

Animal Cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering), s.5 (mutilation), s.6 (docking of dogs' tails), s.7 (administration of poisons etc), s.8 (fighting etc)

Effective from: XXXXXXXXX

Triable either way

Maximum: 5 years' custody

Offence range: Band A fine – 3 years' custody

Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A High Culpability	<ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty and/or sadistic behaviour • Use of very significant force • Leading role in illegal activity
B Medium culpability	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or multiple incidents of cruelty • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal (including failure to seek treatment) • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> - Factors are present in A and C which balance each other out and/or - The offender's culpability falls between the factors as described in A and C

C Lower culpability	<ul style="list-style-type: none"> • Well intentioned but incompetent care • Momentary or brief lapse in judgement • Involved through coercion, intimidation or exploitation. • Mental disorder or learning disability, where linked to the commission of the offence
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Harm demonstrated by one or more of the following

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.

If the offence involved significant numbers of animals sentencers may consider moving up a harm category or moving up substantially within a category range.

Category 1	<ul style="list-style-type: none"> • Death (including injury leading to euthanasia) • Particularly grave or life-threatening injury caused • Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect • Very high level of pain and/or suffering caused
Category 2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect • Substantial level of pain and/or suffering caused
Category 3	<ul style="list-style-type: none"> • Little or no physical, developmental and/or emotional harm [OR distress] • All other levels of pain and/or suffering

Step 2 – Starting point and category range

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

	High culpability	Medium culpability	Low culpability
High harm	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Low level community order
	Category range 26 weeks' custody – 3 years' custody	Category range 18 weeks' – 12 months' custody	Category range Band B fine – Medium level community order
Medium harm	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Band C fine

	Category range 18 weeks' – 12 months' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Low harm	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the 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 owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology to publicise or promote cruelty [OR Use of technology, including circulating details/photos/videos etc of the offence on social media to publicise or promote cruelty]
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury
- Offender in position of professional responsibility for animal
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- 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 relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as 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 4 – 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 5 – 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 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including deprivation of ownership and disqualification of ownership of animals.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – 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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Hansard Extract – Commons Committee Stage of Animal Welfare (Sentencing) Bill

3 February 2021

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): I beg to move amendment 1, in clause 1, page 1, line 10, at end insert—

“(2A) After subsection (1) insert—

(1A) Subsection (1B) applies where the court is considering for the purposes of sentencing the seriousness of an offence under any of sections 4, 5, 6(1) and (2), 7 and 8, and the person guilty of the offence—

(a) filmed themselves committing the offence, or

(b) posted online a video of themselves committing the offence.

(1B) The court—

(a) must treat the fact mentioned in subsection (1A)(a) or (b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and

(b) must state in open court that the offence is so aggravated.”

[...] This simple amendment would make it a more serious animal cruelty offence for the purpose of sentencing if the guilty person had filmed themselves committing the abuse. In a digital age, we see more and more cases of people filming abuse of animals, partly for their own perverse enjoyment, partly because they want to share the film on social media, and partly because they fail to recognise that in so doing they encourage others to do the same.

The former MP for Redcar, Anna Turley, who campaigned relentlessly on the issue, used a specific example to illustrate the point. If the Committee will forgive me, I shall use it again now. She raised the case of Baby the bulldog, a dog from Redcar that was filmed being horrendously abused. I will borrow a quote from RSPCA inspector Gemma Lynch about what happened to Baby. She said Baby was

“totally submissive throughout, not even making a noise when she lands on the stairs, bouncing to the foot of them where there is a baby gate which she crashes into before hitting the ground.”

Frankish, the abuser,

“is saying... ‘one, two three’ before hurling her down them. He is clearly enjoying himself—he’s laughing and smiling. The whole horrible ordeal seems to be for his and the younger man’s entertainment, for fun.”

One clip

“shows him stamping on her neck repeatedly at the bottom of the stairs, then picking her up and throwing her to the ground with force over and over again. He’s laughing hysterically.... Another clip shows him standing on Baby’s chest with his full body weight at the top of the stairs, before jumping up and down on her. This is the only time you hear her make a noise, and she is crying throughout... The younger man says, ‘See if we can make it scream any more. We should throw it down the stairs by its ears’”

before Frankish

“picks her up against the wall and headbutts her twice, then throws her down the stairs again. Everyone who has seen the video says it’s the most distressing thing they’ve ever seen. These are people who have seen a lot of horrible things.”

I am sorry for putting everyone through that, but it is important to understand the examples that the amendment would deal with and to show just what cruelty and abuse people can inflict on animals.

Sadly, Baby was put down three months later after losing the use of her back legs as a result of her injuries from such abhorrent abuse. What makes the case so cruel and inhumane is that the abusers filmed themselves performing those despicable acts, as though they were proud of what they were doing or wanted to hold on to the memories of that abuse. The two men pleaded guilty to causing unnecessary suffering to Baby the bulldog by subjecting her to unnecessary physical violence, an offence under the Animal Welfare Act 2006. They were given a six-month suspended sentence and were tagged, under a curfew between 8 pm and 6 am, and they paid £300 in costs. Was that justice for Baby?

When Anna promoted the Bill, she referred to Baby’s law. Whether it is for Baby or for the countless other animals that we all know examples of, there is an urgent need to address the lack of a digital component—a filming component—in the legislation. This adds an extra component because it furthers the abuse by building on the power play that the people who abuse animals seek. This is about power. We should not underestimate that.

The need to crack down on filming animal abuse grows more urgent by the day. In 2015, the RSPCA investigated 27 cruelty complaints that involved images or videos shared on Snapchat. By 2019, the figure was 62 —a 130% increase.

A survey for the RSPCA showed that at least 46% of young people have witnessed animal cruelty: 28% have seen it on TV or in a film, and 18% have witnessed it on social media. Nearly one young person in five has witnessed animal abuse on social media. According to the survey, the majority who saw it online saw it on Facebook. That tended to be footage of real cruelty against pet animals shared by a stranger. We cannot stand by and let the abuse of defenceless animals continue and then expose our children to those horrifying acts.

[...]

I want Baby’s law to be passed, and I want it to send a strong message to people who not only abuse animals, but choose to film that and post the images online. Sharing the abuse encourages greater abuse and seeks, by having more people witness it, to desensitise. That makes it worth amending the Bill to provide for an extra consideration in sentencing. I encourage Members to support the amendment, although we shall not press it to a vote, for the reasons I gave. I hope to revisit the matter on Report.

Daniel Zeichner (Cambridge) (Lab): [...] As my hon. Friend has said, there are concerns that we want briefly to explore through our amendments. We very much agree with the previous MP for Redcar, who introduced the first Bill, that the filming of cruelty against animals should be considered an aggravating factor by courts in considering the offence. It is already listed as one in the sentencing guidelines to the 2006 Act, but we think it is important that that should be in the Bill.

We have heard that one of the overwhelming issues in the deeply distressing case of Baby the bulldog was the fact that those involved filmed themselves. People not only abusing animals, but recording it and, nowadays, sharing it on social media, with the intention of glorifying and amplifying the abuse, should be taken into account.

We are in a changing world ... As the available technology changes, the law must keep up. To abuse innocent animals and, not only that, to record the abuse for entertainment shows, I am afraid, a malicious intent that should be considered an aggravating factor in sentencing.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Victoria Prentis): [...] Aggravating factors are most often dealt with in the sentencing guidelines for an offence, not within the statute. A select number of offences relating to terrorism and domestic violence are exempt from that general rule. For most offences, normal practice is for other aggravating factors to be included in the sentencing guidelines. Those are not unimportant documents. From my experience as a lawyer, I know that the courts are required to follow those guidelines when determining the appropriate sentence in any particular case.

The sentencing guidelines on animal cruelty were drawn up by the Sentencing Council and were last reviewed in April 2017, following public consultation. Those include guidelines on “the use of technology to publicise or promote cruelty”

which is already considered an aggravating factor. The Department for Environment, Food and Rural Affairs has been in contact with the Sentencing Council about the Bill and, if we pass the Bill, the council will need to reassess its guidelines. It will conduct another review. It will also consult publicly on the new guidelines.

I have been looking at other examples of guidelines relating to filming. Perhaps the best, and the one that I suspect I would suggest to the Sentencing Council, is found in the sentencing guidelines for robbery when sentencing children and young people, which includes the aggravating factor of

“the filming of the offence... or circulating details/photos/videos etc of the offence on social media or within peer groups”.

