0	0	0	39
Not recorded /not known	252	71	42	7	2	5	3	382

Sex	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	72%	15%	7%	2%	1%	0%	1%	100%
Female	82%	15%	3%	0%	0%	0%	0%	100%
Not recorded /not known	100%	0%	0%	0%	0%	0%	0%	100%

Age Group	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	69%	17%	8%	2%	1%	1%	2%	100%
22 to 29 years	68%	18%	8%	2%	3%	1%	1%	100%
30 to 39 years	73%	14%	7%	3%	1%	1%	1%	100%
40 to 49 years	76%	14%	6%	2%	1%	0%	0%	100%
50 to 59 years	74%	14%	7%	3%	0%	0%	2%	100%
60 years or older	53%	12%	29%	0%	0%	0%	6%	100%
Not recorded /not known	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	73%	15%	7%	2%	1%	0%	1%	100%
Black	80%	11%	5%	1%	1%	0%	0%	100%
Asian	78%	11%	4%	6%	1%	0%	0%	100%
Other	62%	21%	13%	5%	0%	0%	0%	100%
Not recorded /not known	66%	19%	11%	2%	1%	1%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentencing trends for domestic burglary, 2009-2019

Number and proportion of adult offenders sentenced for domestic burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	2,034	2,237	2,321	1,903	1,508	1,256	1,035	989	921	720	598
Crown Court	7,638	8,272	8,759	8,357	8,183	7,500	6,370	5,261	4,914	4,399	4,053
Total	9,672	10,509	11,080	10,260	9,691	8,756	7,405	6,250	5,835	5,119	4,651

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	21%	21%	21%	19%	16%	14%	14%	16%	16%	14%	13%
Crown Court	79%	79%	79%	81%	84%	86%	86%	84%	84%	86%	87%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Domestic burglary volumes have decreased from a high of 11,100 in 2011 down to 4,700 in 2019. In 2019 87 per cent of offenders were sentenced in the Crown Court.

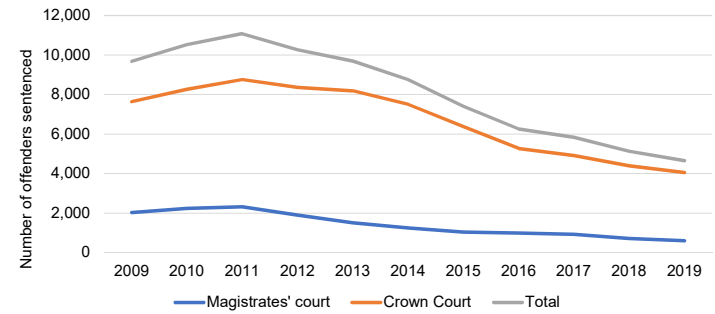
Number and proportion of adult offenders sentenced for domestic burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute discharge	3	4	1	0	2	2	1	5	0	3	5
Conditional discharge	84	99	81	57	44	57	47	32	35	29	25
Fine	29	44	32	34	38	41	38	21	18	18	16
Community sentence	1,913	2,116	2,010	1,648	1,181	895	740	529	451	459	423
Suspended sentence	1,408	1,571	1,561	1,494	1,547	1,524	1,352	962	805	653	546
Immediate custody	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563
Otherwise dealt with	98	100	95	102	142	151	78	64	73	82	73
Total	9,672	10,509	11,080	10,260	9,691	8,756	7,405	6,250	5,835	5,119	4,651

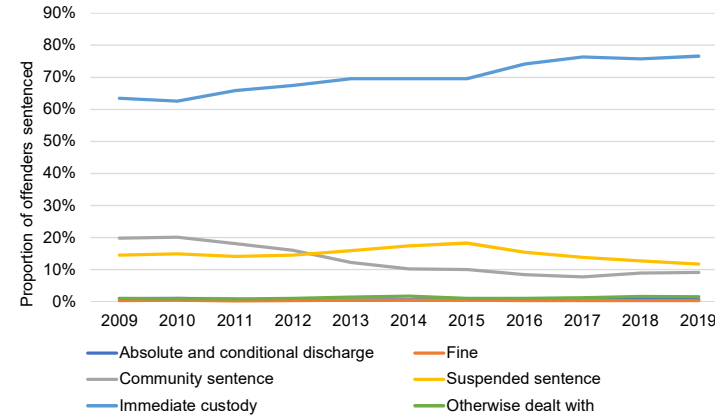
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	1%	1%	1%	1%	0%	1%	1%	1%	1%	1%	1%
Fine	0%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
Community sentence	20%	20%	18%	16%	12%	10%	10%	8%	8%	9%	9%
Suspended sentence	15%	15%	14%	15%	16%	17%	18%	15%	14%	13%	12%
Immediate custody	63%	63%	66%	67%	70%	70%	70%	74%	76%	76%	77%
Otherwise dealt with	1%	1%	1%	1%	1%	2%	1%	1%	1%	2%	2%

Over the last decade there has been a gradual increase in the proportion of offenders sentenced to immediate custody, and in 2019 the proportion sentenced to immediate custody was 77 per cent. The proportion of offenders receiving suspended sentences increased during the period 2012 to 2015, but has since been decreasing, with 12 per cent of offenders receiving an SSO in 2019. The proportion receiving COs decreased in the period 2008 to 2017, but increased slightly in 2018, where it remains in 2019 at 9 per cent.

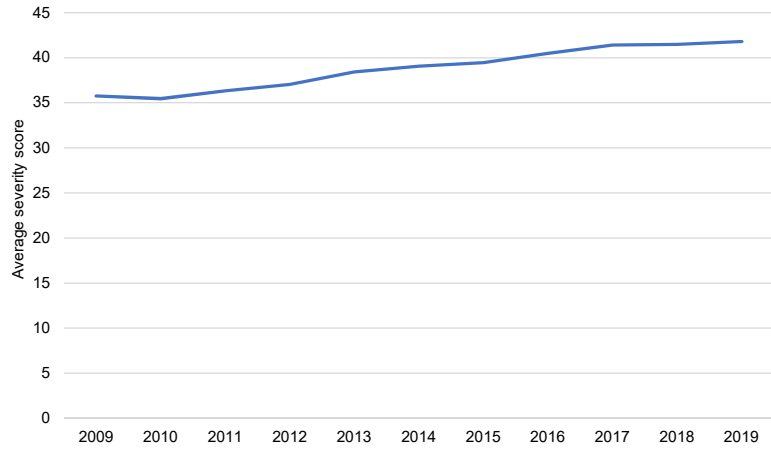
Number of adult offenders sentenced for domestic burglary, by court type, 2009-2019



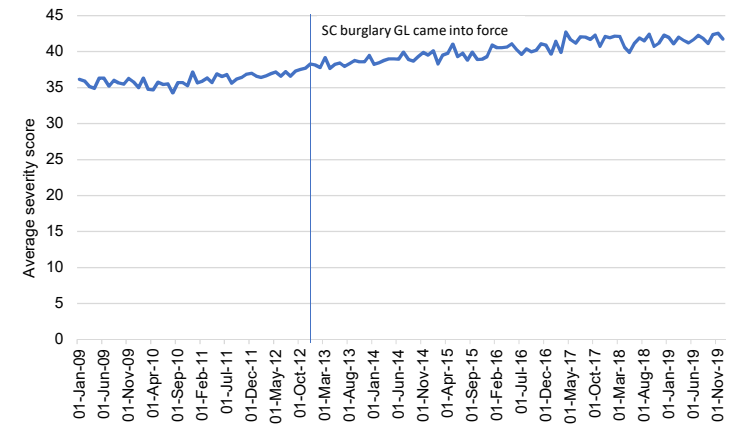
Sentence outcomes for adult offenders sentenced for domestic burglary, all courts, 2009-2019



Average sentencing severity per year for adult offenders sentenced for domestic burglary, all courts, 2009-2019

