Annex A

DRAFT GUIDELINES – ASSAULT OFFENCES

COMMON ASSAULT

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.**
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: • Intention to cause fear of serious harm, including disease transmission • Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances • Prolonged assault • Use of substantial force • Strangulation • Threatened or actual use of weapon or weapon equivalent* • Leading role in group activity
B – Lesser culpability • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category A factors
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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.

HARM	CULPABILITY	
	A	**B**
Harm 1	**Starting point** High level Community Order **Category Range** Low level Community Order - 26 weeks' custody	**Starting point** Medium level Community Order **Category Range** Low level Community Order - 16 weeks' custody
Harm 2	**Starting point** Medium level Community Order **Category Range** Low level Community Order - 16 weeks' custody	**Starting point** Band B fine **Category Range** Band A Fine - low level Community Order
Harm 3	**Starting point** Band B fine **Category Range** Band A Fine - Low level Community Order	**Starting point** Band A Fine **Category Range** Discharge – Band C Fine

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

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

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion.	Increase the length of custodial sentence if already considered for the basic offence **or** consider a custodial sentence, if not already considered for the basic offence.

▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.	
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family **(over and above the distress already considered at step one).**	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

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

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

STEP FIVE
Dangerousness
Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of Part 12 of the Criminal Justice Act 2003. The court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to impose an extended sentence (section 226A).

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

STEP NINE
Consideration for time spent on bail (tagged curfew)
The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

ASSAULT ON EMERGENCY WORKER

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.**
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: • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity
B – Lesser culpability • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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.

HARM	CULPABILITY	
	A	**B**
Harm 1	**Starting point** 8 months **Category Range** 26 weeks' – 1 years' custody	**Starting point** 16 weeks **Category Range** High level Community Order - 26 weeks' custody
Harm 2	**Starting point** 16 weeks **Category Range** High level Community Order - 26 weeks' custody	**Starting point** HL CO **Category Range** Low Level Community Order – 16 weeks
Harm 3	**Starting point** HL CO **Category Range** Low Level Community Order – 16 weeks	**Starting point** ML CO **Category Range** Band B Fine – HL CO

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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

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

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

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

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

ASSAULT WITH INTENT TO RESIST ARREST

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.**
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: • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity
B – Lesser culpability • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

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.

HARM	CULPABILITY	
	A	**B**
Harm 1	**Starting point** 36 weeks' custody **Category Range** 26 weeks' custody – 15 months	**Starting point** 26 weeks' custody **Category Range** High level Community Order - 9 months' custody
Harm 2	**Starting point** 26 weeks' custody **Category Range** High level Community Order - 36 weeks' custody	**Starting point** High Level Community Order **Category Range** Low Level Community Order – 26 weeks' custody
Harm 3	**Starting point** High Level Community Order **Category Range** Low Level Community Order – 26 weeks' custody	**Starting point** Medium Level Community Order **Category Range** Band B Fine – 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) 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: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

ABH

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.**
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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:
A - High culpability • Significant degree of planning or premeditation • Victim obviously vulnerable due to age, personal characteristics or circumstances • Use of a highly dangerous weapon or weapon equivalent* • Strangulation • Leading role in group activity • Prolonged assault
B – Medium culpability • Use of a weapon or weapon equivalent which does not fall within category A • Lesser role in group activity • Cases falling between category A or C because: - Factors in both high and lesser categories are present which balance each other out; and/or - The offender's culpability falls between the factors as described in high and lesser culpability
C – Lesser culpability • No weapon used • Excessive self defence • Mental disorder or learning disability, where linked to the commission of the offence
* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm To assess the level of harm caused by the offence, the court must consider; • The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm • Where in **that range** of injuries the injury caused falls	
Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

STEP TWO

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.

HARM	CULPABILITY		
	A	**B**	**C**
Harm 1	**Starting point** 2 years 6 months' custody **Category Range** 1 year 6 months' – 4 years' custody	**Starting point** 1 year 6 months' custody **Category Range** 36 weeks' – 2 years 6 months' custody	**Starting point** 36 weeks' custody **Category Range** High Level Community Order - 1 year 6 months' custody
Harm 2	**Starting point** 1 year 6 months' custody **Category Range** 36 weeks' – 2 years 6 months' custody	**Starting point** 36 weeks' custody **Category Range** High Level Community Order - 1 year 6 months' custody	**Starting point** High Level Community Order **Category Range** Low Level Community Order – 36 weeks' custody
Harm 3	**Starting point** 36 weeks' custody **Category Range** High Level Community Order - 1 year 6 months' custody	**Starting point** High Level Community Order **Category Range** Low Level Community Order – 36 weeks' custody	**Starting point** Medium Level Community Order **Category Range** Band B Fine – 26 weeks' custody

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)

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

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.	Increase the length of custodial sentence if already considered for the basic offence **or** consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.

victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.	
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family **(over and above the distress already considered at step one).**	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

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

STEP NINE

Consideration for time spent on bail (tagged curfew)

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

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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.**
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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:
A - High culpability • Significant degree of planning or premeditation • Victim obviously vulnerable due to age, personal characteristics or circumstances • Use of a highly dangerous weapon or weapon equivalent* • Strangulation • Leading role in group activity • Prolonged assault
B – Medium culpability • Use of a weapon or weapon equivalent which does not fall within category A • Lesser role in group activity • Cases falling between category A or C because: - Factors in both high and lesser categories are present which balance each other out; and/or - The offender's culpability falls between the factors as described in high and lesser culpability
C – Lesser culpability • No weapon used • Excessive self defence • Mental disorder or learning disability, where linked to the commission of the offence
* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm All cases will involve ‘really serious harm’, which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	Particularly grave and/or life-threatening injury caused Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work
Category 2	Grave but non life-threatening injury caused Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim’s ability to carry out normal day to day activities or on their ability to work
Category 3	All other cases of really serious harm All other cases of wounding

STEP TWO

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.

HARM	CULPABILITY		
	A	**B**	**C**
Harm 1	**Starting point** 4 years' custody **Category Range** 3 years– 4 years 6 months' custody	**Starting point** 3 years' custody **Category Range** 2 -4 years' custody	**Starting point** 2 years' custody **Category Range** 1-3 years' custody
Harm 2	**Starting point** 3 years' custody **Category Range** 2 -4 years' custody	**Starting point** 2 years' custody **Category Range** 1-3 years' custody	**Starting point** 1 years' custody **Category Range** High Level Community Order - 2 years' custody
Harm 3	**Starting point** 2 years' custody **Category Range** 1-3 years' custody	**Starting point** 1 years' custody **Category Range** High Level Community Order - 2 years' custody	**Starting point** 26 weeks' custody **Category Range** Medium Level Community Order – 1 years' custody

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 or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)

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

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely.	Increase the length of custodial sentence if already considered for the basic offence **or** consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.

victim or the victim's family **(over and above the distress already considered at step one).** ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely.	
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	**SENTENCE UPLIFT**
▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family **(over and above the distress already considered at step one).**	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

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

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

STEP FIVE
Dangerousness
The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

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

STEP NINE
Consideration for time spent on bail (tagged curfew)
The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

GBH S18

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.** 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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation
- Leading role in group activity
- Prolonged assault
- Revenge

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
  - Factors in both high and lesser categories are present which balance each other out; **and/or**
  - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

Harm All cases will involve ‘really serious harm’, which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	Particularly grave or life-threatening injury caused Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim’s ability to carry out normal day to day activities or on their ability to work
Category 2	Grave injury Offence results in a permanent, irreversible injury or condition not falling within category 1
Category 3	All other cases of really serious harm All other cases of wounding

STEP TWO

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.

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

HARM	CULPABILITY		
	A	**B**	**C**
Harm 1	**Starting point** 12 years' custody **Category Range** 10-16 years' custody	**Starting point** 7 years' custody **Category Range** 6-10 years' custody	**Starting point** 5 years' custody **Category Range** 4-7 years' custody
Harm 2	**Starting point** 7 years' custody **Category Range** 6-10 years' custody	**Starting point** 5 years' custody **Category Range** 4-7 years' custody	**Starting point** 4 years' custody **Category Range** 3 – 6 years' custody
Harm 3	**Starting point** 5 years' custody **Category Range** 4-7 years' custody	**Starting point** 4 years' custody **Category Range** 3-6 years' custody	**Starting point** 3 years' custody **Category Range** 2-4 years' custody

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 or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

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

ATTEMPTED MURDER

STEP ONE **Determining the offence category**

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

Culpability demonstrated by one or more of the following:	
A – Very High culpability	• Abduction of the victim with intent to murder • Attempted murder of a child • Offence motivated by or involves sexual or sadistic conduct • Offence involves the use of a firearm or explosive or fire • Offence committed for financial gain • Attempted murder of a police officer or prison officer in the course of their duty • Offence committed for the purpose of advancing a political, religious, racial or ideological cause • Offence intended to obstruct or interfere with the course of justice • Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity
B- High culpability	• Offender took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used that knife or other weapon in committing the offence. • Planning or premeditation of murder
C - Medium culpability	• Use of weapon not in category A or B • Lack of premeditation/spontaneous attempt to kill
D- Lesser culpability	• Excessive self defence • Offender acted in response to prolonged or extreme violence or abuse by victim • Offender's responsibility substantially reduced by mental disorder or learning disability

	• Genuine belief by the offender that the offence was an act of mercy

Harm	
Category 1	Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work
Category 2	Serious physical or psychological harm not in category 1
Category 3	All other cases

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below before further adjustment for aggravating or mitigating features, set out below.

For offences involving an extreme nature of one or more very high or high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.

HARM	CULPABILITY			
	A	**B**	**C**	**D**
Harm 1	**Starting point** 35 years **Category Range** 30 - 40	**Starting point** 30 **Category Range** 25-35	**Starting point** 25 **Category Range** 20-30	**Starting point** 14 **Category Range** 10-20
Harm 2	**Starting point** 30 years **Category Range** 25-35	**Starting point** 25 **Category Range** 20-30	**Starting point** 20 **Category Range** 15-25	**Starting point** 8 **Category Range** 5-12
Harm 3	**Starting point** 25 **Category Range** 20-30	**Starting point** 20 **Category Range** 15-25	**Starting point** 10 **Category Range** 7-15	**Starting point** 5 **Category Range** 3-6

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline.*

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:

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Abuse of position of trust

Gratuitous degradation of victim

Others put at risk of harm by the offence

Use of duress or threats against another person to facilitate the commission of the offence

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Steps taken to prevent the victim from seeking or receiving medical assistance

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Attempt by offender to give assistance/summon help when the attempted murder failed

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

Serious medical conditions requiring urgent, intensive or long-term treatment

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

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

STEP FIVE
Dangerousness
The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX
Special custodial sentence for certain offenders of particular concern (section 236A)
Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

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

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

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

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.

Findings – common assault road testing

Aims

This research was conducted to understand how harm is assessed using the draft guidelines for common assault. Previous testing indicated that this step may allow for a wide range of outcomes, depending on the sentencer's interpretation. In testing the common assault guideline, we also sought to understand how magistrates treat biting and spitting, in two separate scenarios.

Methodology

Three common assault scenarios (see Annex A) were tested with 12 magistrates. An alternative harm model was also developed for each guideline (see Annex B), to understand how this might impact on assessment of harm and was tested at a slightly later date. The second model used different wording for each of the categories, including changing category 2 (medium level) of harm to: 'Harm falling between categories 1 and 3.'

A sample of magistrates was taken from the OSC's research pool. The scenarios used were similar to those used in a previous road testing exercise, so any previous participants were deselected, as were any sentencers who had taken part in OSC research in the last year. Sentencers were approached by email, and the draft guidelines were sent to those who said they would like to take part. Interviews were conducted on Microsoft Teams and scenarios were sent to participants shortly before the interviews.

In total, 12 magistrates were interviewed. There was a lower response rate in the second round, after the second harm model was developed, so this model was tested with fewer participants.

	Harm model 1	Harm model 2
Magistrates	9	3

Participants were asked to sentence up to three scenarios using the draft guideline. Responses were collated in an Excel grid and tables with individual sentencing outcomes are set out below. Where participants were given the second harm model, their responses are highlighted in green in the tables.