That is to be considered specifically by the court when sentencing the offender.

[...] I should emphasise that the Sentencing Council is of course independent of the Government, but it is only right for the Government to make suggestions. I am outlining the suggestion that I feel would be the best-practice sentencing guideline, which I hope the council will make if we pass the Bill—I very much hope we will. I suggest a guideline similar to the one for the robbery offence that I outlined.

In addition to the sentencing guidelines, legislation—one piece specifically—provides an offence that could cover filming animal cruelty. Section 127(1) of the Communications Act 2003 creates a specific offence of sending grossly offensive, indecent, obscene or menacing messages over a public electronic communications network. It is a matter for the Crown Prosecution Service to decide which charge to bring, but it is possible that someone filming an act of animal cruelty or sharing it could be charged with an offence under that section. That would result in a maximum sentence of six months for the offence of posting the offensive message. I am happy to speak to DCMS colleagues further about this, and I will do so as the Bill progresses.

In brief, there are existing options to ensure that the offenders who film and upload or distribute footage of their animal cruelty are met with an appropriate response. This is an horrific crime, and filming it to share with others is beyond comprehension. We will discuss this matter further with the Sentencing Council, and when it reviews the guidelines we will ensure that this point is raised during the public consultation.

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Annex A

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Low level Community order – 6 years' custody

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct over a sustained period of time• Sophisticated and planned nature of conduct• Underlying offence very serious
B- Medium culpability	<ul style="list-style-type: none">• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and limited in scope and duration• Unsophisticated nature of conduct• Underlying offence was not serious• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious consequences for an innocent person(s) as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to innocent party (for example loss of reputation)• Serious impact on administration of justice•• Conduct succeeded in perverting the course of justice• Substantial delay caused to the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent person as a result of the offence• Some distress caused to innocent party• Some impact on administration of justice• Conduct partially successful in perverting the course of justice

	<ul style="list-style-type: none">• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• Conduct did not succeed in perverting the course of justice• Limited effects of the offence

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 4 years' custody Category Range 2 - 6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point High level community order Category Range Medium 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

Other aggravating factors:

- Offender involves others in the conduct
- Vulnerable victim
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs

- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- 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

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. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

STEP SEVEN

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

Annex B: Perverting the course of justice and witness intimidation data tables

Perverting the Course of Justice

Number and proportion of adult offenders sentenced for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	27	11	9	6	11	12	5	5	4	4	2
Fine	17	6	2	5	6	7	3	5	1	2	1
Community sentence	176	91	81	46	70	47	25	18	26	14	15
Suspended sentence	446	406	352	360	409	380	341	350	245	246	171
Immediate custody	441	463	420	510	430	447	402	394	338	294	206
Otherwise dealt with	7	7	6	5	3	5	5	16	15	16	9
Total	1,114	984	870	932	929	898	781	788	629	576	404

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	1%	0%
Fine	2%	1%	0%	1%	1%	1%	0%	1%	0%	0%	0%
Community sentence	16%	9%	9%	5%	8%	5%	3%	2%	4%	2%	4%
Suspended sentence	40%	41%	40%	39%	44%	42%	44%	44%	39%	43%	42%
Immediate custody	40%	47%	48%	55%	46%	50%	51%	50%	54%	51%	51%
Otherwise dealt with	1%	1%	1%	1%	0%	1%	1%	2%	2%	3%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

ACSL (years) ¹	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.9	0.9	1.0	1.0	0.9	1.1	1.0	1.1	1.0	1.1	1.2
Median	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.8	0.7	0.8	0.7
Proportion of indeterminates ^{2,3}	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

1) Excludes life and indeterminate sentences

2) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.

3) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	340	359	298	389	345	329	300	270	259	197	140
1 to 2	78	73	88	73	53	75	70	76	54	72	38
2 to 3	12	20	19	29	20	24	20	27	16	17	17
3 to 4	0	2	0	0	0	0	0	1	0	1	1
4 to 5	9	7	11	12	12	13	8	16	6	5	6
5 to 6	0	1	1	1	0	1	2	2	2	0	0
6 to 7	0	1	1	1	0	0	1	2	0	0	2
7 to 8	0	0	2	4	0	0	0	0	0	0	1
8 to 9	0	0	0	0	0	1	0	0	0	0	0
9 to 10	0	0	0	1	0	1	1	0	0	0	0
Greater than 10 years	2	0	0	0	0	3	0	0	1	2	1
Indeterminate	0	0	0	0	0	0	0	0	0	0	0
Total	441	463	420	510	430	447	402	394	338	294	206

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	77%	78%	71%	76%	80%	74%	75%	69%	77%	67%	68%
1 to 2	18%	16%	21%	14%	12%	17%	17%	19%	16%	24%	18%
2 to 3	3%	4%	5%	6%	5%	5%	5%	7%	5%	6%	8%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	2%	3%	2%	3%	3%	2%	4%	2%	2%	3%
5 to 6	0%	0%	0%	0%	0%	0%	0%	1%	1%	0%	0%
6 to 7	0%	0%	0%	0%	0%	0%	0%	1%	0%	0%	1%
7 to 8	0%	0%	0%	1%	0%	0%	0%	0%	0%	0%	0%
8 to 9	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
9 to 10	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Greater than 10 years	0%	0%	0%	0%	0%	1%	0%	0%	0%	1%	0%
Indeterminate	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Notes:

- 4) 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 or equal to 1 year, and '1 to 2 years' includes sentence lengths over 1 year and up to and including 2 years.

Number and proportion of adult offenders sentenced for perverting the course of justice, by **sex** and sentence outcome, 2020

Sex	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2	1	4	60	33	7	107
Male	0	0	11	111	173	2	297
Not recorded/not known	0	0	0	0	0	0	0

Sex	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2%	1%	4%	56%	31%	7%	100%
Male	0%	0%	4%	37%	58%	1%	100%
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **age group** and sentence outcome, 20'20

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	0	1	8	13	1	23
21 to 24	0	0	0	0	0	0	0
25 to 29	2	0	3	50	78	5	138
30 to 39	0	0	2	43	68	1	114
40 to 49	0	1	4	40	28	1	74
50 to 59	0	0	3	26	15	1	45
60 to 69	0	0	2	4	4	0	10
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	0%	4%	35%	57%	4%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	1%	0%	2%	36%	57%	4%	100%
30 to 39	0%	0%	2%	38%	60%	1%	100%
40 to 49	0%	1%	5%	54%	38%	1%	100%
50 to 59	0%	0%	7%	58%	33%	2%	100%
60 to 69	0%	0%	20%	40%	40%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **ethnicity** and sentence outcome, 2020

Ethnicity	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0	0	3	14	14	0	31
Black	0	0	0	8	16	1	25
Mixed	0	0	0	4	9	1	14
Other	0	1	1	0	2	0	4
White	1	0	11	81	111	5	209
Not recorded/not known	1	0	0	64	54	2	121

Ethnicity	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0%	0%	10%	45%	45%	0%	100%
Black	0%	0%	0%	32%	64%	4%	100%
Mixed	0%	0%	0%	29%	64%	7%	100%
Other	0%	25%	25%	0%	50%	0%	100%
White	0%	0%	5%	39%	53%	2%	100%
Not recorded/not known	1%	0%	0%	53%	45%	2%	100%

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	1.1	1.0
Male	1.2	0.7
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Age group	Mean	Median
18 to 20	1.1	0.8
21 to 24		
25 to 29	0.9	0.7
30 to 39	1.1	0.7
40 to 49	1.5	0.9
50 to 59	2.5	0.7
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Ethnicity	Mean	Median
Asian	1.0	0.8
Black	1.1	1.0
Mixed	0.6	0.5
Other	*	*
White	1.2	0.7
Not recorded/not known	1.4	0.8

* = ACSL has not been calculated where the number of offenders sentenced to immediate custody is fewer than 5.

- = No offenders were sentenced to immediate custody.