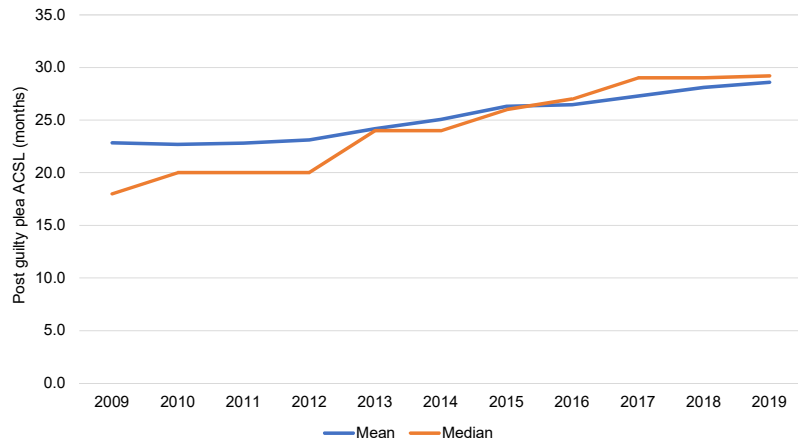


Average sentencing severity per month for adult offenders sentenced for domestic burglary, all courts, 2008-2018

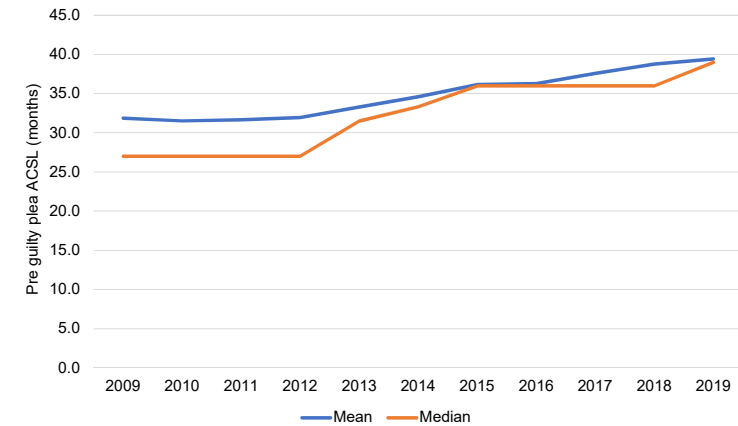


Over time there has been an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders sentenced to immediate custody, and an increase in ACSL.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019



Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 22.8 months in 2011 to 28.6 months in 2019 (post guilty plea).

Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	2,014	2,120	2,400	2,205	1,968	1,687	1,347	1,187	1,041	848	760
Between 1 and 2 years	1,787	1,958	2,085	1,891	1,762	1,558	1,214	1,095	1,018	893	778
Between 2 and 3 years	1,529	1,699	1,850	1,894	2,037	1,858	1,635	1,482	1,476	1,265	1,218
Between 3 and 4 years	548	553	678	651	690	652	605	572	611	536	490
Between 4 and 5 years	166	143	170	179	175	183	192	164	185	180	169
Between 5 and 6 years	54	61	73	65	55	87	84	83	76	95	79
More than 6 years	39	41	44	40	50	61	72	54	46	58	69
Total	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	33%	32%	33%	32%	29%	28%	26%	26%	23%	22%	21%
Between 1 and 2 years	29%	30%	29%	27%	26%	26%	24%	24%	23%	23%	22%
Between 2 and 3 years	25%	26%	25%	27%	30%	31%	32%	32%	33%	33%	34%
Between 3 and 4 years	9%	8%	9%	9%	10%	11%	12%	12%	14%	14%	14%
Between 4 and 5 years	3%	2%	2%	3%	3%	3%	4%	4%	4%	5%	5%
Between 5 and 6 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%
More than 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%

Over time, the proportion of offenders receiving a final sentence of 1 year or less has declined, and a higher proportion now receive sentences between 2 and 4 years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	1,129	1,203	1,353	1,313	1,178	980	771	699	623	481	425
Between 1 and 2 years	1,684	1,829	2,027	1,827	1,626	1,439	1,169	991	915	741	706
Between 2 and 3 years	1,179	1,266	1,360	1,209	1,227	1,068	865	822	737	721	554
Between 3 and 4 years	964	1,096	1,220	1,318	1,420	1,351	1,164	1,065	1,025	870	897
Between 4 and 5 years	628	648	728	720	726	693	614	561	616	536	492
Between 5 and 6 years	359	337	384	329	352	301	301	273	308	277	245
Between 6 and 7 years	62	64	70	70	85	77	92	80	85	95	94
Between 7 and 8 years	65	61	81	84	59	87	78	62	77	71	76
More than 8 years	67	71	77	55	64	90	95	84	67	83	74
Total	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	18%	18%	19%	19%	17%	16%	15%	15%	14%	12%	12%
Between 1 and 2 years	27%	28%	28%	26%	24%	24%	23%	21%	21%	19%	20%
Between 2 and 3 years	19%	19%	19%	17%	18%	18%	17%	18%	17%	19%	16%
Between 3 and 4 years	16%	17%	17%	19%	21%	22%	23%	23%	23%	22%	25%
Between 4 and 5 years	10%	10%	10%	10%	11%	11%	12%	12%	14%	14%	14%
Between 5 and 6 years	6%	5%	5%	5%	5%	5%	6%	6%	7%	7%	7%
Between 6 and 7 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	3%
Between 7 and 8 years	1%	1%	1%	1%	1%	1%	2%	1%	2%	2%	2%
More than 8 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence)

Sentence outcomes and ACSLs for domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234 (n=2,902)	2013 (n=4,418)	2014 (n=4,362)	2015 Q1 (n=899)
Level 1 (most)	30%	33%	35%	32%
Level 2	54%	54%	54%	57%
Level 3 (least)	16%	13%	10%	11%
Total	100%	100%	100%	100%

Offence categories in Sentencing Council domestic burglary definitive guideline

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	3 years' custody	2–6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order – 26 weeks' custody

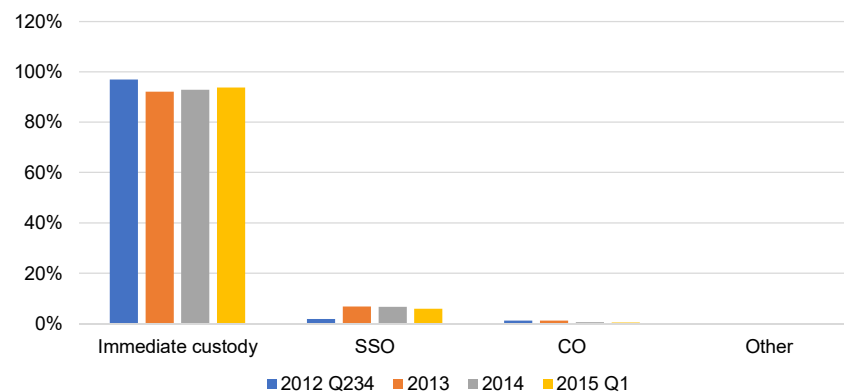
Based on the most recent data available, 32 per cent of offenders currently fall in the highest category of seriousness, and 11% fall in the lowest category.

Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=861)	2013 (n=1,450)	2014 (n=1,539)	2015 Q1 (n=289)
Immediate custody	97%	92%	93%	94%
SSO	2%	7%	7%	6%
CO	1%	1%	1%	0%
Other	0%	0%	0%	0%
Total	100%	100%	100%	100%

In category 1 there has been a small decrease in the use of immediate custody, and a small increase in SSOs. The ACSL in category 1 has increased slightly since the guideline came into force, and was around 3 years in 2015 Q1 (post guilty plea) or 4 years pre guilty plea (note: the starting point for this category is 3 years).