Key findings on harm

- For the scenario involving **biting**, most sentencers (9 out of 11) placed harm in category 2. The remaining two sentencers placed harm in category 3.
- There were more mixed results for the scenario involving **spitting**, though most sentencers (7 out of 11) still placed the harm in category 2, with the remainder split between category 1 and 3. The element of spitting was also considered by most sentencers as part of their assessments of culpability or aggravation. Assessments of harm focussed on distress to the victim, while some identified 'Intent to cause fear of serious harm' (by disease transmission) in the assessment of culpability.
- For the scenario involving **strangulation**, most sentencers (8 out of 9) placed harm in category 1, citing the fact that the victim was in fear for her life, and one sentencer placed harm in category 2.

- There were no significant differences identified where sentencers were using the second harm model. However, it is not possible to draw conclusions due to the very small number of sentencers interviewed.
- In a number of interviews, sentencers said they would want to see the VPS and/or photographs of injuries before assessing the harm.

Summary findings on harm

Scenario A – biting (11 magistrates)

Most sentencers (9 out of 11) placed harm in category 2, and the remaining two placed it in category 3. The three sentencers using the second harm model all placed it in category 2.

A number of sentencers who placed harm in category 2 highlighted the fact that there were markings and redness from biting, but the skin was not broken. Some sentencers added that there was little indication of psychological distress.

> *Teeth marks were visible for some time and skin was red until the following morning… so there weren't any long-lasting injuries but I thought it was minor rather than more than minor… I don't think there's much psychological distress in this incident*
>
> (placed in category 2)

One sentencer who placed harm in category 3 identified that there were marks on the hand but little distress, and the other did not give reasons for their assessment. However, this sentencer included biting as an aggravating factor which increased their sentence from the starting point.

Biting was also considered by one sentencer in the assessment of culpability, and they placed the offence in higher culpability because of the use of teeth. Most sentencers (8 out of 11) placed the offender in lesser culpability, and three placed the offender in higher culpability.

Scenario B – spitting (11 magistrates)

7 out of 11 sentencers placed harm in category 2. Two placed it in category 1 and two placed it in category 3. There was mixed opinion about this assessment and several sentencers thought it was a borderline case, either between categories 1 and 2 or between categories 2 and 3. One sentencer stated they would need a VPS to determine whether there had been lasting psychological damage.

Of the sentencers using the second harm model, two placed it in category 2 and one placed it in category 3. The first two both thought it was borderline between categories 1 and 2. One stated that the fact the victim decided to have a shower quickly indicated that the harm did not last long, while the other thought that her taking a shower showed that the harm was more than minor.

Most sentencers identified that the spitting had caused psychological harm or distress. One sentencer who placed harm in category 1 thought there was substantial distress caused by the spitting.

> *There was a substantial element of distress caused by the incident*
>
> (placed in category 1)

Of the two who placed harm in category 3, one stated there was no real physical harm and that the distress caused by spitting would be applied as an aggravating factor.

> *I think that will come in later as spitting is very nasty… it's a bit borderline… category 3 and aggravate it up a bit* (placed in category 3)

The other, using the second harm model, stated there was no injury and little indication of distress.

> *There's no injury and she was deeply embarrassed… that's it… it doesn't say she was still bothered about it the next day* (placed in category 3)

Spitting was also a factor drawn upon when assessing culpability and aggravation. 5 out of 11 sentencers placed in the offender in higher culpability: four identified 'Intent to cause fear of serious harm' (of disease transmission) as a culpability factor (two of whom also listed spitting as a culpability factor), and one identified spitting as a weapon equivalent. Eight sentencers identified spitting as an aggravating factor of the offence. In their final comments, a few sentencers highlighted the fact that spitting could be seen as a culpability and an aggravating factor.

One sentencer also referred to the fear of disease transmission in their assessment of harm.

> *Category 2 because there doesn't seem to be any prolonged physical or psychological harm or distress… some sentencers would probably opt for category 1 because of the [Covid-19] context*
>
> (placed in category 2)

<u>Scenario C – strangulation (9 magistrates)</u>

8 out of 9 sentencers placed harm in category 1, and one placed it in category 2. Most sentencers highlighted that the victim was in fear for her life and said this amounted to more than minor psychological distress.

> *It's not much physical harm but she said she was in fear of her life and thought she would pass out* (placed in category 1)

One sentencer questioned whether magistrates are qualified to assess psychological harm.

> *I don't know whether somebody's suffering from psychological harm or not… If someone has a letter from a doctor to say they've been prescribed anti-depressants as a result of that… then that is evidence of psychological harm, but if someone just says I've been very upset and I haven't been sleeping very well, I don't know if that's true or not, I haven't got evidence for that. You have to go with instinct and I don't like doing that, I don't think it's a very good way of doing it* (placed in category 1)

Another sentencer who placed harm in category 1 said their decision was led by the physical harm, although acknowledged there had also been psychological harm.

One sentencer who placed harm in category 2 said there was evidence of serious distress, but they were unsure if it was more than minor.

> *No lasting physical injuries, evidence of immediate serious distress, fear of becoming unconscious so… certainly not category 3… unsure as to whether we're talking more than minor… high category 2 but bearing in mind as we carry on that it's nearer 1 than 3*
>
> (placed in category 2)

(placed in category 2)

ANNEX B

Common assault

Scenario A – biting

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	B	• No high culpability factors	2	low level community order	• Service to the public	• Remorse • Previous good character	Band B fine
2	B	• No high culpability factors	2	Band B fine	• Service to the public	• Remorse	Band B fine
3	B	• No high culpability factors	2	fine		• Remorse	Band B fine
4	B	• No high culpability factors	2	Band B fine	• Angry and abusive	• Remorse • Previous good character	Band A fine
5	A	• Leading role in group activity	2	medium level community order	• Service to the public	• Remorse • Previous good character	low level community order with UPW
6	B	• No high culpability factors	3	Band A fine	• Service to the public • Took place at night • Verbal abuse	• Remorse	Band B fine
7	B	• No high culpability factors	3	Band A fine	• Bite marks	• Remorse • Previous good character • Lack of maturity	Band B or C fine
8	A	• Use of teeth	2	medium level community order	• Service to the public	• Remorse	medium level community order
9	A	• Intent to cause fear of serious harm	2	medium level community order	• Deliberate	• Remorse	low level community order
10	B	• No high culpability factors	2	Band B fine	• Service to the public • Presence of others		low level community order
11	B	• No high culpability factors	2	Band B fine	• Service to the public	• Remorse • Previous good character	Band C fine

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Scenario B – spitting

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	A	• Prolonged • Intent to cause fear of serious harm	1	medium level community order	• Domestic context • Alcohol • Prolonged		medium level community order
2	B	• No high culpability factors	2	Band B fine	• Spitting • Domestic context		Band C fine
3	B	• No high culpability factors	1	community order	• Spitting		high level community order
4	B	• No high culpability factors	2	Band B fine	• Domestic context		Band C fine
5	A	• Intent to cause fear of serious harm	2	high level community order	• Spitting • Domestic context	• Provocation	12 weeks custody
6	B	• No high culpability factors	3	band A fine	• Spitting • Domestic context • Alcohol		Band B fine
7	A	• Spitting • Intent to cause fear of serious harm	2	medium level community order	• Spitting	• Provocation	low level community order
8	A	• Spitting as weapon equivalent	2	medium level community order	• Spitting (not double counted) • Domestic context • Alcohol		medium/high level community order
9	A	• Spitting • Intent to cause fear of serious harm • Not prolonged but a build-up	2	medium level community order	• Domestic context		medium level community order
10	B	• No high culpability factors	2	Band B fine	• Spitting • Domestic context • Presence of others	• Previous good character	low level community order
11	B	• No high culpability factors	3	Band A fine	• Spitting • Domestic context	• Previous good character	Band B fine

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Scenario C – strangulation

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	A	• Intent to cause fear of serious harm • Strangulation	2	medium level community order	• Domestic context • Alcohol		high level community order
2	A	• Prolonged • Substantial force • Strangulation	1	18 weeks custody	• Domestic context • Alcohol • Strangulation		18 weeks custody
3	A	• Intent to cause fear of serious harm • Strangulation	1	high level community order	• Domestic context • Abuse of power • Alcohol		high level community order
4	A	• Intent to cause fear of serious harm • Strangulation	1	high level community order	• Domestic context	• Previous good character	high level community order
5	A	• Intent to cause fear of serious harm • Substantial force • Strangulation	1	high level community order	• Domestic context • Alcohol		12 weeks
6	A	• Substantial force • Strangulation	1	high level community order	• Domestic context • Alcohol		12 weeks
7	A	• Prolonged • Substantial force • Strangulation	1	high level community order	• Domestic context • Alcohol		12 weeks, suspended for 12 months
8	A	• Intent to cause fear of serious harm • Strangulation	1	high level community order	• Domestic context • Gratuitous degradation • Abuse of power • Alcohol		high level community order
9	A	• Strangulation	1	high level community order	• Domestic context • Alcohol	• Previous good character	high level community order

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Annex A – scenarios

Scenario A – biting

T and M were on a night out and waiting in line to get into a nightclub for some time. On arriving at the end of the queue, the doorman, B, informed them the venue was full and no further entry could be admitted. M became very angry and abusive, shouting that she was cold and needed the toilet, and had queued for 45 minutes and was not leaving. This continued for 5 minutes. B then advised her that, due to her behaviour and bad language, she would definitely not be allowed to enter and told her to leave the premises. M refused and tried to push past B, who held her back. M bit B's hand hard, causing him to let her go. Teeth marks were visible in his skin for some time, and the skin remained red until the following morning. In B's statement, he said while the bite was painful it was par for the course in his job. M pleaded guilty at the first hearing and was full of remorse and regretted her behaviour.

Scenario B – spitting

H was at a family party and had an argument with his stepmother, S, whom he disliked and had a bad relationship with. S was slightly drunk and was telling H he needed to learn some manners and change his attitude as he had ignored her all evening. H told her to 'fuck off you bitch and don't speak to me.' S continued to berate H and shouted at him that he was 'a rude little bastard', waving her finger in his face. A nasty verbal argument ensued. H decided to leave and, as he pushed past S, spat in her face. S was very upset and tearful and left the party, feeling deeply embarrassed and needing to have a shower and wash her hair. H pleaded guilty but stated that she shouldn't have kept on at him and refused to apologise for the incident.

Scenario C – strangulation

V and her partner D had been to an engagement party. They had both been drinking and, on returning home, D accused V of flirting with someone at the party. She told him to stop being stupid and that she was going to bed and he could sleep on the sofa. As she went to pass him, he threw her against the wall and shouted in her face that he had seen her flirting and she had made him look like a twat. She tried to push him away and go upstairs, and he grabbed her by the throat and held her against the wall with his hand around her neck. V was crying and distressed, and D only let her go once she had gone red in the face and was gasping for air. In her statement, V said she had been unable to breathe, thought she was going to pass out and had been in fear for her life. There were no lasting physical injuries or any bruising, although reddening of her neck was visible in police photographs. D pleaded guilty on the day of trial.

Annex B – harm models

Model 1 (as in the draft guideline)

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Model 2

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm
Category 2	Harm falling between categories 1 and 3
Category 3	No physical injury No/very low level of distress

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Sentencing Council

Consultation Stage Resource Assessment

Sexual Offences

Introduction

This document fulfils the 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 April 2014, the Sentencing Council's *Sexual Offences Definitive Guideline* came into force, covering most sexual offences regularly sentenced by courts in England and Wales. It included guidelines for sentencing over 50 offences including offences relating to causing or inciting sexual offences and arranging and facilitating sexual offences under the Sexual Offences Act 2003 (SOA)

Recent Court of Appeal case law has clarified the approach that the courts should take in cases where no sexual activity takes place, including instances where no child victim exists, usually because the offender is the subject of a so-called "sting" operation. This will typically involve either the police, or an informal group, pretending to be a fictitious child or the parent of a fictitious child in order to identify those trying to commit sexual offences with children. The Court of Appeal requested that the Council consider clarifying the guideline for section 14 of the SOA to cater for these cases. The Council has considered that such an update is necessary. Additionally, following this case law, the Council has considered how the guidelines for causing or inciting offences (for example, section 10 of the SOA) would apply to the situation where activity is incited but not caused, and have revisited these to provide further clarification.

Section 67 of the Serious Crime Act 2015 inserted a new section 15A into the SOA making sexual communication with a child a specific offence. This offence came into effect on 3 April 2017, and no current guideline exists.

The Council is consulting on a draft sentencing guideline covering the new offence under section 15A and the updated and revised guidelines, for use in all courts in England and Wales.