Notes:

5) Excludes life and indeterminate sentences

Witness Intimidation

Number and proportion of adult offenders sentenced for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	13	7	5	2	4	3	6	4	2	1	0
Fine	4	3	0	2	0	5	3	2	1	1	1
Community sentence	106	73	54	39	46	51	32	22	29	15	13
Suspended sentence	145	140	95	102	115	147	143	128	88	71	46
Immediate custody	256	277	227	223	238	243	266	208	178	142	110
Otherwise dealt with	11	18	8	7	11	8	11	8	7	7	5
Total	535	518	389	375	414	457	461	372	305	237	175

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	0%	0%
Fine	1%	1%	0%	1%	0%	1%	1%	1%	0%	0%	1%
Community sentence	20%	14%	14%	10%	11%	11%	7%	6%	10%	6%	7%
Suspended sentence	27%	27%	24%	27%	28%	32%	31%	34%	29%	30%	26%
Immediate custody	48%	53%	58%	59%	57%	53%	58%	56%	58%	60%	63%
Otherwise dealt with	2%	3%	2%	2%	3%	2%	2%	2%	2%	3%	3%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

ACSL (years) ¹	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.8	0.8	0.8	0.7	0.8	0.8	0.8	0.9	0.9	0.9	0.9
Median	0.6	0.7	0.7	0.5	0.7	0.7	0.7	0.8	0.8	0.8	0.8
Proportion of indeterminates ^{2,3}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

6) Excludes 1 case of witness intimidation in 2011, where the data suggested that the sentence was above the statutory maximum for this offence (5 years' custody).

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	200	220	185	185	187	191	198	152	128	102	79
1 to 2	41	48	38	31	45	44	60	48	40	36	28
2 to 3	10	6	2	6	5	8	7	6	7	3	3
3 to 4	1	0	0	0	0	0	0	0	0	0	0
4 to 5 years	4	2	2	1	1	0	1	2	3	1	0
Total	256	276	227	223	238	243	266	208	178	142	110

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	78%	80%	81%	83%	79%	79%	74%	73%	72%	72%	72%
1 to 2	16%	17%	17%	14%	19%	18%	23%	23%	22%	25%	25%
2 to 3	4%	2%	1%	3%	2%	3%	3%	3%	4%	2%	3%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	1%	1%	0%	0%	0%	0%	1%	2%	1%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Number and proportion of adult offenders sentenced for witness intimidation, by sex and sentence outcome, 2020

Sex	Number of adult offenders sentenced							Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with		
Female	0	0	5	4	6	1	16	
Male	0	1	8	42	103	4	158	
Not recorded/not known	0	0	0	0	1	0	1	

Sex	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	0%	0%	31%	25%	38%	6%	100%
Male	0%	1%	5%	27%	65%	3%	100%
Not recorded/not known	0%	0%	0%	0%	100%	0%	100%

Number and proportion of adult offenders sentenced for witness intimidation, by **age group** and sentence outcome, 2020

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	1	4	8	15	0	28
21 to 24	0	0	0	0	0	0	0
25 to 29	0	0	3	11	28	3	45
30 to 39	0	0	5	17	44	1	67
40 to 49	0	0	1	5	12	0	18
50 to 59	0	0	0	4	7	1	12
60 to 69	0	0	0	1	4	0	5
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	4%	14%	29%	54%	0%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	0%	0%	7%	24%	62%	7%	100%
30 to 39	0%	0%	7%	25%	66%	1%	100%
40 to 49	0%	0%	6%	28%	67%	0%	100%
50 to 59	0%	0%	0%	33%	58%	8%	100%
60 to 69	0%	0%	0%	20%	80%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0	0	0	0	6	0	6
Black	0	0	1	1	3	0	5
Mixed	0	0	1	1	0	0	2
Other	0	0	0	0	0	0	0
White	0	1	9	37	77	4	128
Not recorded/not known	0	0	2	7	24	1	34

Ethnicity	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Asian	0%	0%	0%	0%	100%	0%	100%
Black	0%	0%	20%	20%	60%	0%	100%
Mixed	0%	0%	50%	50%	0%	0%	100%
Other	-	-	-	-	-	-	-
White	0%	1%	7%	29%	60%	3%	100%
Not recorded/not known	0%	0%	6%	21%	71%	3%	100%

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation, by sex, age and ethnicity, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	0.6	0.5
Male	0.9	0.8
Not recorded/not known	*	*

Age group	Mean	Median
18 to 20	0.9	0.8
21 to 24	-	-
25 to 29	0.9	0.8
30 to 39	0.8	0.7

40 to 49	0.6	0.6
50 to 59	1.4	1.5
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity	Mean	Median
Asian	0.7	0.5
Black	*	*
Mixed	-	-
Other	-	-
White	0.9	0.8
Not recorded/not known	0.9	0.8

Please note: The figures above include those presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Annex C

Witness Intimidation

Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)

Triable either way

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

Offence range: Low Level Community Order- 4

years' custody

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• <u>Actual or threats</u> of violence to witnesses and/or their families• Deliberately seeking out witnesses• Breach of bail conditions• Conduct over a sustained period of time• Sophisticated and planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat (• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• <u>Unplanned and limited in scope and duration</u>• <u>Unsophisticated nature of conduct</u>• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious impact on administration of justice• Serious distress caused to victim• Contact made at or in vicinity of victim's home
Category 2	<ul style="list-style-type: none">• Some impact on administration of justice• Some distress caused to the victim
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months-2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 9 months -2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months custody Category Range High level community order - 9 months' custody
Category 3	Starting Point 9 months' custody Category Range 6 months -1 years' custody	Starting Point 6 months custody Category Range High level community order – 9 months' custody	Starting Point Medium 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

Other aggravating factors:

- Offender involves others in the conduct
- Use of social media

- Vulnerable victim
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
 - Remorse
 - Good character and/or exemplary conduct
 - The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
 - Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
 - Mental disorder, learning disability (where not taken into account at step one)
 - Age and/or lack of maturity
 - 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

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. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

STEP SEVEN

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

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Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXXXXXXX

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

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.

Harm

Use the factors given in the table below to identify the Harm category. If the offence involved multiple victims, sentencers may consider moving up a harm category or moving up substantially within a category range.

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. No additional reduction should be made for the fact that the offending is an attempt.

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), **gifts or bribes**
- Targeting of a particularly vulnerable child
- Commercial exploitation and/or motivation
- Soliciting images
- **Offender acted together with others to commit the offence**
- **Offender lied about age/persona**

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.

	Culpability A	Culpability B
Harm 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
Harm 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 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.**

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 (including asking the victim to conceal the offending)
- 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*
- Isolated offence
- Age and/or lack of maturity

- **Demonstration of steps taken to address offending behaviour**
- 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

* 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.

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (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 4 – 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 5 – Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

Step 6 – Totality principle

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

Step 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.

- Ancillary orders – Crown Court Compendium

Additional ancillary orders – sexual offences

Step 8 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 9 – 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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Road testing findings s15A Sexual communication with a child

Introduction

The current sexual offences guidelines were published in 2013 and came into force in 2014. The 2020 Court of Appeal case of *Privett* provided the courts with guidance about how to approach the assessment of harm in cases where sexual activity was incited but ultimately did not take place. This often occurs in the context of undercover ‘sting’ operations where there is no child, though could also include cases where there is a child but no sexual activity took place. These cases have tended to be placed automatically in the lowest category of harm. However, the Council has proposed amendments to the guidelines in line with the *Privett* ruling, with directions that judges should determine harm on the basis of what an offender intended, even if no sexual activity ultimately takes place (including situations where there is no real child victim), before making a downward adjustment to reflect the fact that no activity took place.

The Council has also developed a draft guideline for the offences of sexual communication with a child. There is no current guideline for this offence. The same principle applies for determining harm where there is no real child.

Qualitative research was required to understand how the draft guidelines would be used in practice. The s15A Sexual communication with a child guideline was tested with Crown Court judges, district judges and magistrates, with the aim of understanding how sentencers use the guideline, whether they find it clear and usable, and the severity of sentence imposed and when sentencers would consider suspending. The Council also wanted to understand how sentencers interpret the guidance for determining harm where no sexual activity has taken place and what sort of reduction sentencers will give in practice for these cases.

Methodology

A random sample of judges, district judges and magistrates was taken from the research pool¹ and invited to take part in qualitative research interviews. For the new s15A guideline, sentencers were first asked to sentence the case as if it were before them in court today, and then to sentence the case using the draft guideline. Participants were sent the draft guidelines and scenarios one week in advance, to allow time to read through them before the interview.

Table 1: Number of participants sentencing each scenario

Scenario	Guideline	Crown Court judges	District judges	Magistrates	Total
D	s15A	8	3	3	14
E	s15A	8	3	3	14

¹ The database of sentencers who have agreed to be approached by the Sentencing Council to take part in research from time to time.