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	34.1	33.4	34.2	35.7
Median	32.0	32.0	32.0	32.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.8	2.8	2.8	3.0
Median	2.7	2.7	2.7	2.7

Pre guilty plea ACSLs for offenders sentenced to immediate custody

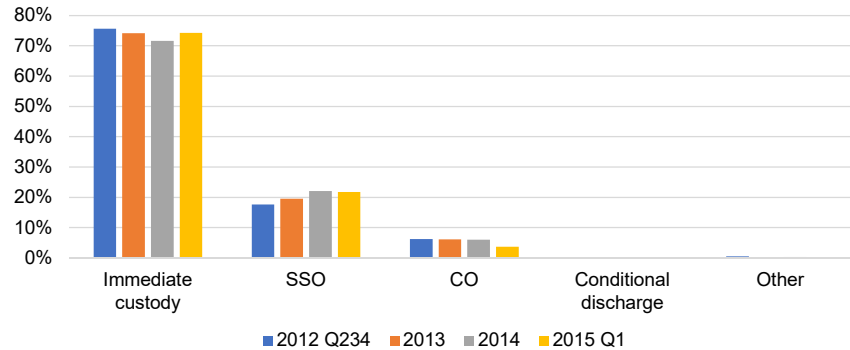
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	46.6	45.6	46.3	47.6
Median	44.8	42.0	43.6	44.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	3.9	3.8	3.9	4.0
Median	3.7	3.5	3.6	3.7

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=1,578)	2013 (n=2,384)	2014 (n=2,370)	2015 Q1 (n=510)
Immediate custody	76%	74%	72%	74%
SSO	18%	20%	22%	22%
CO	6%	6%	6%	4%
Conditional discharge	0%	0%	0%	0%
Other	1%	0%	0%	0%
Total	100%	100%	100%	100%



The proportion of offenders placed in category 2 has been relatively stable since the guideline came into force. Similarly to category 1, the use of immediate custody has slightly decreased, and the use of SSOs has slightly increased. The ACSL in category 2 has remained fairly stable over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	20.6	21.2	20.8	21.6
Median	16.0	18.0	16.0	18.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.7	1.8	1.7	1.8
Median	1.3	1.5	1.3	1.5

Pre guilty plea ACSLs for offenders sentenced to immediate custody

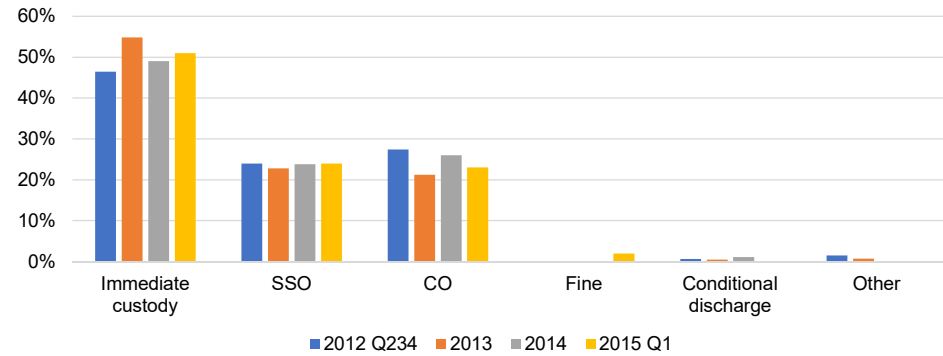
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	28.2	29.0	28.2	29.2
Median	23.9	23.9	23.9	23.9

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.4	2.4	2.4	2.4
Median	2.0	2.0	2.0	2.0

Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=463)	2013 (n=584)	2014 (n=453)	2015 Q1 (n=100)
Immediate custody	46%	55%	49%	51%
SSO	24%	23%	24%	24%
CO	27%	21%	26%	23%
Fine	0%	0%	0%	2%
Conditional discharge	1%	1%	1%	0%
Other	2%	1%	0%	0%
Total	100%	100%	100%	100%



In category 3, the various disposal types and the ACSL have fluctuated over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	17.6	17.2	19.3	17.2
Median	14.0	12.0	15.0	12.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.5	1.4	1.6	1.4
Median	1.2	1.0	1.3	1.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	24.1	23.6	25.8	22.7
Median	18.7	17.9	22.4	17.9

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.0	2.0	2.2	1.9
Median	1.6	1.5	1.9	1.5

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence).
- 2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{2,3}

	2012 Q234	2013	2014	2015 Q1	
Total forms included in analysis:	3,355	5,121	5,096	1,036	
So 10% is approximately:	336	512	510	104	
And 1% is approximately:	34	51	51	10	
Factors indicating greater harm					
Theft of/damage to property causing significant degree of loss	23%	22%	22%	21%	This factor has been used frequently over time.
Soiling/ransacking/vandalism of property	12%	14%	12%	14%	
Victim on/returns to premises while offender present	36%	39%	39%	37%	This has consistently been the most frequently used greater harm factor.
Significant physical/psychological injury or trauma	10%	9%	10%	9%	
Violence used/threatened particularly involving a weapon	4%	4%	4%	3%	
Context of general public disorder	0%	0%	0%	0%	
None stated	39%	37%	37%	38%	
Factors indicating lesser harm					
No physical/psychological injury or trauma	14%	12%	11%	11%	
No violence used/threatened and a weapon not produced	19%	17%	16%	15%	
Nothing stolen or of very low value	15%	15%	13%	14%	
Limited damage/disturbance to property	17%	16%	15%	15%	
None stated	68%	69%	71%	72%	
Factors indicating higher culpability					
Deliberately targeted	23%	21%	24%	22%	This factor has been used fairly frequently.
Significant degree of planning	16%	17%	18%	16%	
Weapon present on entry or carried	1%	2%	1%	2%	
Equipped for burglary	14%	15%	16%	14%	
Member of group or gang	24%	26%	24%	21%	This factor has been used fairly frequently.
None stated	53%	51%	50%	56%	
Factors indicating lower culpability					
Offender exploited by others	3%	2%	2%	2%	
Offence committed on impulse/limited intrusion	12%	11%	10%	11%	Most frequently used lower culpability factor.
Mental disorder/learning disability where linked to the offence	1%	1%	1%	1%	
None stated	85%	86%	88%	87%	
Factors increasing seriousness					
<i>Statutory aggravating factors:</i>					
Previous relevant convictions	72%	73%	72%	76%	High proportion of cases with previous convictions.
Offence committed on bail	7%	6%	6%	4%	
None stated	27%	26%	27%	24%	
<i>Other aggravating factors include:</i>					
Child at home/returns	6%	6%	6%	4%	
Committed at night	27%	27%	27%	26%	Frequently used aggravating factor.
Abuse of power/trust	4%	3%	4%	4%	
Gratuitous degradator	1%	1%	1%	0%	
Steps taken to prevent reporting/assisting prosecution	0%	1%	0%	0%	
Victim compelled to leave home (domestic violence in particular)	1%	1%	1%	1%	
Established evidence of community impact	2%	2%	2%	1%	
Offender was under the influence of alcohol/drug	18%	17%	17%	18%	
Failure to comply with current court order	13%	11%	9%	10%	
On licence	11%	11%	12%	11%	
TICs	9%	8%	6%	4%	
Multiple/previous attempts at same type of offence	2%	1%	0%	1%	
Vulnerable victim	2%	1%	1%	2%	
Speed of reoffending	1%	1%	0%	1%	
No factors stated	38%	45%	46%	46%	
Factors reducing seriousness or reflecting personal mitigation					
Subordinate role in group or gang	5%	5%	5%	4%	
No previous relevant conviction	10%	9%	8%	8%	
Remorse	22%	22%	21%	19%	Most frequently used mitigating factor.
Good character/exemplary conduct	4%	4%	3%	3%	
Determination/demonstration to address addiction/behaviour	10%	9%	9%	8%	
Serious medical condition	1%	1%	1%	1%	
Age/lack of maturity affecting responsibility	8%	8%	6%	5%	
Lapse of time not fault of offender	1%	1%	1%	1%	
Mental disorder/learning disability where not linked to the commission of the offence	2%	2%	2%	3%	
Sole/primary carer for dependant relatives	2%	2%	1%	2%	
Nothing stolen or of very little value	9%	9%	8%	11%	
Made voluntary reparation	1%	1%	1%	2%	
Long gap between offences/lived legally in-between reoffending	1%	0%	1%	0%	
Co-operation with authorities	1%	1%	1%	0%	
No Factors stated	56%	58%	61%	62%	

Source: Crown Court Sentencing Survey

Notes:

1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence).