The Council's aim in developing the new and revised guidelines is to provide sentencers with a clear approach to sentencing sexual offences – including those

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

where no sexual activity has occurred - that will ensure that sentences are proportionate to the offence committed and in relation to other offences, and additionally 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 guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the new and revised guidelines for the following offences under the Sexual Offences Act 2003:

- Sexual communication with a child (section 15A)
- Arranging or facilitating the commission of a child sex offence (section 14)
- Causing or inciting a child to engage in sexual activity (section 10)
- Causing or inciting a child under 13 to engage in sexual activity (section 8)
- Abuse of position of trust: causing or inciting a child to engage in sexual activity (section 17)
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity (section 31)
- Care workers: causing or inciting sexual activity (section 39)
- Causing or inciting sexual exploitation of a child (section 48)
- Causing or inciting prostitution for gain (section 52)[2]

The *Sexual Offences* guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

Current sentencing practice

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

The intention is that the new section 15A guideline will encourage consistency of sentencing in an area where no guideline currently exists and that the revisions to existing guidelines will encourage consistency of sentencing and better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for sexual offences and sentencing data from the Court Proceedings Database[3]. A review of

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[2] Due to very low volumes of causing and inciting sexual offences, sections 17, 31, 39, 48 and 52 have been grouped together in the resource assessment to allow more meaningful analysis of resource impacts of the guidelines.

[3] 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

case law has informed the draft guideline[4] and 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.

During the consultation stage, we intend to conduct research with sentencers, to explore whether the draft guidelines will work as anticipated. This research should also provide some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for sexual offences covered by the draft guidelines have been published on the Sentencing Council website at the following link: http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.

Sexual communication with a child (section 15A)

The statutory maximum sentence for sexual communication with a child is 2 years' custody and around 280 offenders were sentenced for this offence in 2019. About 42 per cent were sentenced to a community order, a further 36 per cent received a suspended sentence and 15 per cent received an immediate custodial sentence, the remaining 6 per cent were recorded as otherwise dealt with.[5,6] For those receiving immediate custody in 2019, the ACSL was 10 months.

Arranging or facilitating the commission of a child sex offence (section 14)

The statutory maximum sentence for arranging or facilitating the commission of a child sex offence is 14 years' custody. In 2019, around 100 offenders were sentenced for this offence, with the majority (71 per cent) sentenced to immediate custody. A further 17 per cent received a suspended sentence, 10 per cent received a community order and 2 per cent were recorded as otherwise dealt with.[5,6] The average (mean) custodial sentence length (ACSL) for those sentenced to immediate custody was 3 years 10 months.

Causing or inciting a child to engage in sexual activity (section 10)

The statutory maximum sentence for causing or inciting a child to engage in sexual activity is 14 years. In 2019, around 260 offenders were sentenced for this offence and the most common outcome was immediate custody (51 per cent of offenders). A further 26 per cent received a suspended sentence, 16 per cent received a community order and 6 per cent were recorded as otherwise dealt with.[5,6] For those receiving immediate custody, the ACSL was 3 years 2 months.

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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 average custodial sentence length values for offenders sentenced to determinate, immediate 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.

[4] Notably *R v Privett [2020] EWCA Crim 557*

[5] 'Otherwise dealt with' include restriction orders, disqualification orders, victim surcharge, guardianship orders, restraining orders, sexual harm prevention orders, forfeiture orders and other miscellaneous disposals.

[6] Percentages may not sum to 100 per cent due to rounding.

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The statutory maximum sentence for causing or inciting a child under 13 to engage in sexual activity is life imprisonment. In 2019, around 170 offenders were sentenced for this offence, most offenders received an immediate custodial sentence (85 per cent). A further 10 per cent received a suspended sentence, 4 per cent received a community order and 2 per cent were recorded as otherwise dealt with.[5,6] In 2019, the ACSL for this offence was 4 years 3 months.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)[2,7]

The statutory maximum sentence varies across these causing and inciting offences under the sections of the SOA mentioned above, from 5 years' for section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity) to life imprisonment for section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity where penetration was involved).[8]

Between 2015 and 2019, around 190 offenders were sentenced for causing and inciting sexual offences under the sections of the SOA mentioned above. The majority of these (around 130 offenders, 67 per cent) were sentenced under section 48: causing or inciting sexual exploitation of a child. Around 30 offenders were sentenced under section 17, around 20 offenders were sentenced under section 52, around 10 offenders were sentenced under section 31 and less than 5 were sentenced under section 52.[9]

For offenders sentenced under section 48 (the highest volume of these offences) between 2015 and 2019, 60 per cent of offenders were sentenced to immediate custody. Suspended sentence orders accounted for 19 per cent of sentences, community order accounted for 16 per cent, 3 per cent were recorded as otherwise dealt with and fines and discharges accounted for 1 per cent each.[5,6] The ACSL for section 48 over the 5-year period was 3 years and 4 months.

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 new 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 new guideline are therefore subject to a substantial degree of uncertainty.

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[7] Due to the small number of offenders sentenced for these offences, 5 years of data have been presented. For offences with very low volumes, further breakdowns of sentence outcomes and ACSLs have not been provided.

[8] The statutory maximum for section 39 offences is 14 years' custody, for section 38 offences the statutory maximum is 14 years' custody and for section 52 offences the statutory maximum is 7 years.

[9] Figures on sentence outcomes have been presented for the highest volume offence (section 48), figures of sentencing outcomes for the other sections are available in the accompanying data tables.

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, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

The resource impact of the draft guideline and changes to existing ones are measured in terms of the changes in sentencing practice that are expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the draft guidelines and revisions are therefore not included in the estimates.

In developing sentence levels for the new guideline, existing guidance 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 proposed in the draft guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the draft guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guideline and revisions to existing ones and to mitigate the risk of the changes having an unintended impact, research will be undertaken with sentencers during the consultation period, utilising different sexual offence scenarios. Along with consultation responses, this should hopefully provide more information on which to base the final resource assessment accompanying the definitive guideline and revisions.

Resource impacts

This section should be read in conjunction with the draft guideline available at: http://www.sentencingcouncil.org.uk/consultations/.

Overall impacts

The expected impact of each guideline and revision is shown in detail below. Analysis of Crown Court judges' sentencing remarks for the relevant sexual offence cases has been conducted to assess how sentences may change under the draft revised guidelines.

For sexual communication with a child (section 15A), there is currently no guideline in place, so the aim of this new guideline is to improve consistency of sentences. However, it is estimated that there may be a small increase in sentencing severity, with some offenders who would previously have received a community order now receiving a short immediate custodial sentence that would likely be suspended.

For arranging or facilitating the commission of a child sexual offence (section 14), there may be a small increase overall in sentence levels for cases in which no actual child is present. It is estimated that there may be a small increase in the ACSL for these cases with the potential requirement for approximately 40 additional prison places per year.[10]

For causing or inciting a child to engage in sexual activity (section 10), there may be an increase in sentencing severity for cases where no child exists (which are charged as attempts), or where the child does exist and the offence was incited but did not occur. It is estimated that for these cases, the average custodial sentence length may increase, with the potential requirement for around 190 additional prison places per year.[10]

For causing or inciting a child under 13 to engage in sexual activity (section 8) it is anticipated that there will be little change in sentencing practice and as such there will be little impact on correctional facilities.

For other causing and inciting sexual offences under sections 17, 31, 39, 42 and 52 of the SOA 2003, there may be a small increase in sentencing severity for cases where no real victim exists, or where a victim does exist and the offence was incited but did not occur. As volumes are low, it is difficult to ascertain the impact for these offences but it is anticipated that any changes would have very little impact on prison and probation resources.

The revised guidelines for all arranging or facilitating and causing or inciting offences (sections 8, 10, 14, 17, 31, 39, 48 and 52 of the SOA) have been updated following guidance from the Court of Appeal and as such the estimated changes in sentencing practice presented above are attributable to the case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice.

Sexual communication with a child (section 15A)

The offence of sexual communication with a child, inserted by section 67 of the Serious Crime Act 2015, came into force on 3 April 2017; there is currently no guideline for this offence.

The new proposed guideline has two levels of culpability and two levels of harm, leading to four offence categories. The sentencing range for this offence has been set with evidence of current sentencing practice in mind, spanning from a community order to 2 years' immediate custody. The statutory maximum for this offence is 2 years' custody.

Just over 80 per cent of offenders sentenced for sexual communication with a child are sentenced at the Crown Court and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.[11] This analysis suggests that offenders that would

[10] These estimates are based on 2019 data and as such should be treated with caution as current sentencing practice after May 2020, may already be accounting for the Court of Appeal guidance. For more information on how the impacts were calculated, see page 8 for section 14 offences and page 9 for section 10 offences.

[11] Around 20 transcripts of Crown Court sentencing remarks were analysed to assess the impact this guideline may have on prison and probation services.

currently receive a community order may receive a short custodial sentence using the new draft guideline. However, based on current sentencing practice, it is likely that most of these sentences would be suspended and so there would be minimal impact on prison resources. If a higher proportion of custodial sentences are not suspended, this would require additional prison places; however, it is expected that this impact would be negligible.

Arranging or facilitating the commission of a child sex offence (section 14)

The existing guideline for section 14 asks sentencers to refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12 of the SOA 2003 and provides brief guidance on how to apply those guidelines to section 14 cases. This approach remains suitable and appropriate; however, following a request from the Court of Appeal to consider whether further guidance was required, the Council proposes to amend the guideline to provide additional information for sentencers in cases in which no child exists.

The Court of Appeal case of *R. v Privett* highlighted that no sexual activity needs to take place for a section 14 offence to be committed and raised concerns about the previous approach taken regarding harm when no child existed. The Court of Appeal in *Privett* said that the court is required to consider the sexual activity intended (even if it does not occur) as part of its assessment of harm, and as such these offences should not automatically be treated as the lowest level of seriousness simply on the basis that no real child was involved. The revised guideline echoes this approach and advises sentencers to identify the category of harm at step 1 based on the sexual activity intended and then apply a downward adjustment at step 2 to reflect the lack of harm which has actually resulted.

In 2019, all adult offenders sentenced for arranging or facilitating a child sexual offence were sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. It found that 75 per cent of transcripts involved cases in which no real child existed. These transcripts were then used to identify possible impacts of the additional wording provided in the guideline.[12]

The transcripts were analysed with reference to the directions provided in the revised guideline for these types of cases, to try to determine how sentences may change. For cases involving no actual child, original sentence practice varied, with most being placed in the lower levels of harm (around 70 per cent were placed in level 2 or 3, with around 30 per cent in level 1). The analysis suggests that overall, sentences would be likely to increase because most of these cases would now be placed into the highest harm category (about 90 per cent in level 1 and 10 per cent in level 2), and then adjusted accordingly. It was estimated that for cases where no real child was involved, most offences that previously attracted a community order or suspended sentence order would now be given an immediate custodial sentence instead[13], and custodial sentence lengths would increase. Sentence lengths would on

[12] Of the 28 Crown Court transcripts analysed, 21 transcripts (75 per cent) were identified as relating to cases in which no real child was present; most of these were identified as police undercover operations, but a small proportion were identified as vigilante action.

[13] Very few transcripts were analysed for those sentenced to community orders or suspended sentence orders, however, all those that were included in the analysis, saw the sentence increased to an immediate custodial

average increase by 5 months for these offences, from 2 years 10 months to 3 years 3 months[14] and as a result may lead to the need for approximately 40 additional prison places per year.[15] This anticipated increase is lower than that for section 10 cases (see below) as some cases already appear to be taking a similar approach to that set out in the case of *Privett*. However, this increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice.

The transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here, represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, case specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then a reduction of between 0 and 1 year was applied from the starting point, before any other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes. It is likely that after May 2020, sentencers would follow the approach set out by the Court of Appeal and as such it is anticipated that the revised guideline itself would have little impact on current sentencing practice. Further research will be done during the consultation stage to test specific scenarios with sentencers to understand how sentencing practice may be influenced by the additional wording in the guideline after the Court of Appeal ruling.

Causing or inciting a child to engage in sexual activity (section 10)

The revised guideline for causing or inciting a child to engage in sexual activity repeats the guidance set out in the offence of arranging or facilitating the commission of a child sexual offence: that sentencers should identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Transcripts of Crown Court judges' sentencing remarks have been analysed in relation to the draft guideline and cases where there was no real child or where the activity was incited with a real child but did not take place have been identified. These cases have been analysed to try to determine how sentences may change under the additional guidance.[16]

Similarly to the section 14 offence, the categorisation of harm for section 10 offences is expected to increase for cases where there is no real child or where the activity was incited with a real child but did not take place. These cases account for

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sentence. Therefore, this estimate provides an indication of the movement of sentences in relation to these cases.