Key findings

- In scenario D, 12 out of 14 sentencers placed the offender in category B1, and all 14 sentencers had a starting point of 1 year. Two Crown Court judges and two district judges made downward adjustments of three months to reflect the fact that the child victim did not exist. Final sentences ranged from a community order to 9 months custody. Two sentencers gave immediate custody, all others gave a community order or suspended sentence. Of the four sentencers who had made an adjustment on the basis of no child victim, all arrived at a final sentence of 6 months, three of which were suspended.
- In scenario E, all sentencers placed the offender in category B2, and 12 out of 14 gave a starting point of 6 months. One Crown Court judge and one district judge made downward adjustments of two months to reflect the fact that the child victim did not exist. Final sentences ranged from a medium level community order to 10 months custody. One Crown Court judge gave immediate custody, all others gave a community order or suspended sentence.
- There was consistency in both scenarios in sentencers' assessments of culpability and harm, as well as starting points. The range in final sentences appeared to relate to the variation in weight given to the mitigating factors.
- Some sentencers said they struggled to assess the harm in the s15A scenarios where there was no child victim, because they were unable to assess whether harm or distress was caused to a victim in the level 1 factors.
- Most sentencers did not make a downward adjustment to reflect the fact that the child victim did not exist, or seem to take the narrative in the guideline into account.

Scenario D (s15A sexual communications)

Offender is aged 30 and lives with his partner. He met the apparent victim (in fact a member of a vigilante group) on a dating app. Her profile claimed she was 18, but soon after they started communicating she revealed that she was in fact 13. He asked her to keep quiet and make sure she did not tell her parents. The conversation soon moved from the dating app on to another messenger service. He asked whether he could be her boyfriend, whether she wanted to kiss him and whether they could meet for a drink. He then turned to discussing the size of her breasts, her experience of puberty, and what underwear she owned. He sent two explicit images of a vagina. They discussed having sex and the risks of getting pregnant. There was some vague discussion of meeting up. These exchanges continued for about two weeks until he was arrested, at which point he admitted everything.

The offender has old and irrelevant convictions for which a community order was given and complied with. The Pre-sentence Report suggests he is minimising responsibility for the offending. A psychological report says he had a difficult childhood and has a very low IQ ("intellectually impaired or suffering from a learning difficulty") which means he has a support worker. The psychologist says this – alongside his other difficulties – was linked with the offending. Psychologist concludes that he will be vulnerable in custody and going to prison is likely to increase chances of reoffending.

Scenario D was tested with eight Crown Court judges, three district judges and three magistrates. It was based on the case of *Hale* for which a 3 year community order was handed down. In road testing, final sentences ranged from a community order to 9 months custody.

In assessing harm, 12 out of 14 sentencers placed the offender in harm category 1 on the basis of images sent. One district judge and one magistrate, having acknowledged the images sent, each placed the offender in category 2 on the basis that there was no impact or harm caused to a victim.

In assessing culpability, 13 out of 14 sentencers placed the offender in culpability category B, on the basis that there were no category A factors. One district judge placed the offender in category A though did not identify any factors that led to this assessment. This sentencer had also put harm in level 2. All sentencers gave a starting point of 1 year.

Two district judges made an adjustment on the basis that the child victim did not exist and reduced their sentences by three months down to 9 months. No Crown Court judges or magistrates made adjustments at this stage, though two Crown Court judges brought their sentences down by three months at mitigation stage to reflect the fact that the child victim did not exist.

Most sentencers did not make an adjustment or seem to take the narrative from the guideline into account. One Crown Court judge noted after giving a final sentence that they had not accounted for the fact that it was an attempt but said this would not alter their final sentence of a high level community order.

Three sentencers brought their sentences down due to mitigating factors, and a further two, as described above, brought sentences down at this stage on the basis there was no real harm caused. One district judge raised the sentence from 9 months to 10 months due to the aggravating factors.

Sentences prior to guilty plea reduction ranged from a high level community order to 1 year custody, and final sentences ranged from a community order to 9 months custody. None of the Crown Court judges sentenced to immediate custody: three gave community orders, two gave suspended sentences of 6 months, and three gave suspended sentences of 8 months. District judges all arrived at a final sentence of 6 months, two of which were suspended. Magistrates arrived at final sentences of 6 months and 1 year (both suspended) and 9 months immediate custody.

Of the four sentencers who had made an adjustment on the basis of no child victim, all arrived at a final sentence of 6 months, three of which were suspended.

Sentencers were also asked to sentence this scenario as they would now, without a guideline in place. Most arrived at very similar final sentences, though one Crown Court judge said they would give a custodial sentence, with a starting point of 18 months to 2 years custody, without the guideline, and came to 8 months, suspended, when using the guideline. They stated that they were happy with the final suspended sentence order they came to, though would have been happy with a custodial sentence too. They concluded that the guideline's approach makes a suspended sentence order more reasoned and justifiable.

In weighing up whether to suspend the sentence, sentencers said they would consider whether there was sufficient prospect of rehabilitation, and the fact that the offender had no previous convictions. One said it would never be appropriate for him to be sent to custody, and gave a community order. Of the two sentencers who gave immediate custodial sentences, one magistrate said they would send the case to the Crown Court and expect it to be suspended. The other, a district judge, said they would consider suspension, and would be balancing the offender's vulnerability against "serious, persistent, harmful behaviour that is very concerning."

Most said they would probably attach rehabilitation activity requirement (RAR) days so that the offender could have one-to-one support rather than the Sexual Offender Treatment Programme (SOTP), due to his low IQ. Five said they would include unpaid work as a punitive element.

Scenario E (s15A sexual communications)

This offending consists of five counts, all attempted sexual communication with a child. These were decoys set up by vigilante groups. The offender is aged 28, and has no previous convictions. The apparent victims were aged 13 and 14. Each of the cases lasted from a few days, up to at most a month and the whole course of offending takes place over about 10 weeks. There was a series of persistent communications to each of the victims. He asked what they were wearing, whether they were wearing a school uniform, whether he could kiss them, whether he could be their boyfriend, and he asked them suggestive questions about their experience, and what they had done with female relatives.

The vigilante group posted the conversation on Facebook and called the police. He made immediate admissions of guilt and put in a guilty plea at the earliest opportunity. The Police found (legal) photographs of young women in school uniform on his phone. His employer dismissed him and he subsequently made a call to the police suggesting he was going to kill himself. He has a history of self-harm and since his arrest he has been getting treatment for mental health issues. He has learning difficulties, is isolated, and lives with his mother. However, he is now in an age-appropriate relationship. The Pre-Sentence Report noted that he recognises that what he did was wrong and that he needs help.

Scenario E was tested with eight Crown Court judges, three district judges and three magistrates. It was based on the case of *Burton*, for which a 3 year community order was handed down, as with the previous scenario. In road testing, final sentences ranged from a medium level community order to 10 months custody.

All sentencers placed the offender in harm level 2, on the basis there were no level 1 factors, and in culpability category B, on the basis there were no category A factors.

For the starting points, 12 out of 14 sentencers gave 6 months custody. Two Crown Court judges gave a starting point of 1 year, to take into account the five counts. One Crown Court judge and one district judge made adjustments on the basis of no child victim, reducing their sentences by two months, to 10 months and 4 months respectively.

Despite identifying a considerable number of mitigating factors across the group, only three sentencers (two Crown Court judges and one district judge) reduced their sentences from the starting point based on mitigation. One Crown Court judge increased the sentence from 6 months to 15 months to account for the five counts. Two district judges also increased their sentences on the basis of aggravation. Other sentencers made no adjustment on the balance of aggravation and mitigation, and sentences prior to the guilty plea reduction ranged from 3 months to 15 months custody. Following the guilty plea reduction, sentences ranged from a medium level community order to 10 months custody.

Six out of eight Crown Court judges gave a final sentence of a medium or high level community order, one gave 6 months custody, suspended, and one gave 10 months immediate custody. Two

district judges gave a high level community order and one gave 6 months custody, suspended. One magistrate gave a high level community order and two gave 4 months custody, suspended.

The Crown Court judge who gave ten months custody stated, when asked, that they had included an adjustment in their final sentence, though had not highlighted this during the sentencing process. They stated the reduction would be fairly small, and noted that they had not been able to take distress caused into account, which would stop the sentence going higher.

Reasons for suspending or giving a community order included: the offender's mental health and learning difficulties, the prospect of rehabilitation, first offence and the assessment that he is unlikely to reoffend. One Crown Court judge said that longer orders are better for this type of offending, to allow time to complete programmes that will address offending behaviour.