2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.

3) Factors in blue are those which are not specifically listed in the domestic burglary guideline, but were on the CCSS form, because they were in either the non-domestic or aggravated burglary guidelines.

4) The factor 'Nothing stolen or of very little value' is not actually a mitigating factor in the domestic burglary guideline (it is a lesser harm factor). It is, however, a mitigating factor for aggravated burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for domestic Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	4,319	93
Female	319	7
Not recorded/not known	13	
Total	4,651	100

93% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	645	14
22 to 29 years	1,195	26
30 to 39 years	1,519	33
40 to 49 years	995	21
50 to 59 years	272	6
60 years or older	25	<1
Not recorded/not known	-	
Total	4,651	100

A third of the adults sentenced were in the 30 to 39 age group.

Perceived Ethnicity ²	Number of adults sentenced	Percentage of all adults sentenced ¹
White	3,336	86
Black	316	8
Asian	126	3
Other	79	2
Not recorded/not known	794	
Total	4,651	100

86% of adults sentenced had 'white' as their recorded perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for domestic burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Sex	Number of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Male	19	14	366	468	3388	64	4319
Female	11	2	52	77	168	9	319
Not recorded/not known	0	0	5	1	7	0	13

Age Group	Number of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 21 years	6	0	100	101	424	14	645
22 to 29 years	8	6	112	150	900	19	1195
30 to 39 years	5	5	113	165	1213	18	1519
40 to 49 years	10	3	86	87	794	15	995
50 to 59 years	1	2	11	34	217	7	272
60 years or older	0	0	1	9	15	0	25
Not recorded /not known	0	0	0	0	0	0	0

Perceived Ethnicity ²	Number of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
White	27	13	319	361	2569	47	3336
Black	1	2	34	53	219	7	316
Asian	0	0	10	17	96	3	126
Other	0	0	4	11	64	0	79
Not recorded/not known	2	1	56	104	615	16	794

Notes:

1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sex	Proportion of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Male	0%	0%	8%	11%	78%	1%	100%
Female	3%	1%	16%	24%	53%	3%	100%
Not recorded/not known	0%	0%	38%	8%	54%	0%	100%

Age Group	Proportion of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 21 years	1%	0%	16%	16%	66%	2%	100%
22 to 29 years	1%	1%	9%	13%	75%	2%	100%
30 to 39 years	0%	0%	7%	11%	80%	1%	100%
40 to 49 years	1%	0%	9%	9%	80%	2%	100%
50 to 59 years	0%	1%	4%	13%	80%	3%	100%
60 years or older	0%	0%	4%	36%	60%	0%	100%
Not recorded /not known	0%	0%	0%	0%	0%	0%	-

Perceived Ethnicity ²	Proportion of adults sentenced						Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
White	1%	0%	10%	11%	77%	1%	100%
Black	0%	1%	11%	17%	69%	2%	100%
Asian	0%	0%	8%	13%	76%	2%	100%
Other	0%	0%	5%	14%	81%	0%	100%
Not recorded/not known	0%	0%	7%	13%	77%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (months)¹	
	Mean	Median
Male	28.9	29.2
Female	24.0	24.0
Not recorded/not known ²	4.5	5.6

Age Group	Mean	Median
18 to 21 years	24.3	24.0
22 to 29 years	27.9	28.0
30 to 39 years	28.3	29.0
40 to 49 years	30.8	30.0
50 to 59 years	33.7	32.0
60 years or older	24.1	29.0
Not recorded /not known	-	-

Perceived Ethnicity³	Mean	Median
White	28.7	29.2
Black	28.0	29.2
Asian	27.6	24.0
Other	25.2	20.0
Not recorded/not known	28.9	28.0

Source: Court Proceedings Database, Ministry of Justice

- = No offenders were sentenced to immediate custody.

Notes:

- 1) ACSL was based on only 7 adults.
- 2) Excludes life and indeterminate sentences.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	705	738	1161	472	166	77	69	3388
Female	48	40	57	18	3	2	0	168
Not recorded /not known	7	0	0	0	0	0	0	7

Age Group	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	111	140	117	37	10	2	7	424
22 to 29 years	210	204	294	115	40	15	22	900
30 to 39 years	279	249	415	155	57	35	23	1213
40 to 49 years	127	152	302	131	51	20	11	794
50 to 59 years	28	31	84	50	11	7	6	217
60 years or older	5	2	6	2	0	0	0	15
Not recorded /not known	0	0	0	0	0	0	0	0

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	541	539	893	362	130	59	45	2569
Black	46	38	90	31	8	3	3	219
Asian	24	28	24	10	6	1	3	96
Other	20	17	15	7	3	1	1	64
Not recorded /not known	129	156	196	80	22	15	17	615

Notes:

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

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sex	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	21%	22%	34%	14%	5%	2%	2%	100%
Female	29%	24%	34%	11%	2%	1%	0%	100%
Not recorded /not known	100%	0%	0%	0%	0%	0%	0%	100%

Age Group	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	26%	33%	28%	9%	2%	0%	2%	100%
22 to 29 years	23%	23%	33%	13%	4%	2%	2%	100%
30 to 39 years	23%	21%	34%	13%	5%	3%	2%	100%
40 to 49 years	16%	19%	38%	16%	6%	3%	1%	100%
50 to 59 years	13%	14%	39%	23%	5%	3%	3%	100%
60 years or older	33%	13%	40%	13%	0%	0%	0%	100%
Not recorded /not known	-	-	-	-	-	-	-	100%

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	21%	21%	35%	14%	5%	2%	2%	100%
Black	21%	17%	41%	14%	4%	1%	1%	100%
Asian	25%	29%	25%	10%	6%	1%	3%	100%
Other	31%	27%	23%	11%	5%	2%	2%	100%
Not recorded /not known	21%	25%	32%	13%	4%	2%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

Sentencing trends for aggravated burglary, 2009-2019

Number and proportion of adult offenders sentenced for aggravated burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	0	0	0	0	0	0	0	0	0	0	0
Crown Court	263	309	318	303	257	227	217	193	200	170	190
Total	263	309	318	303	257	227	217	193	200	170	190

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Crown Court	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

The number of offenders sentenced for aggravated burglary has decreased from a high of 320 in 2011 to 190 in 2019.

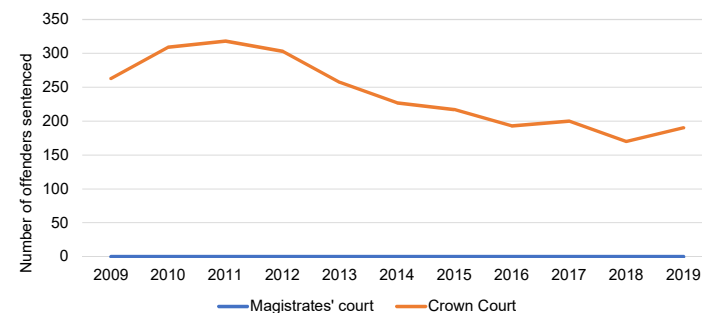
Number and proportion of adult offenders sentenced for aggravated burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine	0	0	0	0	0	0	1	0	0	0	0
Community sentence	5	11	4	3	0	3	1	0	2	1	0
Suspended sentence	10	15	8	3	4	2	6	2	2	1	0
Immediate custody	246	278	302	293	251	217	199	179	183	159	173
Otherwise dealt with	2	5	4	4	2	5	10	12	13	9	17
Total	263	309	318	303	257	227	217	193	200	170	190

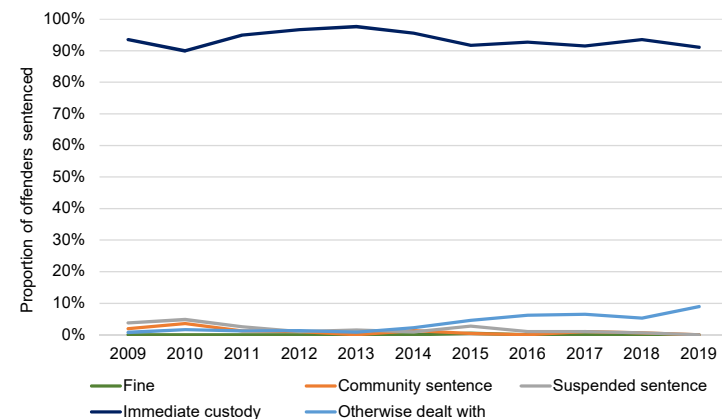
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	2%	4%	1%	1%	0%	1%	0%	0%	1%	1%	0%
Suspended sentence	4%	5%	3%	1%	2%	1%	3%	1%	1%	1%	0%
Immediate custody	94%	90%	95%	97%	98%	96%	92%	93%	92%	94%	91%
Otherwise dealt with	1%	2%	1%	1%	1%	2%	5%	6%	7%	5%	9%

The majority of offenders sentenced for aggravated burglary are sentenced to immediate custody. In 2019, 91 per cent of offenders were sentenced to immediate custody and nine per cent were otherwise dealt with.