[14] This ACSL was calculated using the sampled transcripts and represents the estimated average custodial sentence length of the section 14 offences within the transcript analysed where no real child was involved. It does not reflect the whole case mix of this offence and as such is not comparable to the ACSL set out in the 'Current sentencing practice' section of this document.

[15] Using evidence from the transcript analysis, it has been estimated that around 75 per cent of offenders sentenced for the section 14 offence were sentenced for cases in which no real child existed, therefore this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change

[16] Of the 26 transcripts relating to causing or inciting a child to engage in sexual activity analysed, 14 were identified as involving no real child or where the activity was incited with a real child but did not take place.

approximately 54 per cent of those sentenced for section 10 offences and the analysis suggested that the harm would increase from level 3 under 2019 sentencing practice to level 1 under the revised guideline, with a reduction applied to allow for the lesser harm actually caused. Due to this, it is estimated that on average, immediate custodial sentences for cases where there was no real child or where the activity was incited with a real child but did not take place may increase by about 2 years 4 months, from 1 year 2 months to 3 years 6 months[17], resulting in a need for approximately 190 additional prison places per year. This increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice. It is also expected that in cases where a real child was present or the sexual activity took place, sentences will remain unaffected by this change.[18,19]

As with the section 14 offence, the transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, cases specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then a reduction of between 0 and 1 year was applied from the starting point, before any other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes. It is likely that after May 2020, sentencers would follow the approach set out by the Court of Appeal and as such it is anticipated that the revised guideline itself would have little impact on current sentencing practice. As with the section 14 offences, further research will be done during the consultation stage to test specific scenarios with sentencers to understand how sentencing practice may be influenced by the additional wording in the guideline after the Court of Appeal ruling.

The revised guideline also adds additional guidance for sentencers on cases where offences are committed remotely or online, clarifying that 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. Due to the small number of offences of this nature captured by the transcripts, it is difficult to estimate the effect of this change on sentencing outcomes. However, it is expected that the changes to the guideline will help improve consistency when sentencing these cases, that it reflects current practice to a large extent, and any impact on sentences is likely to be small since the number of offenders sentenced for this type of offence is so low.

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The revised guideline for causing or inciting a child under 13 to engage in sexual activity follows the same structure as the section 10 offence and advises sentencers

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[17] This ACSL was calculated using the sampled section 10 transcripts and represents the estimated average custodial sentence length of the specific offence within the transcript analysed where no real child was involved

[18] Using evidence from the transcript analysis, it has been estimated that 54 per cent of offenders sentenced for section 10 offences were sentenced for offences in which no child was harmed, therefore this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change.

to identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Due to the nature of this offence and the harm factors presented in the guideline as it currently exists, it is not anticipated that this additional information would cause the harm category to increase for cases where no real child is involved, or the offence is incited but does not occur. The factors within the guideline that would lead to the higher levels of harm would usually require a real child to exist or for some aspect of the offending to have actually occurred, (for example, abduction and forcing entry into the victim's home). It is therefore anticipated that this change will have little impact on sentencing outcomes for this offence and as such any impact of correctional resources will be negligible.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)

The additional explanatory wording provided within the guidelines for the section 8 and 10 offences, highlighting that sentencers should identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2, is also being applied to all other causing and inciting offence guidelines, to provide clarity on how sentencers should approach cases where no real victim is involved, or the offence is incited but does not occur.

Due to small volumes of these offences, it is difficult to estimate the effect of this change on sentencing outcomes, however, it is possible that this change may increase sentencing severity for these specific cases and consequently have an impact on correctional resources. Although it is not possible to quantify what this impact might be, it is anticipated to be minimal due to the small number of offenders sentenced for these offences, with a negligible impact on prison and probation resources.

Risks

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 comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates

which should be interpreted as indicative of the direction and approximate magnitude of any change only.

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 them as intended. For the new section 15A guideline, sentencing ranges have been agreed on by considering sentence ranges in the existing Sexual Offences guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant sexual offence cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back 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.

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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. Where the activity takes place, 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 fact that no or lesser harm 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 the police or 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 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 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.

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 fact that no or lesser harm actually resulted.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by the police or 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. No additional reduction should be made for the fact that the offending is an attempt.

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 • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, the victim.
Category 2 • Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim
Category 3 • Other sexual activity

Culpability
Culpability A • 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	**Starting point** 5 years' custody **Category range** 4 – 10 years' custody	**Starting point** 1 year's custody **Category range** High level community order – 2 years' custody
Category 2	**Starting point** 3 years' custody **Category range** 2 – 6 years' custody	**Starting point** 26 weeks' custody **Category range** High level community order – 1 year's custody
Category 3	**Starting point** 26 weeks' custody **Category range** High level community order – 3 years' custody	**Starting point** Medium level community order **Category range** Low level community order – 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 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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Annex D

"Severe psychological harm" – expanded explanation

"The assessment of psychological harm experienced by the victim is for the sentencer. Whilst it may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence."

"Abuse of trust" – expanded explanation

- *A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.*
- *In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.*
- *Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.*
- *Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.*
- *Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.*

Proposed amendments to historic sex offences guidance

Approach to sentencing historic sexual offences

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:[1]

[1] R v H and others [2011] EWCA Crim 2753

1. The offender must be sentenced in accordance with the sentencing regime applicable at the **date of sentence**. Under sections 57 and 63 of the Sentencing Code the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.

2. The sentence is limited to the maximum sentence available at the **date of the commission of the offence**. If the maximum sentence has been reduced, the lower maximum will be applicable.

3. The court should ~~have regard~~ sentence by reference to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Where the offence, if committed on the day on which the offender was convicted, would have constituted an offence contrary to section 5 or section 6 of the Sexual Offences Act 2003, sections 265 and 278 of the Sentencing Code (special custodial sentence for certain offenders of particular concern) apply.

4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.

5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.

6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.

7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.

8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, 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.

9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may ~~be regarded as personal mitigation~~ significantly reduce the offender's culpability.

10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.

11. A reduction for an early guilty plea should be made in the usual manner.

Annex E

Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXX

Triable either way

Maximum: 2 years' custody

Offence range: XXXXXXXXX

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 fact that no or lesser harm has actually resulted. In such cases a small reduction within the category range will usually be appropriate.

Harm
Category 1 • Sexual images sent or received • Significant psychological harm or distress caused to victim
Category 2 • Factor(s) in category 1 not present

Culpability
Culpability A • Abuse of trust • Use of threats (including blackmail) • Targeting of a particularly vulnerable child • Commercial exploitation and/or motivation

• Soliciting images
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	**Starting point** 18 months' custody **Category range** 9 – 24 months' custody	**Starting point** 1 year's custody **Category range** High level community order – 18 months' custody
Category 2	**Starting point** 1 year's custody **Category range** High level community order – 18 months' custody	**Starting point** 6 months' custody **Category range** Medium level community order – 1 year's custody

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 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)
- Offence involved sustained or persistent communication

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity *[see expanded explanation below]* ~~where it affects the responsibility of the offender~~
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment *[see expanded explanation below]*
- 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.

Expanded Explanation: age and/or lack of maturity

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Expanded explanation: Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

- The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.
- However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
- There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending.
- A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).
- But, an offender's knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing judge when determining the sentence that it would be just to impose.

[Further steps]

Step 7 – Ancillary Orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may automatically apply.

- Link: Ancillary orders – Crown Court Compendium, Part II Sentencing, s7

Additional ancillary orders – sexual offences [drop down]

Sexual harm prevention orders (SHPOs)

Sexual Offences Act 2003, s103A

In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk.

The only prohibitions which can be imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the

offender. The order may include only negative prohibitions; there is no power to impose positive obligations.

The order may have effect for a fixed period (not less than five years) or until further order.

Slavery and trafficking prevention orders

Modern Slavery Act 2015, s14

A court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if satisfied that:

- there is a risk the offender may commit a slavery or human trafficking offence; and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

Automatic orders on conviction

The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

Requirement or provision	Statutory reference
Notification requirements A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly. *The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.*	Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003
Protection for children and vulnerable adults A statutory scheme pursuant to which offenders will or may be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.	Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006 Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)

Annex A

Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 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	• Targeting of vulnerable victim • A significant degree of planning or organisation
B- Medium culpability	• Some degree of planning or organisation • Other cases that fall between categories A and C because: o Factors are present in A and C which balance each other out **and/or** o The offender's culpability falls between the factors described in A and C
C- Lower culpability	• 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 be weighing up all the factors of the case**	
Category 1	• 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	• Some psychological injury or some other impact on the victim • 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	• 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 years' custody **Category Range** 4 – 9 years' custody
Category 2	**Starting Point** 8 years' custody **Category Range** 6 -11 years' custody	**Starting Point** 6 years' custody **Category Range** 4– 9 years' custody	**Starting Point** 4 years' custody **Category Range** 2-6 years' custody
Category 3	**Starting Point** 6 years' 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/crown-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.

Care should be taken to avoid double counting factors already taken into account at step one

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:

- Weapon carried when entering premises
- Use of face covering or disguise
- Offence committed in a dwelling
- 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.

STEP FIVE
Dangerousness
The court should consider whether having regard to the criteria contained in section 308 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.

Annex B

Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Low level community order- six 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	• Targeting of vulnerable victim • A significant degree of planning or organisation • Knife or other weapon carried (where not charged separately)
B- Medium culpability	• Some degree of planning or organisation • Equipped for burglary (where not in high culpability) • Other cases that fall between categories A and C because: o Factors are present in A and C which balance each other out **and/or** o The offender's culpability falls between the factors described in A and C
C- Lower culpability	• 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 be weighing up all the factors of the case**	
Category 1	• 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	• Greater emotional impact on the victim than would normally be expected

	• 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	• 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.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under part 10, or an alcohol treatment requirement under part 11, of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

For cases of particular gravity, sentences above the top of the range may be appropriate.

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

Category 3	**Starting Point** 1 year 6 months custody **Category Range** 6 months - 3 years' custody	**Starting Point** 1 years' custody **Category Range** High level community order-2 years' custody	**Starting Point** High level community order **Category Range** Low level community order-6 months custody

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 in 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 C

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – five 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	• A significant degree of planning or organisation • Knife or other weapon carried (where not charged separately)
B- Medium culpability	• Some degree of planning or organisation • Equipped for burglary (where not in high culpability) • Other cases that fall between categories A and C because: o Factors are present in A and C which balance each other out **and/or** o The offender's culpability falls between the factors described in A and C
C- Lower culpability	• 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 be weighing up all the factors of the case**	
Category 1	• 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	• Greater emotional impact on the victim than would normally be expected

	• 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	• 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 the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under part 10, or an alcohol treatment requirement under part 11, of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

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

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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Sentencing Council

Annex D

Consultation Stage Resource Assessment

Burglary Offences

Introduction

This document fulfils the 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 January 2012, the Sentencing Council's definitive *Burglary Offences* guideline came into force. As assessment of the guideline published in January 2016 found that sentencing severity had increased beyond what was expected for non-domestic burglary offences.[2] Sentences were also found to have increased beyond what was expected for aggravated burglary, although due to low volumes for this offence, the findings were less conclusive. A further assessment published in July 2017, found that the guideline may have contributed to increases in sentencing severity for all three burglary offences, although the increase in domestic burglary was within the expected range.[3]

In light of the assessment findings, the Council decided to update the guidelines. The Council also decided to bring the guidelines into line with the structure now used for most guidelines. Previously, there were two levels of culpability and two levels of harm, leading to a sentencing table with three starting points. In the draft guideline, there are now medium levels of culpability and medium levels of harm leading to nine possible starting points in the sentencing table.

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. It was accepted by the Council that sentencing levels had increased since the guideline came into force, and the draft revised guidelines have been developed with recent sentencing levels in mind.

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

[2] https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-assessment.pdf

[3] https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-further-assessment.pdf

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.

This resource assessment covers the following offences:

- Non-domestic burglary, Theft Act 1968 (section 9);
- Domestic burglary, Theft Act 1968 (section 9);
- Aggravated burglary, Theft Act 1968 (section 10).

The *Burglary 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 it.

The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice as it is currently. In order to develop a guideline that maintains 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,[4] findings from the two burglary guideline assessments, Council members' experience of sentencing burglary cases and references to case law and news articles. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that should maintain current sentencing practice.