Again, most sentencers indicated they would attach RAR days rather than the SOTP requirement, given the vulnerability of the offender, and would attach an unpaid work requirement if he were able to do this.

Some sentencers said they struggled to assess the harm where there was no real victim, because they were unable to assess whether harm or distress was caused to the victim. One questioned whether they should be assessing the harm they would expect to be caused to a victim.

Other comments on the guideline

One sentencer thought that the guideline was "pitched too high," noting that all the starting points are custodial sentences even though the maximum sentence is just two years.

One judge questioned why location and timing of offence are included in the aggravating factors but not in other guidelines.

Opinions were split on the conspicuousness of the narrative about the adjustment. When asked, most sentencers said they had found it clear, though not all had applied it. Some said they liked the fact that it stood out in a blue box, while another said it needed to be highlighted so that sentencers would read it.

One magistrate said the guideline was "quite clear you should be considering it as, if the defendant thinks the victim is real, then you should be considering them as a real person." This sentencer was able to assess the harm appropriately though did not apply a subsequent adjustment on the basis there was no real child.

One district judge questioned why cases where images have been sent or received should be the most harmful type of case. A Crown Court judge thought this would be better placed in aggravating factors to avoid every sexual image case being placed in category 1A.

Scenario D – s15A Sexual communication with a child: Crown Court judges, district judges and magistrates

	Harm	Factors	Culpability	Factors	SP	After adjustment	Reduction for no victim	Aggravating factors	Mitigating factors	Pre-GP sentence	Final sentence
Crown Court judges											
1	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year						CO or SSO
2	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Sustained communication 	<ul style="list-style-type: none"> • Mental disorder/ learning disability • <i>Vulnerable in custody</i> 	1 year	High level community order
3	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Steps to prevent reporting 	<ul style="list-style-type: none"> • No relevant convictions • Mental disorder/ learning disability • <i>Vulnerable in custody</i> 	High level community order	High level community order
4	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year		3 months	<ul style="list-style-type: none"> • Steps to prevent reporting • Sustained communication 	<ul style="list-style-type: none"> • Good character • Mental disorder/ learning disability 	9 months	6 months, suspended for two years
5	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year		3 months			9 months	6 months, suspended
6	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Disparity in age • Attempt to conceal • Sustained communication 	<ul style="list-style-type: none"> • Good character • Mental disorder/ learning disability 	1 year	8 months, suspended
7	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year					1 year	8 months, suspended
8	1	<ul style="list-style-type: none"> • Images sent 	B		1 year				<ul style="list-style-type: none"> • No relevant convictions • Remorse • Mental disorder/ learning disability 	1 year	8 months, suspended for 2 years
District judges											

9	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year	9 months	3 months	<ul style="list-style-type: none"> • Steps to prevent reporting • Sustained communication 	<ul style="list-style-type: none"> • No relevant convictions • Mental disorder/ learning disability • <i>Isolated offence</i> • <i>Vulnerable in custody</i> 	6 months	6 months, suspended
10	2	<ul style="list-style-type: none"> • Images sent • <i>No impact on victim</i> 	A		1 year			<ul style="list-style-type: none"> • Sending images • Unpleasant discussion 	<ul style="list-style-type: none"> • No relevant convictions • Mental disorder/ learning disability 	6 months	6 months, suspended
11	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year	9 months	3 months	<ul style="list-style-type: none"> • Steps to prevent reporting • Attempt to conceal evidence • Sustained communication 	<ul style="list-style-type: none"> • Mental disorder/ learning disability • <i>Difficult childhood</i> 	10 months	6 months
Magistrates											
12	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Steps to prevent reporting 	<ul style="list-style-type: none"> • No relevant convictions • Mental disorder/ learning disability 	1 year	9 months
13	2	<ul style="list-style-type: none"> • Images sent • <i>No harm to victim</i> 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Attempt to conceal evidence 	<ul style="list-style-type: none"> • No relevant convictions • Mental disorder/ learning disability 	6 months, suspended	[credit is keeping the case in the magistrates' court]
14	1	<ul style="list-style-type: none"> • Images sent 	B	<ul style="list-style-type: none"> • No Cat A factors 	1 year			<ul style="list-style-type: none"> • Steps to prevent reporting • <i>Minimising responsibility</i> 	<ul style="list-style-type: none"> • Mental disorder/ learning disability • <i>Isolated offence</i> • <i>Vulnerable in custody</i> 	1 year	1 year, suspended

Scenario E – s15A Sexual communication with a child: Crown Court judges, district judges and magistrates

	Harm	Factors	Culpability	Factors	SP	After adjustment	Reduction for no victim	Aggravating factors	Mitigating factors	Pre-GP sentence	Final sentence
Crown Court judges											
1	2	<ul style="list-style-type: none"> No level 1 factors 	B (x5)		1 year	10 months	2 months		<ul style="list-style-type: none"> Good character 	9 months	6 months, suspended for 18 months
2	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> Sustained communication 	<ul style="list-style-type: none"> No previous convictions Remorse Mental disorder/ learning disability Age/lack of maturity 		Medium level community order
3	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	1 year (for 5)				<ul style="list-style-type: none"> Good character Remorse Mental disorder/ learning disability 	10 months	3 year community order
4	2	<ul style="list-style-type: none"> No level 1 factors 	B		6 months				<ul style="list-style-type: none"> <i>Immediate admissions</i> <i>Social isolation</i> <i>Self-harm</i> 		2 year community order
5	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months for single offence				<ul style="list-style-type: none"> Mental disorder/ learning disability <i>Immediate admissions</i> <i>Self-harm</i> <i>Age-appropriate relationship</i> 	15 months (for 5)	10 months
6	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> <i>Number of victims</i> 	<ul style="list-style-type: none"> No previous convictions Remorse Good character Lack of maturity Mental disorder/ learning disability 		High level community order
7	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months				<ul style="list-style-type: none"> Mental disorder/ learning disability <i>Age-appropriate relationship</i> <i>Isolated offence</i> 		Medium level community order

8	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months				<ul style="list-style-type: none"> No previous convictions Remorse Lack of maturity <i>Lost job</i> 	6 months	High level community order
District judges											
9	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> Sustained communication 	<ul style="list-style-type: none"> No previous convictions Remorse Mental disorder/ learning disability <i>Self-harm</i> <i>Steps to obtain treatment</i> 	9 months	6 months, suspended (x5 concurrent)
10	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> Sustained communication <i>Images on phone</i> 	<ul style="list-style-type: none"> Good character Mental disorder/ learning disability 	6 months	High level community order
11	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months	4 months	2 months	<ul style="list-style-type: none"> Sustained communication 	<ul style="list-style-type: none"> Good character Mental disorder/ learning disability <i>Immediate admissions</i> <i>Socially isolation</i> 	3 months	8 weeks (for single offence) For all 5: High level community order
Magistrates											
12	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months				<ul style="list-style-type: none"> Remorse Mental disorder/ learning disability 	6 months	4 months, suspended
13	2	<ul style="list-style-type: none"> No level 1 factors 	B (x5)	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> Sustained communication 	<ul style="list-style-type: none"> No previous convictions Mental disorder/ learning disability 	6 months	4 months, suspended
14	2	<ul style="list-style-type: none"> No level 1 factors 	B	<ul style="list-style-type: none"> No cat A factors 	6 months			<ul style="list-style-type: none"> Sustained communication 	<ul style="list-style-type: none"> No previous convictions Mental disorder/ learning disability <i>Age-appropriate relationship</i> 	6 months	High level community order

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Psychological harm

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

- 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.

Age and/or lack of maturity

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.

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

- 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

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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. 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.

