

# 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**

<b>Culpability</b> demonstrated by one or more of the following:	
<b>A-</b> High Culpability	<ul style="list-style-type: none"> <li>• A significant degree of planning or organisation</li> <li>• Knife or other weapon carried (where not charged separately)</li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Some degree of planning or organisation</li> <li>• Equipped for burglary (where not in high culpability)</li> <li>• Other cases that fall between categories A and C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out <b>and/or</b></li> <li>○ The offender's culpability falls between the factors described in A and C</li> </ul> </li> </ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"> <li>• Offence committed on impulse, with limited intrusion into property</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Mental disorder or learning disability, where linked to the commission of the offence</li> </ul>

**Harm**

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

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

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

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous 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
<b>Category 1</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -5 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> High level community order - 2 years' custody	<b>Starting Point</b> 6 months custody <b>Category Range</b> Medium level community order – 1 years' custody
<b>Category 2</b>	<b>Starting Point</b> 1 years' custody <b>Category Range</b> High level community order - 2 years' custody	<b>Starting Point</b> 6 months custody <b>Category Range</b> Medium level community order – 1 years' custody	<b>Starting Point</b> Medium level community order <b>Category Range</b> Low -high level community order
<b>Category 3</b>	<b>Starting Point</b> 6 months custody <b>Category Range</b> Medium level community order - 1 years' custody	<b>Starting Point</b> Medium level community order <b>Category Range</b> Low – high level community	<b>Starting Point</b> Band B fine <b>Category Range</b> 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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