During the consultation stage, some small-scale research will be conducted with a group of sentencers, to check that the draft guidelines would work as anticipated. This research should also provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for burglary offences covered by the draft guidelines have been published on the Sentencing Council website at the following link: http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.

[4] The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Data on average custodial sentence lengths presented in this resource assessment are those 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

Non-domestic burglary

Around 5,200 adults were sentenced for a non-domestic burglary offence in 2019. This number has been decreasing since 2011 when 8,500 adults were sentenced for this offence. Around 64 per cent of offenders were sentenced in magistrates' courts, the remaining 36 were sentenced in the Crown Court.

Just over half (55 per cent) of those sentenced for non-domestic burglary in 2019 were sentenced to immediate custody. A further 22 per cent and 17 per cent of adults received a community sentence and a suspended sentence respectively. The rest received a fine (2 per cent), a discharge (2 per cent) or were otherwise dealt with[5] (2 per cent).

The statutory maximum sentence for this offence is 10 years' custody. In 2019, the average custodial sentence length (ACSL)[6] was 11.3 months (after any reduction for a guilty plea).

Domestic burglary

Around 4,700 adults were sentenced for a domestic burglary offence in 2019. This has been sharply decreasing since a high of 11,100 in 2011. Around 87 per cent of offenders were sentenced in the Crown Court, the remaining 13 per cent were sentenced in magistrates' courts.

Around 77 per cent of those adults sentenced for domestic burglary in 2019 received an immediate custodial sentence. This was followed by 12 per cent receiving a suspended sentence and 9 per cent receiving a community sentence. The rest received a fine (less than 0.5 per cent), a discharge (1 per cent) or were otherwise dealt with[7] (2 per cent).

The statutory maximum sentence for this offence is 14 years' custody. The ACSL in 2019 was 28.6 months (after any reduction for a guilty plea).

Aggravated burglary

Around 190 adults were sentenced for an aggravated burglary in 2019. This is a reduction from 2011 when 320 adults were sentenced for the same offence. This offence is indictable only and therefore all offenders were sentenced in the Crown Court.

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[5] The category 'Otherwise dealt with' in this case includes: one day in police cells; hospital order; forfeiture of property; restraining order; a deferred sentence; compensation; and other miscellaneous disposals. Due to a data issue currently under investigation, there are a number of non-domestic burglary cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

[6] The average referred to in the text is the mean, which is calculated by adding all of the individual values and dividing the total by the number of values.

[7] The category 'Otherwise dealt with' in this case includes: one day in police cells; hospital order; compensation; restraining order; and other miscellaneous disposals. Due to a data issue currently under investigation, there are a number of domestic burglary cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

Nearly all (91 per cent) of the offenders received an immediate custodial sentence with the remaining 9 per cent 'otherwise dealt with'[8].

The statutory maximum sentence for this offence is life imprisonment. The ACSL in 2019 was 7.8 years (after any reduction for a guilty plea). Under 0.5 per cent of those sentenced in 2019 received an indeterminate sentence[9].

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 new guideline and draws upon analytical and research work undertaken during guideline development. Additionally, in this case, findings from the two guideline evaluations have helped to inform 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 new guideline are therefore subject to a substantial degree of uncertainty.

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

In developing sentence levels for the different guidelines, existing guidance 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 proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. Additionally, the draft guidelines have a medium level of culpability and a medium level of harm, which are not part of the current guideline, meaning that it is difficult to foresee how offences will map from the existing to draft guidelines. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore 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, interviews will be undertaken with sentencers during the consultation period, which will provide more information on which to base the final resource assessment accompanying the definitive guidelines.

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[8] The category 'Otherwise dealt with' in this case includes: otherwise dealt with on conviction (or finding of guilt). Due to a data issue currently under investigation, there are a number of aggravated burglary cases incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

[9] Adults sentenced to indeterminate sentences are not included in ACSL and sentence length figures.

Resource impacts

This section should be read in conjunction with the draft guidelines available at: http://www.sentencingcouncil.org.uk/consultations/.

Summary

There have been several changes to the placement of factors in the draft revised guidelines, which the analysis suggests may lead to changes in the categorisation of culpability in some cases, with potential subsequent impacts on sentences. This comprises the factor related to group offending within the non-domestic and domestic burglary guidelines, and the factor related to a weapon being present on entry to the premises within the aggravated burglary guideline. Additionally, some new wording related to alcohol dependency/misuse may lead to lower sentences.

Further research during the consultation stage will explore these issues in more detail, and there should therefore be further evidence available to estimate the impact of the guidelines for the final resource assessment.

Overall, aside from the specific issues mentioned above which will be explored during the consultation, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines, and at this stage, there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources.

Non-domestic burglary

The assessment of the impact of the existing guideline for this offence found that average sentencing severity increased beyond the expected levels when the guideline came into force, suggesting that the guideline had had an unintended impact of increasing sentences. The Council considered the findings of this assessment, as well as findings from the further assessment which explored the possible reasons for the increases.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of a medium level community order for the least serious offence up to a starting point of two years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from a starting point of a band B fine for the least serious offences up to two years' custody as a starting point for the most serious offences.

The Council decided to look carefully at the top categories of culpability and harm within the guideline, to ensure that only the most serious offences lead to the highest sentences. Accordingly, some changes to the factors in these categories were made. The intention was not necessarily to maintain or to decrease sentences, but instead to ensure that proportionate sentences were imposed relative to the seriousness of the offence. The Council also decided that sentences at the lower end of offending could better address the causes of the offending behaviour. Therefore, it was decided to include a new reference to alcohol treatment requirements alongside the

existing reference to drug treatment requirements in the guideline, as alternatives to short or moderate custodial sentences in appropriate cases. It was acknowledged that this may lead to decreases in sentence severity in some cases at the lower end of offending, but is intended to help reduce future offending.

A number of changes have been made to the wording and placement of the factors in the guideline. For example, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and has been moved from step one of the guideline to step two. Also 'premises or victim deliberately targeted'[10] has been removed from the guideline factors. Several of the harm factors and aggravating and mitigating factors have also been re-worded, and the factor 'offence committed at night' has been removed from the aggravating factors.

An analysis of a small sample[11] of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. It should be noted that transcripts of judges' sentencing remarks are only available for offenders sentenced at the Crown Court. As around two thirds of offenders (64 per cent in 2019) are sentenced in magistrates' courts for this offence, this means that this transcript analysis covers only the most serious end of offending. Therefore, findings will not be representative of all offenders sentenced for this offence. Additionally, the sample analysed was fairly small, and is unlikely to have accounted for the full range of offending at the Crown Court, and so findings for this offence are tentative.

Based on this analysis of a small sample of cases, most of the changes in the draft guideline are not expected to result in an impact on prison or probation resources. Where a change in sentences was found, it was minimal in size, and where an increase in the sentence under the new guideline was observed for some cases, this was usually balanced out by a decrease of around the same magnitude in other cases.

One exception to this was for several cases where the judge had placed the offence within the higher culpability category under the existing guideline where one of the relevant factors was that the offender committed the offence as part of a group. Under the revised guideline, the analysis found that other higher culpability factors (such as 'significant planning was involved') would be taken into account in most cases to keep the offender within this higher culpability category. This suggests that this would not have an impact on sentences. However, different findings were found for domestic burglary (see later),[12] The impact of this change will therefore be explored in more detail as part of research planned for during the consultation.

As explained above, the small sample of transcripts analysed was mainly comprised of more serious offences, in particular those which judges had put into the highest harm categories. This means that it has not been possible at this stage to determine

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[10] The factor 'vulnerable victim' appears instead at step two under aggravating factors.

[11] A total of 15 transcripts were analysed for this offence, of which 9 transcripts covering 19 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

[12] Where similar changes were made to these factors in the domestic burglary guidelines, the analysis suggested that in some cases, the movement of this factor from step one to step two may lead to a lower culpability categorisation. However, while sentencers may take the 'offence committed as part of a group' aggravating factor into account at step two and increase the sentence, this may not fully offset the decrease in culpability.

the possible impact of the lower starting point for the lowest level of offending[13]. It is possible that sentences may decrease for the least serious offences, but without further evidence, it is not possible to determine this at this stage.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the existing guideline mentions that sentencers may choose a community order with a drug rehabilitation requirement (DRR) as an alternative to a custodial sentence where the offender is dependent on or has a propensity to misuse of drugs and there is sufficient prospect of success. The draft guideline has the same text but also mentions alcohol dependency/misuse and alcohol treatment requirements, which may lead to more community orders being given to those with alcohol dependency or misuse issues, leading to a possible decrease in sentencing severity in some cases. However, it has not been possible to estimate the impact of this change from the sample of sentencing remarks, as it was not possible to identify when this factor may be a sufficient reason to impose a community order instead of a custodial sentence, and it may be that community orders with alcohol treatment requirements are already being imposed whenever relevant. Additionally, as the transcripts covered the more serious end of offending for this offence, it may be that the relevant types of cases where this change could occur were just not present in the evidence used to inform this resource assessment.

Due to the small sample of transcripts and lack of cases falling into the lower harm categories, these issues will be explored further during the consultation stage. This will include research with sentencers, which will include offences at the lower end of seriousness as this is where most change to sentence starting points in the draft guideline, have been made.

Domestic burglary

The assessment of the impact of the existing guideline for this offence and the further assessment conducted to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline, although severity stayed within the bounds of the expected levels. The Council considered these findings and concluded that the higher sentences imposed under the existing guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's now standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of a high level community order for the least serious offence up to a starting point of three years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as

[13] The lowest starting point in the current guideline is a medium level community order whereas the lowest starting point is a Band B fine in the draft guideline.

the current guideline (high level community order for the least serious offences) up to again, the same starting point for the most serious offences (three years' custody).

A number of changes have been made to the wording and placement of the factors in the guideline. For example, similarly to the non-domestic burglary guideline, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and moved from step one of the guideline to step two. Several of the harm factors and aggravating and mitigating factors have also been re-worded. Text has been added above the sentencing table telling sentencers that sentences above the top of the range may be appropriate for cases of particular gravity.

An analysis of a small sample[14] of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As the majority of offenders are sentenced at the Crown Court for this offence (87 per cent in 2019), it is expected that these transcripts are representative of most types of offending for this offence, except for those with the very lowest levels of seriousness. However, as this is a high-volume offence and the sample was small, it is unlikely that all types of offending have been captured within the analysis. Further research will be conducted during the consultation stage to better understand the possible impact of the guideline on sentencing.

Based on this analysis of a small sample of cases, most of the changes in the draft guideline are not expected to result in an impact on prison or probation resources. However, there were some exceptions.

The analysis found that in some cases, the movement of the factor related to group offending from step one to step two of the guideline could lead to a lowering of the culpability category under the draft guideline. Sentencers may take into account the relevant aggravating factor, but this may not fully offset any decrease to sentences caused by the lower culpability categorisation. There is not enough evidence at this stage to suggest that a decrease in sentences may occur as a result of this, but this will be explored in more detail as part of research planned for during the consultation.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the guideline has been revised in the same way as within the non-domestic burglary guideline, to capture dependency on or propensity to misuse alcohol. Similarly, this may lead to a greater use of community orders for this offence, but it has not been possible to estimate the impact of this from the sample of sentencing remarks.

Within the sample of transcripts, there were several cases which might fall under the definition of 'cases of particular gravity', and the text above the sentencing table advising sentencers that a sentence above the top of the range may be appropriate might apply in cases such as these. However, the sentence imposed in these cases was already above the top of the range, demonstrating that sentencers may already be sentencing in the way recommended by the additional wording. There is a possibility that in some cases, this is not currently happening, and so sentences may

[14] A total of 21 transcripts were analysed for this offence, of which 11 transcripts covering 14 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

increase, but any impact of this is likely to be minimal, as the evidence suggests that for the small proportion of cases where this text would apply, at least some if not many sentencers are already imposing more severe sentences.

As explained above, due to the small sample of transcripts, it is recommended that further analysis and research is undertaken during the consultation stage to better understand the possible impact of the revised guideline on sentences, and subsequently on prison and probation resources.

Aggravated burglary

The assessment of the impact of the existing guideline for this offence and the further assessment conducted to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline. However, as the volume of offenders sentenced for this offence is relatively low, the findings needed to be treated with caution. The Council considered these findings and concluded that the higher sentences imposed under the existing guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's now standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of two years' custody for the least serious offence up to a starting point of 10 years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as the current guideline (two years' custody for least serious offences) up to again, the same starting point for most serious offences (10 years' custody).