[\[1\]](#) R v H and others [2011] EWCA Crim 2753

List of consultation respondents- Annex A

1. Colette
2. Suffolk Magistrates Bench
3. Sentencing Academy
4. Prison Reform Trust
5. Justices' Legal Advisers
6. HM Council of District Judges
7. Rory Kelly
8. Chief Magistrate
9. West London Magistrates Bench
10. CLSA
11. Council of HM Circuit Judges
12. MA
13. Association of Convenience Stores
14. CPS
15. Howard league for Penal Reform
16. Historic England
17. North London Bench
18. East Kent Bench
19. Fiona Levack JP
20. Alan Atkinson JP
21. Emir Felsal JP
22. HHJ Mark Weekes
23. Kyle Brown JP
24. Benjamyn Damazer JP
25. John Marr JP
26. Nargis Alsadiq
27. Guy Cecil JP
28. Neil King
29. Janet Kemp JP
30. Martin Alderman JP
31. HHJ Rupert Lowe
32. Justice Committee

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Road testing with Crown Court judges and magistrates: Domestic, Non-domestic and Aggravated burglary

Introduction

The current burglary guidelines were published by the Council in January 2012. At this time, the resource assessment did not predict any impact on prison and probation services. However, when reviewed in 2016, the initial assessment indicated that since the guidelines had come into force, sentencing severity had increased for domestic (s.9), non-domestic (s.9) and aggravated burglary (s.10). Further research indicated that the increase in sentence severity for non-domestic burglary in the magistrates' court and Crown Court, could be attributable to the guideline, though for domestic burglary this appeared to be part of a longer-term trend rather than resulting from the guideline. Due to low volumes of cases of aggravated burglary, it was not possible to conclude if this increase was caused by the implementation of the guideline.

Alongside amendments to some factors, as outlined below, the draft guidelines update the existing guidelines to reflect the stepped approach used in more recent guidelines produced by the Council and introduces new medium levels of culpability/harm. Therefore, research was needed to understand how amendments to the structure of the guideline, and changes to factors could impact sentencing practice; and to ensure the draft guidelines are clear and usable. As they were new elements to the guidelines, particular attention was paid to the following elements of the draft guidelines to understand:

Domestic burglary: How sentencers interpreted guidance on the application of flexibility regarding cases of particular gravity and whether guidance wording in relation to imposing community orders with drug or alcohol treatment requirements is clear.

Non-domestic burglary: What, if any, are the issues being seen by magistrates when sentencing cases of non-domestic burglary, that could contribute to the increase in sentence severity in this court.

Aggravated burglary: How sentencers applied new guidance on carrying a weapon on entry of the premises as an aggravating factor as compared with a factor used in assessing culpability.

Methodology

Twenty-one interviews were conducted, consisting of nine magistrates and twelve Crown Court judges. Participants were selected by random sample from the Council's research pool. Qualitative interviews were conducted via MS Teams with sentencers from across England and Wales. Judges considered three scenarios (summarised below) and magistrates, two, relating to the Non-domestic burglary guideline only. Participants received the draft guidelines a week prior to the interview and sentenced each scenario twice, using the draft and existing guidelines.

Scenario	Summary of scenario
A – Domestic	<p>K, with another defendant, broke into a home of an elderly couple at night by smashing glass in the back door. The resident confronted K who threatened him with a screwdriver. Keys, a wallet, jewellery and a brand new Motability car valued at £23,000 were stolen. The couple felt violated and felt they had to install extra security measures to make them feel safe.</p> <p>CCTV captured the defendant approaching the property, alongside the number plate of the vehicle, with his hood up partially obscuring his face, using a torch and holding a screwdriver. CCTV from the day before captured K loitering outside the house, peering through the window.</p> <p>The court heard that K had been on a burglary expedition that evening, with two other attempted burglaries taking place nearby (subject to separate charges), both of which were foiled by passers-by. K was convicted after trial. He has over 100 previous convictions for theft, burglary and robbery and was out on licence at the time of the offence.</p>
B – Domestic	<p>A, 21, entered a home through an open ground floor window during the afternoon. He had been drinking for most of the day and needed money to buy alcohol, which led to the offence. He was disturbed by the victim, who found him in the living room, going through her handbag but left emptyhanded. He pleaded guilty at the first opportunity and has one previous conviction for domestic burglary. The pre-sentence report detailed that he has had a troubled background and suffered a trauma which led to him having problems with alcohol addiction. He is now willing to accept he has an alcohol problem and wants to tackle it. The victim was very upset and scared by the incident, leaving her anxious about security and being at home on her own.</p>
C – Aggravated	<p>R, 21, forced his way into a convenience store, along with two others, just as it was closing for the night and the shutters were being rolled down. R was carrying a machete which he used to force the shutters back up. Two staff members had seen this on CCTV and retreated to a locked back room and called the police. R and the others emptied the tills and contents of the cigarette store into bags they had brought with them for that purpose. Police came in time to apprehend them.</p> <p>Damage was done to the shutters, costing around £500 to repair. R pleaded guilty at the first opportunity. He has two previous unrelated convictions. The victim impact statements said they were terrified in the incident.</p>
D - Non-domestic	<p>W, 50, stole a handbag from behind a reception desk at a local hospital whilst there for an appointment. The receptionist was in the back room. The handbag (an expensive one) contained a purse with £70 cash, bank cards and the victim's driving licence and the only copy of an assignment for the receptionist's college course. The bag was found in a nearby alleyway, minus the cash, cards and licence. The handbag and assignment were ruined by heavy rain. W pleaded guilty at the first opportunity. He had many previous convictions for dishonesty. The victim was upset by what had happened and had the inconvenience of having to cancel all her cards, wait for new ones, and apply for a new licence. She was also upset by the loss of the handbag (a 21st Birthday gift).</p>
E – Non-domestic	<p>P, aged 29, and a friend who had been drinking most of the day, broke into an office on a new housing development. They vandalised some of the walls, damaged some furnishings, and broke a window. P said he committed the offence on impulse whilst walking past on the way home. He has one unrelated previous conviction and pleaded guilty at the first possible opportunity.</p>

Key Points

- The guidelines road tested well, and judges and magistrates found the draft guidelines clear and usable. The update to the stepped approach was highly favoured across each of the draft guidelines, especially three levels of culpability and harm.
- Under the s.9 Domestic and Non-domestic draft guidelines, a theme of concern arose surrounding assessment of two harm factors: ‘much greater emotional impact on the victim than would normally be expected’ and ‘greater emotional impact on the victim than would normally be expected’. Multiple sentencers thought this to be highly subjective and thought the harm categories lacked a position for a normal level of emotional impact.
- One scenario (A – Domestic burglary) was sentenced consistently across the draft and existing guidelines and between judges. Sentences for scenarios B-E remained largely consistent between the draft and existing guidelines however, varied depending on sentencer. For the most part, the differences are small.¹
- Domestic burglary: Additional wording relating to cases of particular gravity was found to be clear and usable. Additional wording on Alcohol Treatment Requirements (ATR) as an alternative to short or moderate custodial sentences was not opposed although some judges stated they would have to be persuaded to apply this in the case of domestic burglary or they would need evidence that addiction was the root cause of the offending behaviour.
- Aggravated burglary: On the whole, there was not opposition to the movement of the ‘weapon carried when entering premises’ from a factor of culpability to an aggravating factor. Five of the nine judges that considered the Aggravated burglary scenario (C), applied this factor under aggravation, hence double counting the factor, and two judges applied it at step one. One did so on the basis that it may need to be taken into account when considering taking the sentence outside of the guideline and the other was initially undecided on harm categories, but focused on the weapon element of the harm factor: ‘Violence used or threatened against the victim, particularly involving a weapon’, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of ‘weapon carried when entering premises’, they said ‘that effectively confirms it’s category one [harm]’.
- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

¹ A breakdown of the sentences can be seen at the end of this document.

s.9 Domestic burglary

Scenario A (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario A, the offender was expected to be placed in Category 1A, with a 3 year starting point. The sentence could go above the top of the range, because it was a case of particular gravity, leading to a sentence of above 6 years.

- Eight of the nine judges assessed Scenario A, relating to Domestic burglary to be category A1 as expected. Due to uncertainty surrounding if the screwdriver would constitute a weapon, one judge assessed this as B1. Five of the nine judges applied the wording 'for cases of particular gravity, sentences above the top of the range may be appropriate' and their final sentences ranged from 7-9 years. The four remaining sentences ranged between three and a half and six years.
 - It was agreed the wording was clear and workable.
 - To emphasise the additional wording, it was suggested this wording be highlighted or put in larger type.
- A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment of 'much greater' or 'greater emotional harm than is normally expected'. Multiple judges and magistrates expressed concern about this element and felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims. However, this did not appear to produce inconsistencies in the assessment of harm.

Scenario B (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario B, the offender was expected to be placed in Category B1, with a starting point of 2 years and then a reduction for guilty plea. A community order with an alcohol treatment requirement may be a proper alternative to a short of moderate custodial sentence.