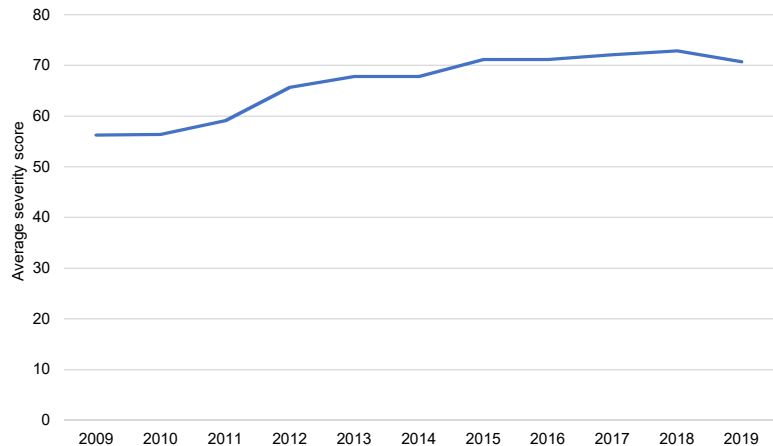
Number of adult offenders sentenced for aggravated burglary, by court type, 2009-2019



Sentence outcomes for adult offenders sentenced for aggravated burglary, all courts, 2009-2019

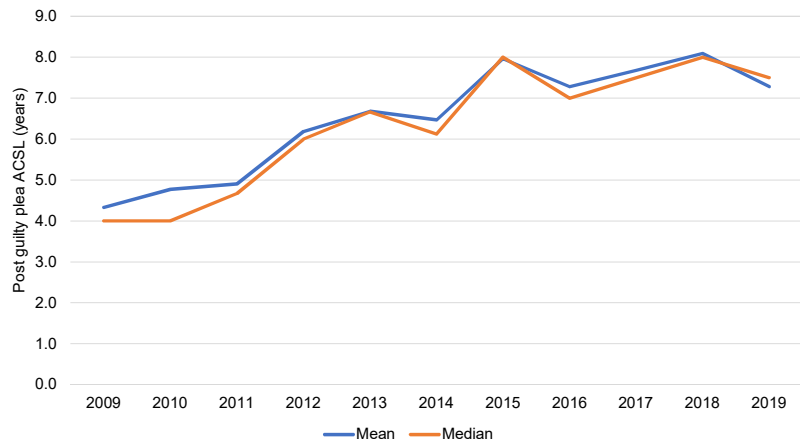


Average sentencing severity per year for adult offenders sentenced for aggravated burglary, all courts, 2009-2019



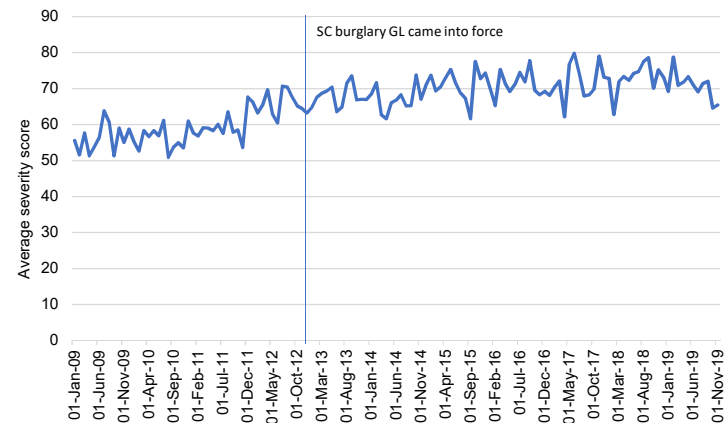
Since 2010 there has been an upward trend in sentence severity, but has started to drop in the last year.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019

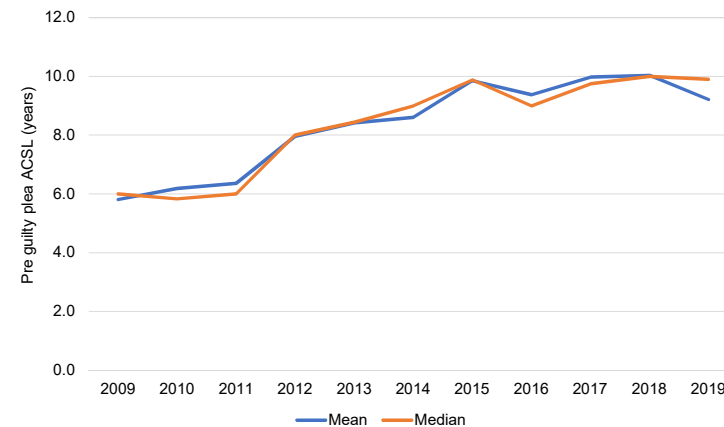


Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 4 years 4 months in 2009 to 7 years 3 months in 2019 (post guilty plea).

Average sentencing severity per month for adult offenders sentenced for aggravated burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019



Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	36	29	28	12	8	5	3	2	3	1	6
Between 2 and 4 years	77	104	91	50	37	41	20	19	20	17	24
Between 4 and 6 years	85	67	102	94	70	62	37	43	41	30	36
Between 6 and 8 years	16	31	39	69	69	66	49	59	55	45	45
Between 8 and 10 years	5	11	12	29	51	29	51	39	38	36	34
More than 10 years	4	11	7	17	14	13	38	17	26	30	27
Indeterminate	23	25	23	22	2	1	1	.	.	.	1
Total	246	278	302	293	251	217	199	179	183	159	173

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	15%	10%	9%	4%	3%	2%	2%	1%	2%	1%	3%
Between 2 and 4 years	31%	37%	30%	17%	15%	19%	10%	11%	11%	11%	14%
Between 4 and 6 years	35%	24%	34%	32%	28%	29%	19%	24%	22%	19%	21%
Between 6 and 8 years	7%	11%	13%	24%	27%	30%	25%	33%	30%	28%	26%
Between 8 and 10 years	2%	4%	4%	10%	20%	13%	26%	22%	21%	23%	20%
More than 10 years	2%	4%	2%	6%	6%	6%	19%	9%	14%	19%	16%
Indeterminate	9%	9%	8%	8%	1%	<1%	<1%	0%	0%	0%	<1%

In 2019, 46% of those sentenced receive a sentence of between six and ten years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	16	7	14	6	4	5	3	1	.	1	3
Between 2 and 4 years	38	52	46	25	16	13	6	7	7	6	11
Between 4 and 6 years	82	94	94	49	35	39	19	17	23	14	27
Between 6 and 8 years	54	56	61	64	59	36	30	42	29	23	23
Between 8 and 10 years	20	17	42	66	78	57	56	54	49	47	33
Between 10 and 12 years	6	16	15	49	33	47	48	31	40	44	52
More than 12 years	7	11	7	12	24	19	36	27	35	24	23
Indeterminate	23	25	23	22	2	1	1	.	.	.	1
Total	246	278	302	293	251	217	199	179	183	159	173

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	7%	3%	5%	2%	2%	2%	2%	1%	0%	1%	2%
Between 2 and 4 years	15%	19%	15%	9%	6%	6%	3%	4%	4%	4%	6%
Between 4 and 6 years	33%	34%	31%	17%	14%	18%	10%	9%	13%	9%	16%
Between 6 and 8 years	22%	20%	20%	22%	24%	17%	15%	23%	16%	14%	13%
Between 8 and 10 years	8%	6%	14%	23%	31%	26%	28%	30%	27%	30%	19%
Between 10 and 12 years	2%	6%	5%	17%	13%	22%	24%	17%	22%	28%	30%
More than 12 years	3%	4%	2%	4%	10%	9%	18%	15%	19%	15%	13%
Indeterminate	9%	9%	8%	8%	1%	<1%	1%	0%	0%	0%	1%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and cases which are recorded in the CPD as being sentenced in magistrates' courts (this offence is indictable only).