In addition to the structural changes, a number of changes have been made to the culpability factors. The factors 'weapon present on entry' and 'member of a group or gang' have been moved from step one to step two (aggravating factors) and re-worded. 'Equipped for burglary' has been removed from all steps of the guideline and 'use of face covering or disguise' has been added to step two (aggravating factors).

An analysis of a small sample[15] of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As all offenders are sentenced at the Crown Court for this offence, the sample should represent the full range of offending, although, as with the burglary offences covered earlier, it is possible that some types of offending have not been captured by these transcripts as the sample is small.

Based on this analysis of a sample of cases, the movement of the 'weapon present on entry' factor may mean some cases are put into a lower level of culpability at step one, when under the existing guideline they were put into higher culpability. In three of the transcripts analysed, the removal of this factor from step one was not balanced out by taking into account 'weapon carried when entering premises' as an aggravating factor and instead led to a lower final sentence. However, in the majority

[15] A total of 20 transcripts were analysed for this offence, of which 13 transcripts covering 20 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

of transcripts analysed, the culpability stayed at the same level due to the 'significant degree of planning' factor being present in the case. The factor 'Violence used or threatened against the victim, particularly involving a weapon' has remained within the high harm box and will also keep these cases within the higher end of the sentencing table. Therefore, the evidence suggests that the movement of this factor ('weapon present on entry') will not have an effect on the final sentence in most cases. There may be a decrease in sentences in a small proportion of cases where this factor is present. The analysis for domestic burglary found that the movement of the factor 'offence was committed as part of a group' from step one to step two may lead to lower categorisations of culpability. However, the analysis for aggravated burglary did not suggest a similar finding: there seemed consistently to be enough other culpability factors available in the revised guideline to maintain a high level of culpability for those offenders previously placed in higher culpability. Therefore, for this offence, categorisations of culpability are not expected to decrease. Given that this finding has not been consistent across the three burglary offences, this will be explored in more detail as part of research that will be conducted during the consultation, and may provide further evidence for the final resource assessment.

Further research will be conducted during the consultation stage to explore in more detail the possible impact of the guideline on sentences and subsequently on prison and probation resources.

Risks

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 comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guideline 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 them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of sentencing remarks for 56 cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period should also

enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back 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.

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Sentencing trends for non-domestic burglary, 2009-2019[1]

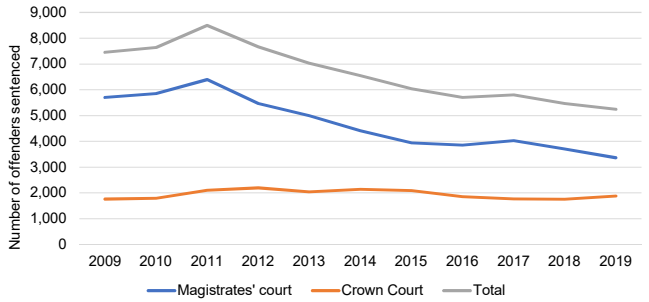
Number and proportion of adult offenders sentenced for non-domestic burglary, by court type, 2009-2019

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

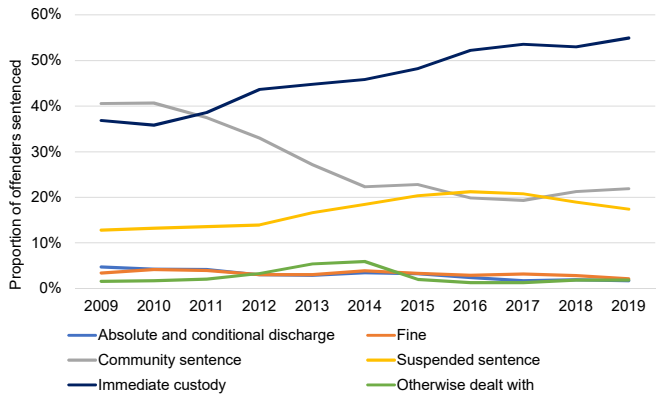


Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, all courts, 2009-2019

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**

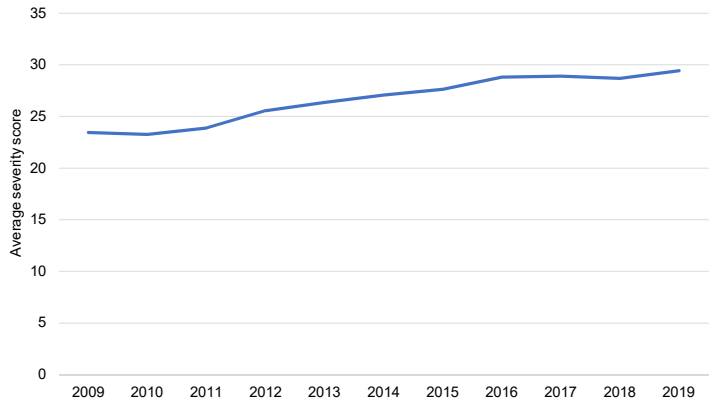
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	5%	4%	4%	3%	3%	4%	3%	2%	2%	2%	2%
Fine	3%	4%	4%	3%	3%	4%	3%	3%	3%	3%	2%
Community sentence	41%	41%	38%	33%	27%	22%	23%	20%	19%	21%	22%
Suspended sentence	13%	13%	14%	14%	17%	18%	20%	21%	21%	19%	17%
Immediate 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%

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

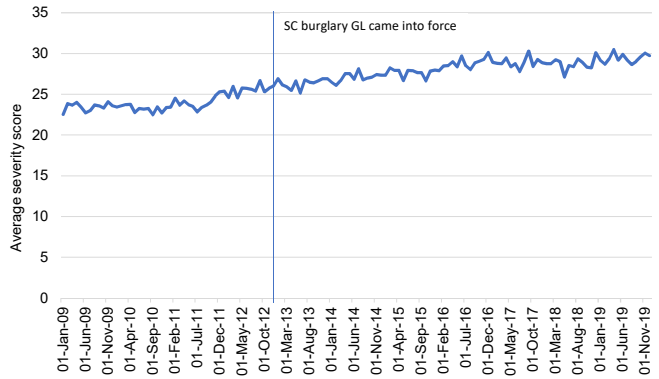


Between 2010 and 2017, the proportion of offenders receiving a CO decreased from 41 per cent to 19 per cent. In 2018 and 2019 this increased slightly, to 21 and 22 per cent. The proportion of offenders receiving a custodial sentence (either immediate or suspended) increased during the period 2010 and 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.

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

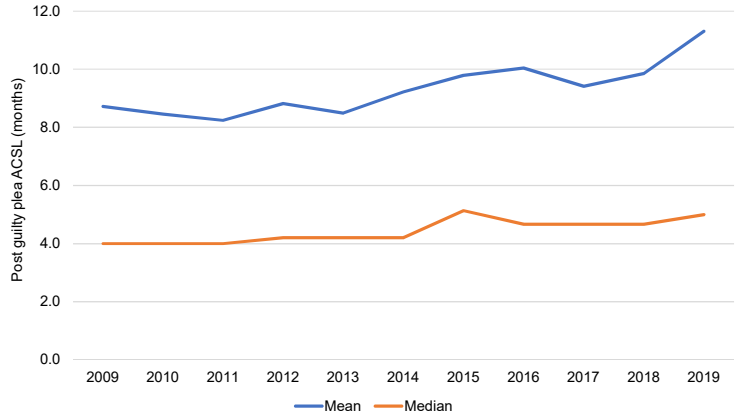


Average sentencing severity per month for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019

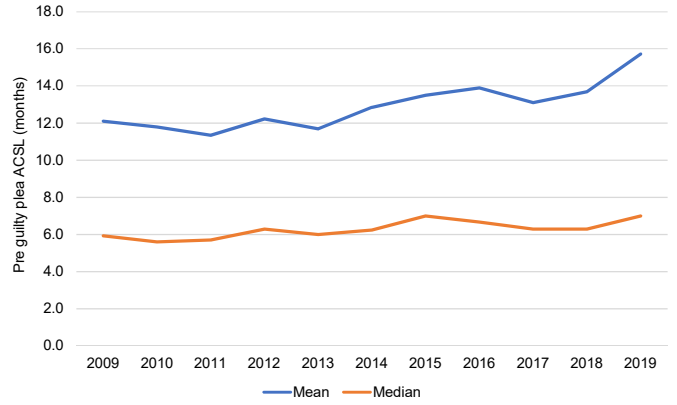


Between 2010 and 2016 there was an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders receiving a custodial sentence (either immediate or suspended), and a reduction in the proportion of offenders receiving a CO. Severity remained stable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

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

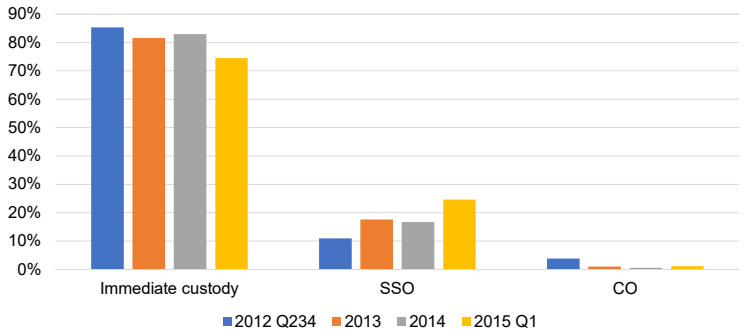
Based on the most recent data available, 35 per cent of offenders currently fall in the highest category of seriousness, and 14% fall in the lowest category.

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%**

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



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

	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

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

	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

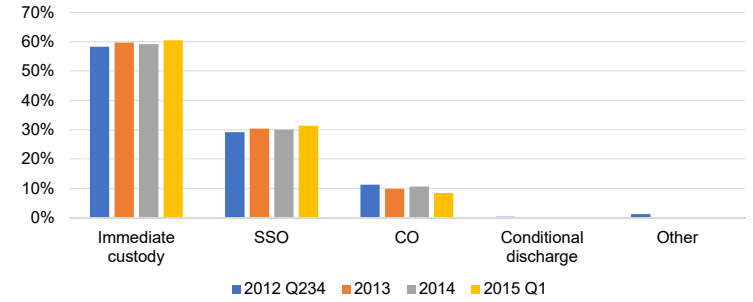
Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=347)	2013 (n=541)	2014 (n=577)	2015 Q1 (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.

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



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

	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

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

	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

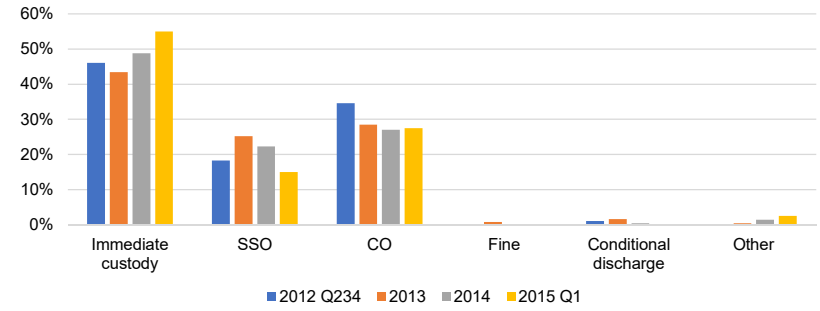
Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=191)	2013 (n=242)	2014 (n=211)	2015 Q1 (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 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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Deliberately targeted	33%	33%	38%	30%	This factor has been used frequently over time.
Significant degree of planning	23%	27%	35%	29%	This factor has been used frequently over time.
Weapon present on entry or carried	2%	2%	1%	2%	
Equipped for burglary	25%	25%	32%	30%	This factor has been used frequently over time.
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%	
Offence committed on impulse/limited intrusion	9%	10%	8%	7%	Most frequently used lower culpability factor.
Mental disorder/learning disability where linked to the	1%	1%	1%	0%	
None stated	88%	88%	90%	90%	
Factors increasing seriousness	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Statutory aggravating factors:					
Previous relevant convictions	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%	
Other aggravating factors include:					
Child at home/returns	0%	1%	0%	0%	
Committed at night	21%	24%	29%	23%	Frequently used aggravating factor.
Abuse of power/trust	2%	2%	2%	2%	
Gratuitous degradation	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/drugs	12%	11%	13%	11%	
Failure to comply with current court orders	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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Made voluntary reparation	0%	1%	1%	1%	
Subordinate role in group or gang	7%	5%	7%	6%	
No previous relevant convictions	7%	7%	6%	5%	
Remorse	16%	18%	15%	16%	Most frequently used mitigating factor.
Good character/exemplary conduct	5%	4%	3%	2%	
Determination/demonstration to address addiction/behaviour	10%	11%	9%	13%	
Serious medical conditions	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[4]	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 peri
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