Two of the nine judges categorised Scenario B, relating to Domestic burglary, as B1 as expected. Three assessed it to be C1, three C2 and one B2. Five judges imposed suspended sentence orders (SSO) ranging between six months and one year and two months. Eight imposed custodial sentences ranging from one year to two years and six months. One judge did not state their sentence pre and post-guilty plea and imposed a suspended sentence of 6 months with an ATR and unpaid work.

- Those who assessed culpability to be category B (as expected) agreed that the offence was committed on impulse, but that there was more than 'limited intrusion'.

Those who assessed it as category C said there was limited intrusion, and some pointed out that there was no targeting in the case.

- Those categorising the offender under high harm (as expected) agreed this was due to the occupier being present. Those who assessed harm as category two agreed on the factor of the victim being present, but balanced this with the fact nothing was stolen.
- The wording in relation to imposing community orders with drug or alcohol treatment requirements was generally accepted, with judges saying they would be applied if alcohol was the root cause of the offending behaviour. However, two judges said they would need '*some persuasion*' that it would be an appropriate sentence for Domestic burglary. Another judge said they would be hesitant to impose non-custodial penalties due to this area being 'under sentenced': "*The impact on some of this sort of thing is just enormous, and to the extent that deterrence works for those who are inclined to commit offences, which is, I think very much in doubt, but to the extent it does work, they need to know that if you break into someone's house, you're going in.*"
- Participants were positive about the guideline and liked the flexibility of the stepped approach. Concerns were raised on the assessment of the '*normally expected*' emotional impact on victims included within the harm categorisation. Additional wording relating to cases of particular gravity was found to be clear and usable.
- Judges were happy with the culpability under the Domestic burglary guideline and favoured the addition of the third category of culpability, which was thought to give more flexibility and scope to analyse the case in a more critical and detailed way. '*The guidelines really identify the factors that touch upon culpability and harm.*'
- Aggravating and mitigating factors were widely accepted. One comment was made, suggesting the factors relating to the offence itself should be grouped together, followed by the remaining factors.

s.10 Aggravated burglary

Scenario C (s.10 Aggravated burglary)

Sentencing as expected by policy:

In Scenario C, the offender was expected to be placed in category B2 with a starting point of 6 years, with an increase within the range for aggravating factors.

- Four judges placed the offender in culpability A and five judges in culpability B. Those placing the offender in the higher category did so on the basis of a significant degree of planning and targeting of a vulnerable victim. Those placing the offender in category B did so on the basis of some degree of planning or organisation.
- Six judges assessed harm to be category one and three as category two. Those placing the offender in category one did so on the basis of the presence of the victim, trauma to the victim and a significant degree of loss. Those placing the offender in category two did so on the basis of some degree of loss and psychological impact to the victim.
- Five of nine judges applied the factor 'weapon carried when entering premises' under Step 2, double counting, and two applied the factor under Step 1. Of the two,

one did so on the basis that the factor should remain in culpability as, 'it might be the fact that you feel it should be taken into account when taking it outside of the guideline.' The other judge was initially undecided between harm categories one and two but focused on the weapon element of the harm factor: *'Violence used or threatened against the victim, particularly involving a weapon'*, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of *'weapon carried when entering premises'*, they said *'that effectively confirms it's category one [harm]'*.

- Judges imposed custodial sentences ranging from six to ten years.
- The guideline was well received and sentencers were in favour of the stepped approach. On the whole, there was not opposition to the movement of the factor *'weapon carried when entering premises'* from a factor of culpability to an aggravating factor. However, some clarification was called for on the wording and whether the weapon need be visible or concealed.
- Under Scenario C, no judges made an increase in their imposed sentence using the draft guideline in comparison to that using the existing guidelines. Five judges imposed sentences that were less than that under the existing guideline, the decreases range between one (three judges) and three years (one judge). One judge made a decrease of a year and a half.
- It was noted that the addition of the middle category was helpful to have in terms of starting points: *'It's a very useful area and there's a nice degree of overlap as well between the ranges with different categories, which is always good to see because it enables you to finesse things more than if the guideline categories were hard edged between the different brackets'*.
- There were no points to note on aggravating or mitigating factors. One judge commended the Council on the addition of the factor *'Offence committed in a dwelling'* – *'I think that's a very useful addition to reflect in the new guideline that isn't present in the old [existing] one.'*

s.9 Non-domestic burglary

Scenario D (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario D, the offender was expected to be placed in category C1 with a starting point of 6 months, aggravated by previous convictions to around 1 year. Reduced to around 6 months following guilty plea.

- Nine judges and nine magistrates were asked to sentence scenario D. Thirteen judges and magistrates assessed Scenario D (Non-domestic burglary) to be category C2, three C1 (as expected), one B2 and one C1 or 2. Those categorising harm to be level two, did so on the basis of the factors of *'some degree of loss'*, *'greater emotional impact than expected'*, *'soiling of property'* and *'victim on premises'*.
- Sentences imposed by judges ranged from a Community Order to 8 months custody. Pre-GP sentences by magistrates ranged from Medium-Level Community Order to six months custody. Five judges' sentences remained consistent across the existing and draft guidelines and two of the magistrates sentences remained consistent.

- Two judges made increases of two months to their sentences using the draft guideline. Three magistrates made increases using the draft guideline. Two increased their sentence by one and a half months and one increased from a high-level community order to six months custody. One judge and three magistrates made a decrease using the draft guideline, all of which reduced a custodial sentence to community orders.

Scenario E (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario E, the offender was expected to be placed in category C2 with a starting point of a medium-level community order. This could be aggravated to a high-level community order however, credit for a guilty plea could reduce the sentence back to a medium-level community order.

- Four of nine magistrates assessed Scenario E (Non-domestic burglary) to be category C2 as expected, four as B2, and one as C3. Those categorising under category C based the decision on the factor of the offence being committed on impulse with limited intrusion. Three of four of those under category B based this on the offence committed on impulse but with more than limited intrusion.
- Most (8 of 9) magistrates assessed harm to be category 2 based on 'some degree of loss' and 'ransacking or vandalism'. One magistrate categorised the scenario as category 3 and alongside 'some degree of loss', applied the factor of 'nothing stolen'.
- Sentences included Band B fine (2), medium-level community order (4) and 6 months custody (4). Four magistrates imposed a higher sentence using the draft guideline. Increases range from one and a half months to four months. One magistrate increased their sentence from a low-level community order to six months custody. Four magistrates sentences remained consistent and one made a decrease from four and a half months custody to a MLCO.

Comments on the s.9 Non-domestic burglary guideline:

- It was generally thought the guideline worked well and was relatively easy to follow. A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment 'much greater' or 'greater emotional harm than is normally expected'. It was felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims.
- Other than the above note on emotional impact, most judges and magistrates were happy with the three levels of harm and culpability and felt that there was a greater range of factors 'which fit better with the nuanced nature of the offence'.
- One magistrate thought the draft guideline to be pitched at a better starting point than the existing Non-domestic burglary guideline.
- There were no objections to aggravating or mitigating factors.

- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

Scenario A – Domestic burglary

Existing guideline		Draft guideline									
	SP (years)	Final sentence (years)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating factors	Mitigating factors	Final sentence (years)	
Expected			A	<ul style="list-style-type: none"> Targeting of vulnerable victims Significant degree of planning Other weapon carried Equipped for burglary 	1	<ul style="list-style-type: none"> Occupier at home Violence used or threatened against the victim Substantial degree of loss 	3	<ul style="list-style-type: none"> Previous convictions Offence committed at night Vulnerable victim(s) Offence committed as part of a group Offence committed on licence 	None	Above 6 years	
	1	3.5 years	3.5 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim <i>Threat of violence**</i> 	1	<ul style="list-style-type: none"> Occupier at home Economic loss to victim 	3.5 years*	<ul style="list-style-type: none"> Previous convictions Offence committed as part of a group Offence committed on licence 	None	3.5 years
	2	4.5 years	6 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Significant degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Violence or threatened against victim 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence 	None	7 years
	3	3 years	6 years	B	<ul style="list-style-type: none"> Culpability falls between A and C <i>Other weapon carried?</i> 	1	<ul style="list-style-type: none"> Occupier at home Violence threatened against victim 	3 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence was committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence <i>Other offending</i> 	None	6 years
	4	3 years	7 years	A	<ul style="list-style-type: none"> Significant degree of planning Other weapon carried 	1	<ul style="list-style-type: none"> emotional impact Occupier at home Violence threatened against victim Substantial degree of loss 	3 years	<ul style="list-style-type: none"> Offence committed at night Offence committed as part of a group Offence committed on licence <i>Serious consequences for the victims</i> 	None	7 years
	5	6 years	6-8 years	A	<ul style="list-style-type: none"> Significant degree of planning Equipped for burglary 	1	<ul style="list-style-type: none"> Substantial degree of loss <i>Age of victims</i> <i>Significant impact on the victims</i> <i>Violation</i> 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed on licence <i>Homeowner present</i> <i>Value of property stolen</i> 	None	6-8 years