Sentence outcomes and ACSLs for aggravated burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234 (n=123)	2013 (n=155)	2014 (n=160)	2015 Q1 (n=43)
Level 1 (most)	76%	68%	69%	81%
Level 2	23%	28%	29%	19%
Level 3 (least)	1%	4%	1%	0%
Total	100%	100%	100%	100%

Offence categories in Sentencing Council aggravated burglary definitive guideline

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	10 years' custody	9–13 years' custody
Category 2	6 years' custody	4–9 years' custody
Category 3	2 years' custody	1–4 years' custody

Based on the most recent data available, 81 per cent of offenders currently fall in the highest category of seriousness, and the remainder (19 per cent) fall in the middle category.

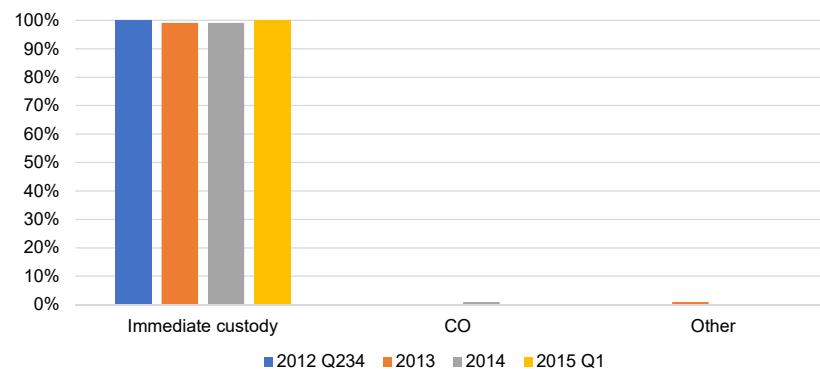
Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=94)	2013 (n=105)	2014 (n=111)	2015 Q1 (n=35)
Immediate custody	100%	99%	99%	100%
CO	0%	0%	1%	0%
Other	0%	1%	0%	0%
Total	100%	100%	100%	100%

Since the guideline came into force, the ACSL in category 1 has ranged from 7 years 3 months to 8 years (post guilty plea). The pre guilty plea ACSL has ranged from 9 years 6 months to 9 years 10 months. (To note, the starting point in this category is 10 years.)

Proportion of adult offenders, by sentence outcome, category 1 (most serious), 2012 to 2015



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	89.7	87.4	87.8	95.5
Median	90.0	90.0	88.0	108.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	7.5	7.3	7.3	8.0
Median	7.5	7.5	7.3	9.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	117.7	113.5	113.6	115.0
Median	116.4	114.0	120.0	120.0

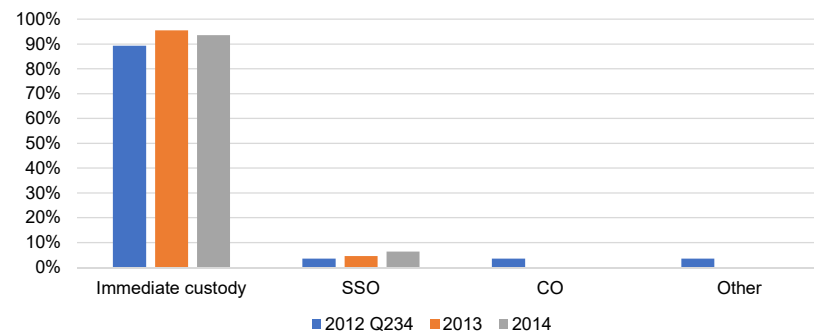
	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	9.8	9.5	9.5	9.6
Median	9.7	9.5	10.0	10.0

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=28)	2013 (n=44)	2014 (n=47)	2015 Q1 (n=8)
Immediate custody	89%	95%	94%	*
SSO	4%	5%	6%	*
CO	4%	0%	0%	*
Other	4%	0%	0%	*
Total	100%	100%	100%	*

Proportion of adult offenders, by sentence outcome, category 2 (middle category), 2012 to 2015



The proportion of offenders placed in category 2 has fluctuated since the guideline came into force, as has the ACSL, which has ranged from 4 years 4 months to 4 years 8 months.

* Proportions and ACSLs have not been shown for 2015 Q1, due to the low number of offenders placed within this category during this period.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	54.9	55.9	52.4	*
Median	54.0	53.0	48.0	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	4.6	4.7	4.4	*
Median	4.5	4.4	4.0	*

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	69.9	71.3	64.3	*
Median	71.6	69.2	60.0	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	5.8	5.9	5.4	*
Median	6.0	5.8	5.0	*

Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=1)	2013 (n=6)	2014 (n=2)	2015 Q1 (n=0)
Immediate custody	*	*	*	*
SSO	*	*	*	*
Total	*	*	*	*

* Proportions and ACSLs have not been shown for category 3, due to the very low number of offenders placed within this category each year.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and cases which are recorded in the CPD as being sentenced in magistrates' courts (this offence is indictable only).
- 2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for aggravated burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1 ^{1,2,3}

	2012 Q234	2013	2014	2015 Q1
Total forms included in analysis:	136	168	172	46
So 10% is approximately:	14	17	17	5
And 1% is approximately:	1	2	2	0

	2012 Q234	2013	2014	2015 Q1
Factors indicating greater harm				
Theft of/damage to property causing significant degree of loss	13%	9%	13%	17%
Soiling/ransacking/vandalism of property	12%	14%	12%	9%
Victim on/returns to premises while offender present	74%	68%	69%	74%
Significant physical/psychological injury or trauma	42%	39%	41%	57%
Violence used/threatened particularly involving a weapon	80%	75%	67%	72%
Context of general public disorder	4%	5%	3%	7%
None stated	8%	13%	12%	11%

Very frequently used greater harm factor
Frequently used greater harm factor
Very frequently used greater harm factor

Factors indicating lesser harm				
No physical/psychological injury or trauma	5%	7%	6%	11%
No violence used/threatened and a weapon not produced	1%	5%	4%	7%
Nothing stolen or of very low value ⁴	10%	17%	8%	9%
Limited damage/disturbance to property	6%	11%	3%	9%
None stated	82%	79%	85%	83%

	2012 Q234	2013	2014	2015 Q1
Factors indicating higher culpability				
Deliberately targeted	51%	48%	45%	52%
Significant degree of planning	43%	42%	44%	39%
Equipped for burglary	32%	43%	37%	24%
Weapon present on entry or carried	77%	72%	76%	85%
Member of group or gang	62%	60%	52%	61%
None stated	7%	13%	13%	11%

Frequently used greater harm factor
Frequently used greater harm factor
Frequently used greater harm factor
Very frequently used greater harm factor
Very frequently used greater harm factor

Factors indicating lower culpability				
Offender exploited by others	5%	1%	2%	4%
Offence committed on impulse/limited intrusion	4%	4%	5%	0%
Mental disorder/learning disability where linked to the	1%	1%	1%	2%
None stated	90%	95%	92%	96%

	2012 Q234	2013	2014	2015 Q1
Factors increasing seriousness				
<i>Statutory aggravating factors:</i>				
Previous relevant convictions:	62%	61%	62%	57%
Offence committed on bail	4%	3%	4%	2%
None stated	35%	38%	36%	41%

High proportion of cases with previous convictions.