Sex	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
Male	81	107	1060	857	2797	92	**4994**
Female	9	4	78	44	68	5	**208**
Not recorded/not known	1	2	9	11	16	2	**41**

Sex	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
Male	2%	2%	21%	17%	56%	2%	**100%**
Female	4%	2%	38%	21%	33%	2%	**100%**
Not recorded/not known	2%	5%	22%	27%	39%	5%	**100%**

Age Group	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
18 to 21 years	20	16	152	58	121	11	**378**
22 to 29 years[2]	13	35	221	181	539	16	**1005**
30 to 39 years	29	30	395	346	1287	31	**2118**
40 to 49 years	18	23	300	272	785	32	**1430**
50 to 59 years	9	8	74	52	132	9	**284**
60 years or older	2	1	5	3	17	0	**28**
Not recorded /not known	0	0	0	0	0	0	**0**

Age Group	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
18 to 21 years	5%	4%	40%	15%	32%	3%	**100%**
22 to 29 years[2]	1%	3%	22%	18%	54%	2%	**100%**
30 to 39 years	1%	1%	19%	16%	61%	1%	**100%**
40 to 49 years	1%	2%	21%	19%	55%	2%	**100%**
50 to 59 years	3%	3%	26%	18%	46%	3%	**100%**
60 years or older	7%	4%	18%	11%	61%	0%	**100%**
Not recorded /not known	-	-	-	-	-	-	-

Perceived Ethnicity[3]	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
White	66	86	922	684	2179	72	**4009**
Black	9	5	60	70	209	5	**358**
Asian	1	2	28	19	72	3	**125**
Other	1	0	13	8	39	3	**64**
Not recorded/not known	14	20	124	131	382	16	**687**

Perceived Ethnicity[3]	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
White	2%	2%	23%	17%	54%	2%	**100%**
Black	3%	1%	17%	20%	58%	1%	**100%**
Asian	1%	2%	22%	15%	58%	2%	**100%**
Other	2%	0%	20%	13%	61%	5%	**100%**
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 Ethnicity[2]	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]							
	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	**Total**
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	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	**Total**
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]	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	**Total**
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)							
	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	**Total**
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	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	**Total**
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]	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	**Total**
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

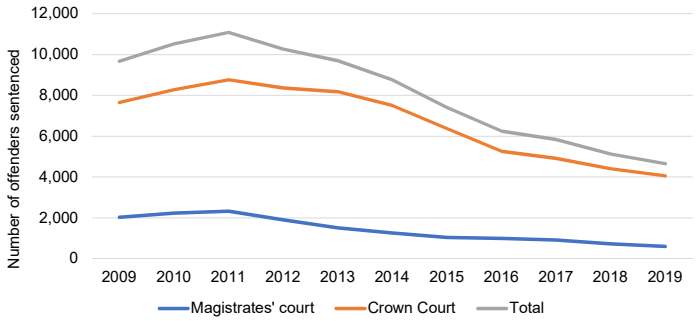
Number and proportion of adult offenders sentenced for domestic burglary, by court type, 2009-2019

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

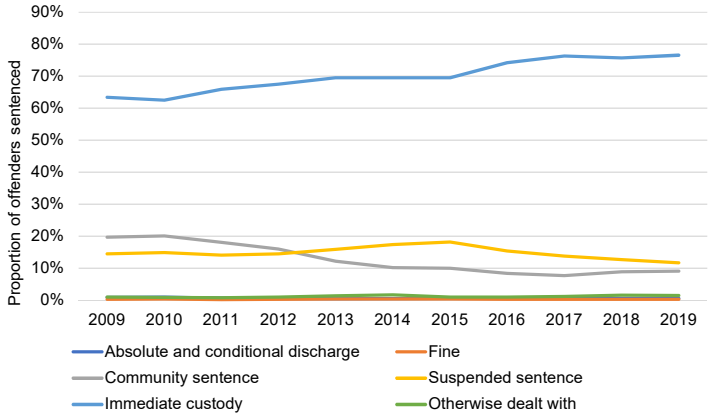


Number and proportion of adult offenders sentenced for domestic burglary, by sentence outcome, all courts, 2009-2019

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**

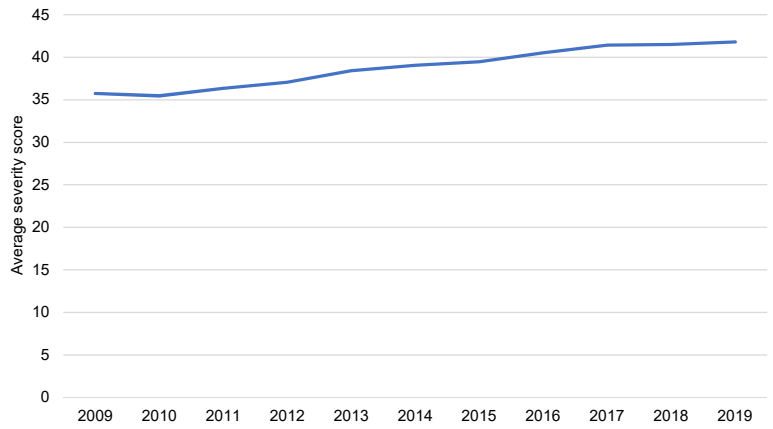
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	1%	1%	1%	1%	0%	1%	1%	1%	1%	1%	1%
Fine	0%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
Community sentence	20%	20%	18%	16%	12%	10%	10%	8%	8%	9%	9%
Suspended sentence	15%	15%	14%	15%	16%	17%	18%	15%	14%	13%	12%
Immediate 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%

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

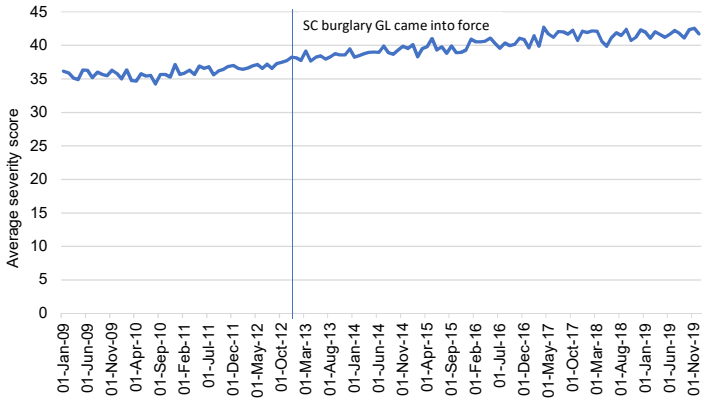


Over the last decade there has been a gradual increase in the proportion of offenders sentenced to immediate custody, and in 2019 the proportion sentenced to immediate custody was 77 per cent. The proportion of offenders receiving suspended sentences increased during the period 2012 to 2015, but has 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.

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

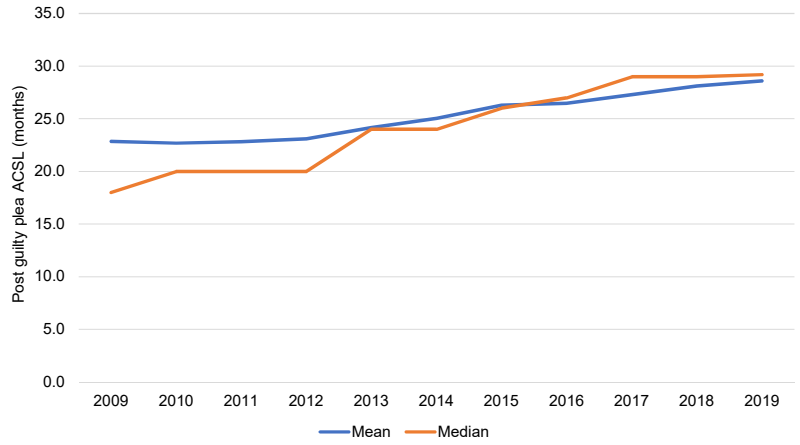


Average sentencing severity per month for adult offenders sentenced for domestic burglary, all courts, 2008-2018

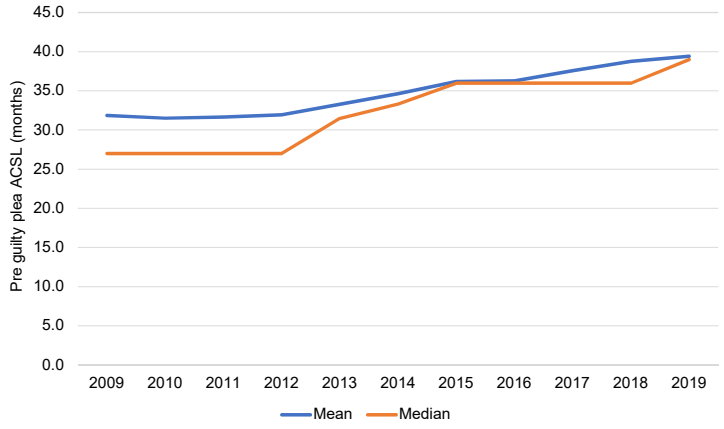


Over time there has been an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders sentenced to immediate custody, and an increase in ACSL.

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

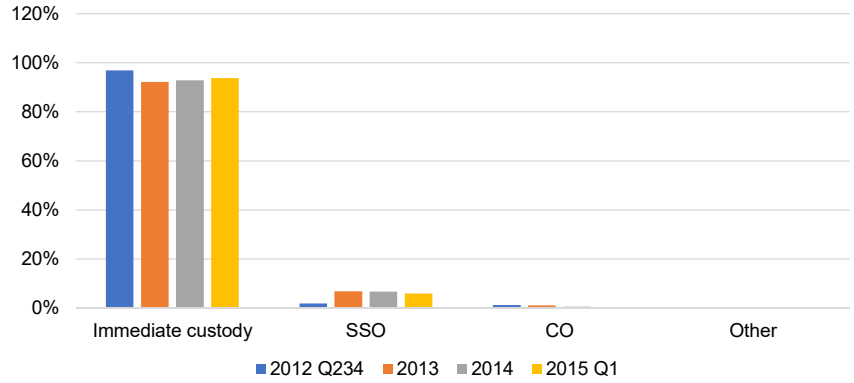
Offence Category	**Starting Point** *(Applicable to all offenders)*	**Category Range** *(Applicable to all offenders)*
Category 1	3 years' custody	2–6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order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

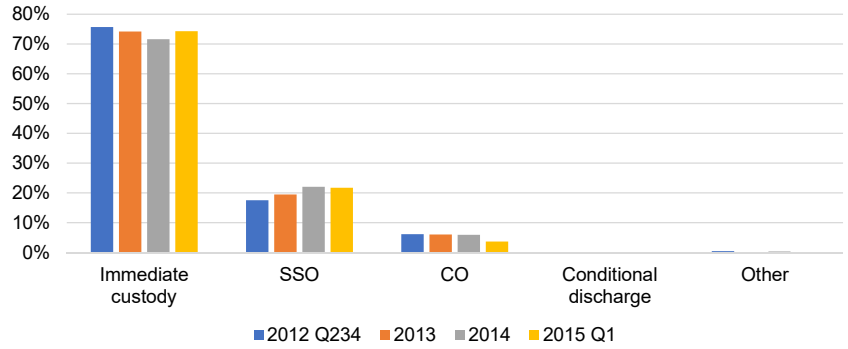
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	46.6	45.6	46.3	47.6
Median	44.8	42.0	43.6	44.8

	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

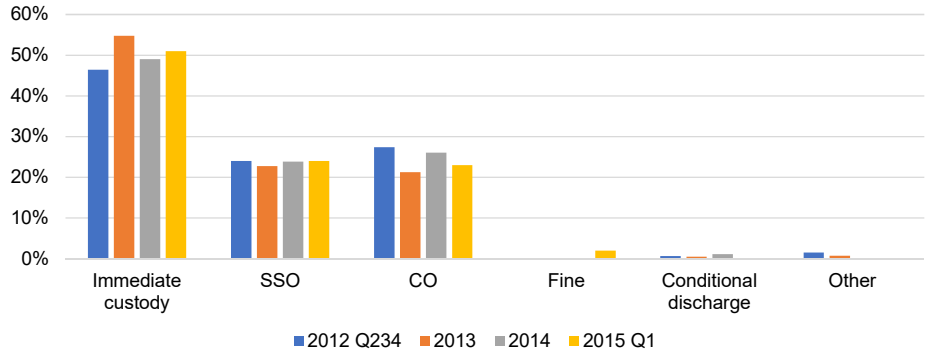
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	28.2	29.0	28.2	29.2
Median	23.9	23.9	23.9	23.9

	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[1,2,3]

	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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
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	1%	1%	1%	1%	
None stated	85%	86%	88%	87%	
Factors increasing seriousness	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Statutory aggravating factors:					
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%	
Other aggravating factors include:					
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 degradation	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/drugs	18%	17%	17%	18%	
Failure to comply with current court orders	13%	11%	9%	10%	
On licence	11%	11%	12%	11%	
TIC's	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	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Subordinate role in group or gang	5%	5%	5%	4%	
No previous relevant convictions	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 conditions	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 career for dependant relatives	2%	2%	1%	2%	
Nothing stolen or of very little value[4]	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						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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**

Sex	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with[1]	Total
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

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.

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 Ethnicity[3]	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]							
	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	**Total**
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	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	**Total**
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]	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	**Total**
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**

Sex	Proportion of adults sentenced to each sentence length (years)							
	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	**Total**
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	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	**Total**
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	-	-	-	-	-	-	-	

Perceived Ethnicity[2]	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	**Total**
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

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 aggravated burglary, 2009-2019

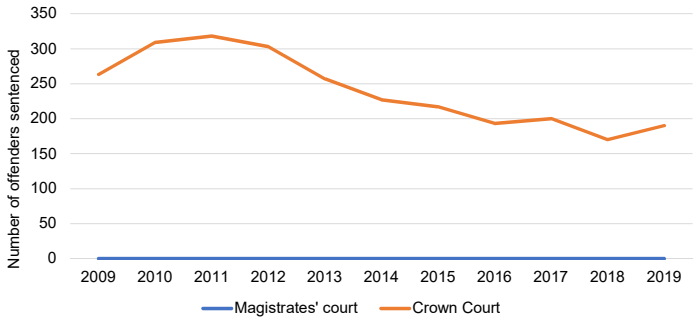
Number and proportion of adult offenders sentenced for aggravated burglary, by court type, 2009-2019

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

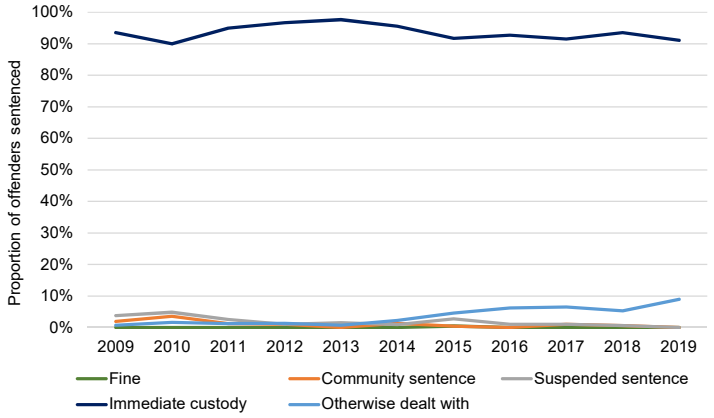


Number and proportion of adult offenders sentenced for aggravated burglary, by sentence outcome, all courts, 2009-2019

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**

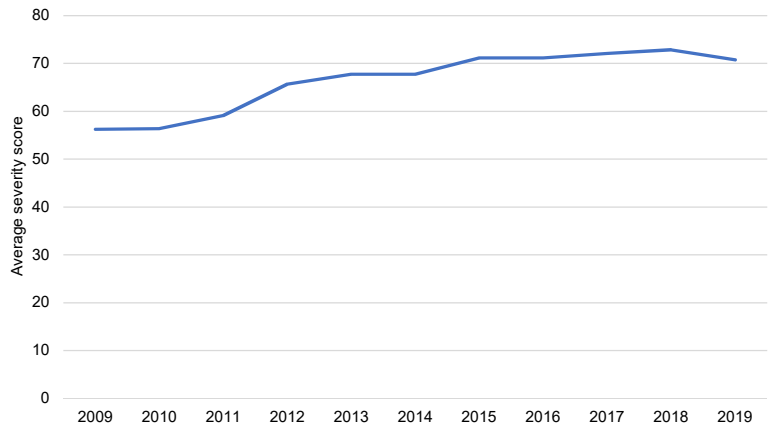
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	2%	4%	1%	1%	0%	1%	0%	0%	1%	1%	0%
Suspended sentence	4%	5%	3%	1%	2%	1%	3%	1%	1%	1%	0%
Immediate custody	94%	90%	95%	97%	98%	96%	92%	93%	92%	94%	91%
Otherwise dealt with	1%	2%	1%	1%	1%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

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

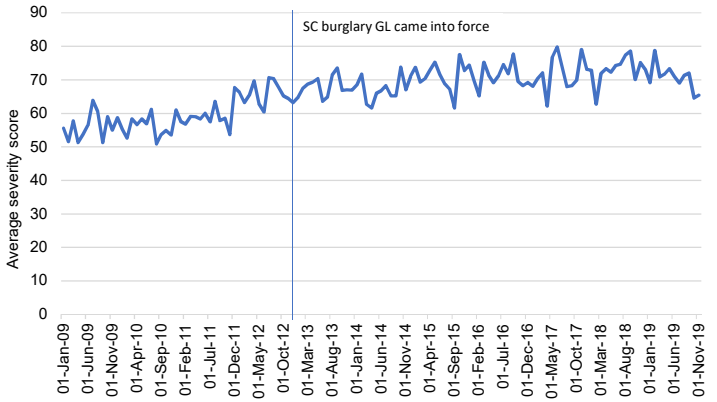


The majority of offenders sentenced for aggravated burglary are sentenced to immediate custody. In 2019, 91 per cent of offenders were sentenced to immediate custody and nine per cent were otherwise dealt with.

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

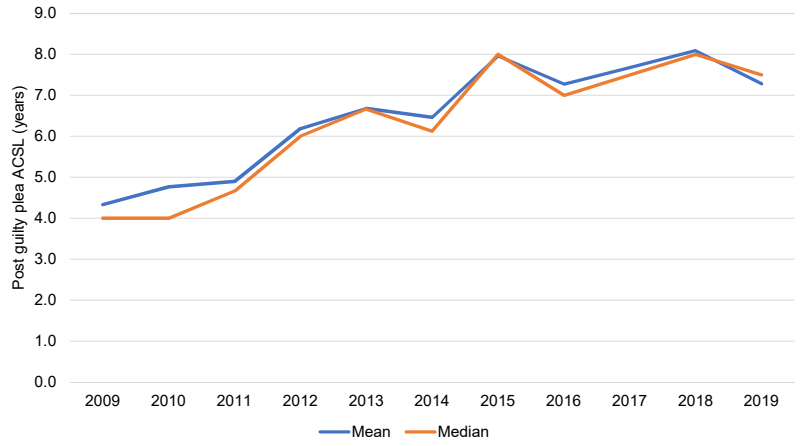


Average sentencing severity per month for adult offenders sentenced for aggravated burglary, all courts, 2009-2019

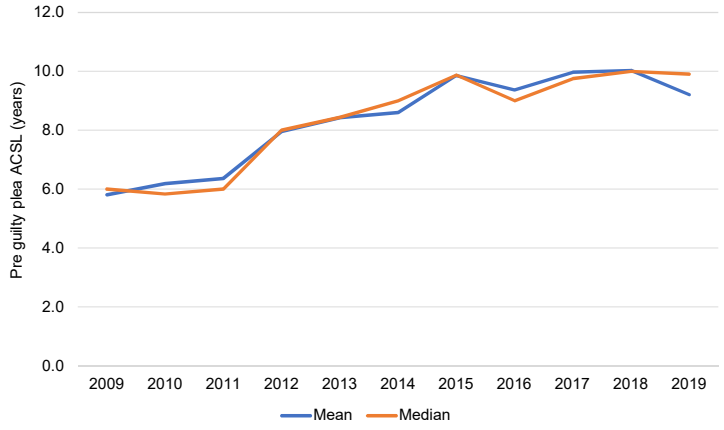


Since 2010 there has been an upward trend in sentence severity, but has started to drop in the last year.

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



Estimated ACSLs (pre guilty plea) 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).

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

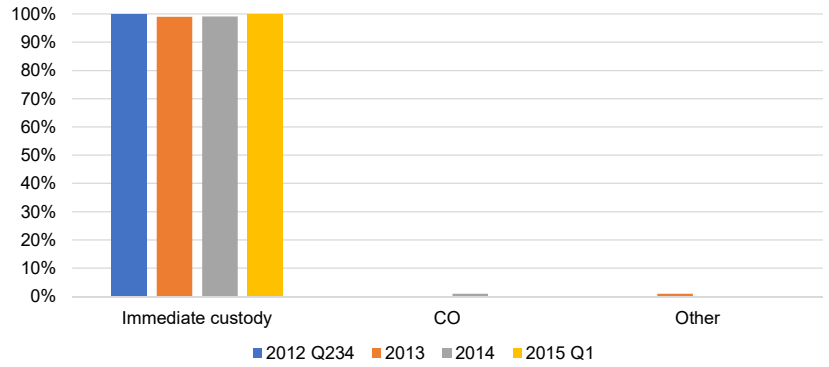
Based on the most recent data available, 81 per cent of offenders currently fall in the highest category of seriousness, and the remainder (19 per cent) fall in the middle category.

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%**

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



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.)

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

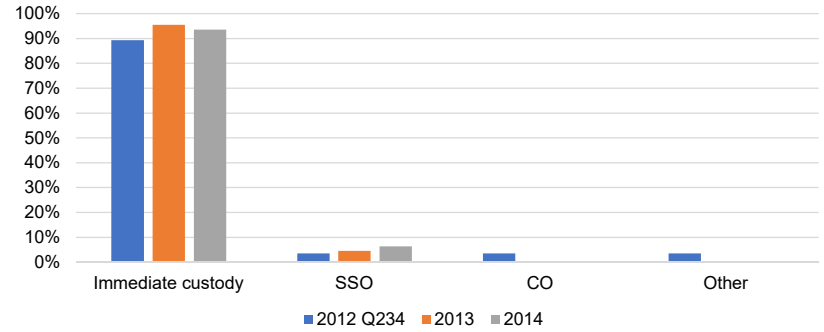
	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	9.8	9.5	9.5	9.6
Median	9.7	9.5	10.0	10.0

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	
Factors indicating greater harm	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
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%	Very frequently used greater harm factor
Significant physical/psychological injury or trauma	42%	39%	41%	57%	Frequently used greater harm factor
Violence used/threatened particularly involving a weapon	80%	75%	67%	72%	Very frequently used greater harm factor
Context of general public disorder	4%	5%	3%	7%	
None stated	8%	13%	12%	11%	
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%	
Factors indicating higher culpability	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Deliberately targeted	51%	48%	45%	52%	Frequently used greater harm factor
Significant degree of planning	43%	42%	44%	39%	Frequently used greater harm factor
Equipped for burglary	32%	43%	37%	24%	Frequently used greater harm factor
Weapon present on entry or carried	77%	72%	76%	85%	Very frequently used greater harm factor
Member of group or gang	62%	60%	52%	61%	Very frequently used greater harm factor
None stated	7%	13%	13%	11%	
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%	
Factors increasing seriousness	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
Statutory aggravating factors:					
Previous relevant convictions:	62%	61%	62%	57%	High proportion of cases with previous convictions.
Offence committed on bail	4%	3%	4%	2%	
None stated	35%	38%	36%	41%	
Other aggravating factors include:					
Child at home/returns	16%	20%	18%	26%	
Committed at night	42%	38%	50%	48%	Frequently used aggravating factor.
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 childr	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%	
Factors reducing seriousness or reflecting personal mitigation	**2012 Q234**	**2013**	**2014**	**2015 Q1**	
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%	Most frequently used mitigating factor.
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%	

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 sentenced[1]
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 Ethnicity[2]	Number of adults sentenced	Percentage of all adults sentenced[1]
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 Ethnicity[2]	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	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]	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**

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	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]	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

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