<i>Other aggravating factors include:</i>				
Child at home/returns	16%	20%	18%	26%
Committed at night	42%	38%	50%	48%
Abuse of power/trust	0%	2%	1%	0%
Gratuitous degradation	7%	9%	7%	4%
Steps taken to prevent reporting/assisting prosecution	2%	5%	3%	2%
Victim compelled to leave home (domestic violence in particular)	2%	10%	6%	9%
Established evidence of community impact	0%	2%	1%	0%
Offender was under the influence of alcohol/drugs	19%	21%	17%	37%
Failure to comply with current court orders	12%	4%	9%	13%
On licence	10%	9%	12%	13%
TIC's	4%	2%	1%	0%
Major role of offender including Facilitating/forcing involvement of others including child	1%	1%	0%	2%
Multiple/previous attempts at same type of offence	0%	1%	1%	0%
Newton hearing/trial of issue	1%	1%	0%	0%
Risk of harm to others/causing fear to others	0%	1%	0%	4%
Location of offence	1%	0%	1%	4%
Wearing of a disguise	1%	1%	0%	2%
Vulnerable victim	0%	1%	0%	2%
No factors stated	29%	38%	31%	26%

Frequently used aggravating factor.

	2012 Q234	2013	2014	2015 Q1
Factors reducing seriousness or reflecting personal mitigation				
Subordinate role in group or gang	13%	11%	14%	9%
Injuries caused recklessly	2%	5%	2%	2%
Nothing stolen or of very little value ⁴	15%	15%	11%	11%
Made voluntary reparation	1%	0%	1%	0%
No previous relevant convictions	16%	17%	16%	2%
Remorse	29%	25%	25%	15%
Good character/exemplary conduct	10%	5%	8%	0%
Determination/demonstration to address addiction/behaviour	4%	5%	7%	4%
Serious medical conditions	2%	1%	4%	2%
Age/lack of maturity affecting responsibility	13%	15%	12%	13%
Lapse of time not fault of offender	1%	2%	1%	2%
Mental disorder/learning disability where not linked to the commission of the offence	2%	2%	3%	4%
Sole/primary carer for dependant relatives	1%	1%	1%	0%
Long gap between offences/lived legally in-between reoffending	0%	1%	1%	0%
Is an addict	0%	0%	1%	2%
Co-operation with authorities	2%	2%	0%	0%
Provocation	1%	1%	1%	0%
No Factors stated	45%	45%	52%	61%

Most frequently used mitigating factor.

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths.
- 2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.
- 3) Factors in blue are those which are not specifically listed in the aggravated burglary guideline, but were on the CCSS form, because they were in either the domestic or non-domestic burglary guidelines.
- 4) The factor 'Nothing stolen or of very little value' is not actually a lesser harm factor in the aggravated burglary guideline (it is a mitigating factor). It is, however, a lesser harm factor for domestic/non-domestic burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for Aggravated Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced¹
Male	181	95
Female	9	5
Not recorded/not known	-	-
Total	190	100

95% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	46	24
22 to 29 years	65	34
30 to 39 years	43	23
40 to 49 years	26	14
50 to 59 years	10	5
60 years or older	-	-
Not recorded/not known	-	-
Total	190	100

81% of the adults sentenced were under 40 years of age.

Perceived Ethnicity²	Number of adults sentenced	Percentage of all adults sentenced¹
White	119	78
Black	23	15
Asian	6	4
Other	5	3
Not recorded/not known	37	-
Total	190	100

78% of adults sentenced had 'white' as their recorded perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for aggravated burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Sex	Immediate custody	Otherwise dealt with ¹	Total
Male	168	13	181
Female	5	4	9
Not recorded/not known	-	-	-

Age Group	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	44	2	46
22 to 29 years	59	6	65
30 to 39 years	39	4	43
40 to 49 years	21	5	26
50 to 59 years	10	0	10
60 years or older	0	0	0
Not recorded/not known	0	0	0

Perceived Ethnicity ²	Immediate custody	Otherwise dealt with ¹	Total
White	109	10	119
Black	22	1	23
Asian	5	1	6
Other	5	0	5
Not recorded/not known	32	5	37

Sex	Immediate custody	Otherwise dealt with ¹	Total
Male	93%	7%	100%
Female	56%	44%	100%
Not recorded/not known	-	-	-

Age Group	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	96%	4%	100%
22 to 29 years	91%	9%	100%
30 to 39 years	91%	9%	100%
40 to 49 years	81%	19%	100%
50 to 59 years	100%	0%	100%
60 years or older	-	-	-
Not recorded/not known	-	-	-

Perceived Ethnicity ²	Immediate custody	Otherwise dealt with ¹	Total
White	92%	8%	100%
Black	96%	4%	100%
Asian	83%	17%	100%
Other	100%	0%	100%
Not recorded/not known	86%	14%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation;
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (years)¹	
	Mean	Median
Male	7.8	7.5
Female	6.9	8.0
Not recorded/not known	-	-

Age Group	Mean	Median
18 to 21 years	6.1	6.0
22 to 29 years	8.3	8.0
30 to 39 years	7.5	8.0
40 to 49 years	6.4	7.0
50 to 59 years	16.7	7.8
60 years or older	-	-
Not recorded /not known	-	-

Perceived Ethnicity²	Mean	Median
White	8.4	8.0
Black	7.6	7.1
Asian	6.0	6.0
Other	5.9	6.5
Not recorded/not known	6.6	6.4

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Excludes life and indeterminate sentences.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
Male	6	23	35	44	32	24	3	1	168
Female	0	1	1	1	2	0	0	0	5
Not recorded /not known	-	-	-	-	-	-	-	-	-

Age Group	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
18 to 21 years	0	8	19	9	7	1	0	0	44
22 to 29 years	2	5	8	15	14	14	1	0	59
30 to 39 years	2	5	6	11	9	5	1	0	39
40 to 49 years	2	5	3	4	3	3	1	0	21
50 to 59 years	0	1	0	6	1	1	0	1	10
60 years or older	0	0	0	0	0	0	0	0	0
Not recorded /not known	-	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
White	4	11	21	28	25	17	2	1	109
Black	0	4	5	4	4	4	1	0	22
Asian	0	1	2	1	1	0	0	0	5
Other	0	1	1	3	0	0	0	0	5
Not recorded /not known	2	7	7	9	4	3	0	0	32

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '2 years or less' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case

Sex	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
Male	4%	14%	21%	26%	19%	14%	2%	1%	100%
Female	0%	20%	20%	20%	40%	0%	0%	0%	100%
Not recorded /not known	-	-	-	-	-	-	-	-	-

Age Group	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
18 to 21 years	0%	18%	43%	20%	16%	2%	0%	0%	100%
22 to 29 years	3%	8%	14%	25%	24%	24%	2%	0%	100%
30 to 39 years	5%	13%	15%	28%	23%	13%	3%	0%	100%
40 to 49 years	10%	24%	14%	19%	14%	14%	5%	0%	100%
50 to 59 years	0%	10%	0%	60%	10%	10%	0%	10%	100%
60 years or older	-	-	-	-	-	-	-	-	-
Not recorded /not known	-	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
White	4%	10%	19%	26%	23%	16%	2%	1%	100%
Black	0%	18%	23%	18%	18%	18%	5%	0%	100%
Asian	0%	20%	40%	20%	20%	0%	0%	0%	100%
Other	0%	20%	20%	60%	0%	0%	0%	0%	100%
Not recorded /not known	6%	22%	22%	28%	13%	9%	0%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Annex C

Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: x – xx years' custody

This is a **specified offence** for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where:

- a. it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; or
- b. any person in the dwelling was subjected to violence or the threat of violence; or
- c. if the defendant were convicted, it would be a third qualifying conviction for domestic burglary.

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors in the table 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	<ul style="list-style-type: none"> • Targeting of vulnerable victim • A significant degree of planning or organisation • Knife or other weapon carried (where not charged separately)
B- Medium culpability	<ul style="list-style-type: none"> • Some degree of planning or organisation • Equipped for burglary (where not in high culpability) • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ 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- Lower culpability	<ul style="list-style-type: none"> • Offence committed on impulse, with limited intrusion into property • Involved through coercion, intimidation or exploitation • Mental disorder or learning disability, where linked to the commission of the offence

Harm	
The level of harm is assessed by weighing up all the factors of the case	
Category 1	<ul style="list-style-type: none"> • Much greater emotional impact on the victim than would normally be expected • Occupier at home (or returns home) while offender present • Violence used or threatened against the victim • Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value) • Soiling of property and/or extensive damage or disturbance to property • Context of public disorder
Category 2	<ul style="list-style-type: none"> • Greater emotional impact on the victim than would normally be expected

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

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 conditions

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply section 314 of the Sentencing Code and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting Point 3 years' custody</p> <p>Category Range 2 -6 years' custody</p>	<p>Starting Point 2 years' custody</p> <p>Category Range 1 -4 years' custody</p>	<p>Starting Point 1 year 6 months custody</p> <p>Category Range 6 months – 3 years' custody</p>
Category 2	<p>Starting Point 2 years' custody</p> <p>Category Range 1 -4 years' custody</p>	<p>Starting Point 1 year 6 months custody</p> <p>Category Range 6 months – 3 years' custody</p>	<p>Starting Point 1 years' custody</p> <p>Category Range High level community order-2 years custody</p>
Category 3	<p>Starting Point 1 year 6 months custody</p> <p>Category Range 6 months - 3 years' custody</p>	<p>Starting Point 1 years' custody</p> <p>Category Range High level community order-2 years custody</p>	<p>Starting Point High level community order</p> <p>Category Range Low level community order-6 months custody</p>

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/>

Below is a **non-exhaustive** list of additional elements providing the context of the

offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- 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:

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity

- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under section 314 of the Sentencing Code, the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

STEP FIVE**Dangerousness**

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained section 308 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 52 of the Sentencing Code 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 and section 325 of the Sentencing Code.

Annex D

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: x – xx years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is indictable only where it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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	<ul style="list-style-type: none">• A significant degree of planning or organisation• Knife or other weapon carried (where not charged separately)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ 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- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm	
The level of harm is assessed by weighing up all the factors of the case	
Category 1	<ul style="list-style-type: none">• Much greater emotional impact on the victim than would normally be expected• Victim on the premises (or returns) while offender present• Violence used or threatened against the victim• Theft of/damage to property causing a- substantial degree of loss to the victim (whether economic, commercial or personal value) Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Greater emotional impact on the victim than would normally be expected

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism of the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

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 conditions

Courts may wish to note the Imposition guideline

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences/>

Harm	Culpability		
	A	B	C
Category 1	<p>Starting Point 2 years' custody</p> <p>Category Range 1 -5 years' custody</p>	<p>Starting Point 1 years' custody</p> <p>Category Range High level community order - 2 years' custody</p>	<p>Starting Point 6 months custody</p> <p>Category Range Medium level community order – 1 years custody</p>
Category 2	<p>Starting Point 1 years' custody</p> <p>Category Range High level community order - 2 years' custody</p>	<p>Starting Point 6 months custody</p> <p>Category Range Medium level community order – 1 years custody</p>	<p>Starting Point Medium level community order</p> <p>Category Range Low -high level community order</p>
Category 3	<p>Starting Point 6 months custody</p> <p>Category Range Medium level community order - 1 years' custody</p>	<p>Starting Point Medium level community order</p> <p>Category Range Low – high level community</p>	<p>Starting Point Band B fine</p> <p>Category Range Discharge – Low level community order</p>

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- 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:

- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Dangerousness**

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained section 308 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 52 of the Sentencing Code 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 and section 325 of the Sentencing Code.

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Arranging or facilitating the commission of a child sex offence

Sexual Offences Act 2003, s.14

Effective from: 1 April 2014

Triable either way

Maximum: 14 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are **specified offences** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

When sentencing a section 14 offence, sentencers should refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12:

- [Sexual activity with a child](#), Sexual Offences Act 2003, s.9
- [Causing or inciting a child to engage in sexual activity](#), Sexual Offences Act 2003, s.10
- [Engaging in sexual activity in the presence of a child](#), Sexual Offences Act 2003, s.11
- [Causing a child to watch a sexual act](#), Sexual Offences Act 2003, s.12

The level of harm should be determined by reference to the type of activity arranged or facilitated. Sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed, including in instances where no child victim exists. In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the lack of harm which has actually resulted.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

For offences involving significant commercial exploitation and/or an international element, it may, in the interests of justice, be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the starting point and range may be appropriate.

Sexual activity with a child/ Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003, s.10, Sexual Offences Act 2003, s.9

Effective from: 1 April 2014

Sexual activity with a child, Sexual Offences Act 2003, s.9

Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003, s.10

Triable only on indictment (if penetration involved), otherwise, triable either way

Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are **specified offences** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Arranging or facilitating the commission of a child offence (section 14 of the Sexual Offences Act 2003)

[\[Insert link to revised section 14 guideline\]](#)

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

This guideline also applies to offences committed remotely/online. **Sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world.**

In section 10 cases where activity is incited but does not take place the court should identify the category of harm on the basis of the sexual activity the offender intended,

and then apply a downward adjustment at step two to reflect the lack of harm which has actually resulted.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by others from carrying out the offence at a late stage, or in attempts where a child victim does not exist and, but for this fact, the offender would have carried out the offence, a small reduction within the category range will usually be appropriate.

Where for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features.

Harm
Category 1 <ul style="list-style-type: none">• Penetration of vagina or anus (using body or object)• Penile penetration of mouth In either case by, or of, the victim.
Category 2 <ul style="list-style-type: none">• Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim
Category 3 <ul style="list-style-type: none">• Other sexual activity

Culpability
Culpability A <ul style="list-style-type: none">• Significant degree of planning• Offender acts together with others to commit the offence• Use of alcohol/drugs on victim to facilitate the offence• Grooming behaviour used against victim• Abuse of trust• Use of threats (including blackmail)• Sexual images of victim recorded, retained, solicited or shared

- Specific targeting of a particularly vulnerable child
- Offender lied about age
- Significant disparity in age
- Commercial exploitation and/or motivation
- Offence racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
- Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

Culpability B

- Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 5 years' custody</p> <p>Category range 4 – 10 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years' custody</p>
Category 2	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>
Category 3	<p>Starting point 26 weeks' custody</p>	<p>Starting point Medium level community order</p>

	Category range High level community order – 3 years' custody	Category range Low level community order – High level community order
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The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Severe psychological or physical harm
- Ejaculation
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Victim compelled to leave their home, school, etc
- Failure to comply with current court orders
- Offence committed whilst on licence
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially other children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs

- Victim encouraged to recruit others
- Period over which offence committed

Mitigating factors

Statutory aggravating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- ~~Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it~~

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

[Further steps]

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Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXX

Triable either way

Maximum: 2 years' custody

Offence range: XXXXXXXXXX

This is a **specified offence** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

In cases of attempts where an offender tries to communicate with a child victim who does not exist, the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the lack of harm which has actually resulted. In such cases a small reduction within the category range will usually be appropriate.

Harm
Category 1 <ul style="list-style-type: none"> • Discussion of penetrative activity, oral sex, extreme sexual activity, sadism, or masturbation • Sexual images sent or received • Significant psychological harm or distress caused to victim
Category 2 <ul style="list-style-type: none"> • Factor(s) in category 1 not present

Culpability
Culpability A <ul style="list-style-type: none"> • Abuse of trust • Use of threats (including blackmail)

<ul style="list-style-type: none"> • Targeting of a particularly vulnerable child • Commercial exploitation and/or motivation
<p>Culpability B</p> <ul style="list-style-type: none"> • Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 18 months' custody</p> <p>Category range 9 – 24 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>
Category 2	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium level community order – 1 year's custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

The court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Offence racially or religiously aggravated
- 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

- Failure to comply with current court orders
- Offence committed whilst on licence
- Financial or other reward offered to victim
- Offender lied about age or used a false identity
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others
- Victim particularly vulnerable (where not taken into account at step one)
- **Sustained and persistent offending**

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- **Isolated offence**

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has

been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

[Further steps]