								• <i>Evidence of bad character</i>		
6	6 years	9 years	A	<ul style="list-style-type: none"> • Degree of planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Much greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	6 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	9 years
7	3 years	4.5 years	A	<ul style="list-style-type: none"> • Planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Offence committed on licence 	None	4.5-5 years
8	5-6 years	5-6 years	A	<ul style="list-style-type: none"> • Targeting of vulnerable victims • Other weapon carried • Some degree of planning • Equipped for burglary 	1	<ul style="list-style-type: none"> • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • <i>Threatening</i> 	None	5-6 years
9	3 years	8 years	A	<ul style="list-style-type: none"> • Significant degree of planning 	1	<ul style="list-style-type: none"> • Emotional impact • Occupier at home • Violence threatened against victim • <i>Significant</i> substantial loss 	3 years	<ul style="list-style-type: none"> • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	8 years

* raised from 3 years to reflect previous convictions.

** a harm factor but applied in culpability

Scenario B – Domestic burglary

Existing guideline			Draft guideline								
	SP (years and months)	Pre-GP sentence (years and months)	Culpability	Factors	Harm	Factors	SP (years and months)	Aggravating	Mitigating	Pre – GP sentence	Final sentence, Post-GP (years)
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Confrontation 	2 years	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age 	2 years	Around 1 or CO with an ATR
1	1 year	1 year	B	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Nothing stolen 	1 year, 9 months	<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 9 months	1 year 2 months susp. 2 years
2	1 year	1 year	C	<ul style="list-style-type: none"> No targeting not equipped 	1	<ul style="list-style-type: none"> Occupier at home 	6 months	-	-	-	6 months susp. 1 year (ATR/UPW)
3	1 year	10-13 months	C	-	2	<ul style="list-style-type: none"> Occupier at home 	1 year	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 3 months	10 months
4	1 year	1 year	C	<ul style="list-style-type: none"> Committed on impulse No targeting 	2	<ul style="list-style-type: none"> Occupier at home Property of low value stolen 	1 year	-	<ul style="list-style-type: none"> Determination to address addiction origins of problem guilty plea 	1 year	8 months susp. 2 years (RAR/UPW/curfew)
5	1 year	8 months susp. 2 years (ATR)	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion. 	1	<ul style="list-style-type: none"> Occupier at home Greater degree of emotional impact 	-	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Determination of steps taken to address offending behaviour Age and/or lack of maturity 	1 year 6 months	1 year susp. 2 years
6	1 year 6 months	1 year 6 months	C	-	2	<ul style="list-style-type: none"> Nothing stolen or only property of 	1 year	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Some indication to address 	1 year	9 months

						<ul style="list-style-type: none"> low value to the victim Limited damage to property 		<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> addiction/offending behaviour Age 		
7	1 year	1 year 9 months	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	1	<ul style="list-style-type: none"> Greater emotional impact than expected Nothing stolen 	2 year	<ul style="list-style-type: none"> Previous convictions Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> <i>Willingness</i> to address addiction <i>Traumatic background</i> 	2 year 6 months	1 year 8 months
8	9 months	1 year	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	2	<ul style="list-style-type: none"> Occupier at home Nothing stolen or only property of low value to the victim 	1 year	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> Remorse <i>Willingness</i> to address addiction 	1 year 3 months	1 year
9	1 year	1 year 3 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Much greater impact than expected 	1 year, 6 months	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> <i>Acceptance of alcohol problem</i> 	1 year 9 months	1 year 2 months susp. 2 years

Scenario C – Aggravated burglary

Existing guideline		Draft guideline									
SP (years)	Final Sentence Pre-GP (years and months)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating	Mitigating	Pre-GP (years)	Final sentence Post-GP (years)	
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	2	<ul style="list-style-type: none"> Some psychological harm Some degree of loss to the victim 	6 years	<ul style="list-style-type: none"> Use of face covering Offence committed at night Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant previous convictions Age 	7 years	4 years, 8 months
1	10 years	9 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises <i>Violence against property</i> Substantial degree of loss Psychological impact to the victim Ransacking or vandalism <i>Weapon carried</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Age and lack of maturity 	7 years, 6 months	5 years
2	11 years	10 years	A	<ul style="list-style-type: none"> Some impact or loss <i>Victim on premises</i> 	1	<ul style="list-style-type: none"> Victim on the premises Some degree of loss 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering Offence committed at night Offence was committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Remorse Age and lack of maturity 	10 years	6 years, 6 months
3	10 years	10 years	A	<ul style="list-style-type: none"> Significant degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises 	10 years	-	-	10 years	6 years, 8 months
4	10 years	8 years	A	<ul style="list-style-type: none"> Significant planning and targeting and <i>slight</i> vulnerability Weapon 	1 or 2	<ul style="list-style-type: none"> Victim on the premises Violence threatened <i>Attempt to steal what would be a substantial loss</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering 	<ul style="list-style-type: none"> Nothing stolen No previous convictions 	8 years	5 years, 4 months

						<ul style="list-style-type: none"> • <i>Equipped for burglary</i> • Some psychological impact • <i>Weapon produced</i> 		<ul style="list-style-type: none"> • Offence committed in a dwelling • Offence committed as part of a group 	<ul style="list-style-type: none"> • Age and lack of maturity 		
5	10 years	9 years	B	-	1	<ul style="list-style-type: none"> • Significant psychological trauma to the victim • Victim on the premises • <i>Some degree of violence threatened, involving a weapon</i> 	8 years	<ul style="list-style-type: none"> • Use of face covering • Vulnerable victim • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous conviction • Age and lack of maturity 	8 years	5 years, 4 months
6	10 years	9 years	B	<ul style="list-style-type: none"> • Some planning or organisation 	2	<ul style="list-style-type: none"> • Victim on the premises • <i>Significant degree of loss</i> • Vulnerable victim 	9 years	<ul style="list-style-type: none"> • Unrelated previous convictions • Weapon carried when entering premises • Use of face covering • Vulnerable victim (taken into account at step 1) • Committed at night 	<ul style="list-style-type: none"> • Age 	8 years	5 years, 4 months
7	10 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning • <i>Part of a group</i> • <i>Committed at night</i> 	1	<ul style="list-style-type: none"> • Violence used or threatened against the victim • Some psychological injury to the victim • Some degree of loss • Victim on the premises 	9 years	<ul style="list-style-type: none"> • <i>Unrelated previous convictions*</i> • Weapon carried when entering premises (taken into account at step 1) • Use of face covering • Committed at night 	<ul style="list-style-type: none"> • No relevant previous convictions • Age and lack of maturity 	9 years	6 years
8	9 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning 	1	-	8 years	-	-	8 years	5 years, 4 months
9	10 years	9 years	B	<ul style="list-style-type: none"> • Targeting of vulnerable victim • Some degree of planning or organisation 	2	<ul style="list-style-type: none"> • Victims on the premises • Some degree of loss • Some psychological injury or impact on the victim 	6 years	<ul style="list-style-type: none"> • Weapon carried when entering premises • Use of face covering • Offence committed at night • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous convictions • Age 	6 years	4 years

* a mitigating factor but applied under aggravation

Scenario D – Non-domestic burglary (judges)

	Existing guideline		Draft guideline							
	SP (mths)	Final Sentence (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Final sentence (years and mths)
Expected			C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss Limited damage or disturbance to property 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	8 months
2	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	HLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
3	MLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO
4	CO	HLCO/SO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	None	None	CO
5	HLCO	-	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Loss Impact on victim 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UW/RAR)
6	4.5 months/LLCO	6 months	C	<ul style="list-style-type: none"> Committed on impulse (<i>opportunistic</i>) 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
7	4.5 months	6 months possibly susp.	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Greater emotional impact 	CO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO (curfew)
8	9 months	6 months (assuming GP)	C	<ul style="list-style-type: none"> Committed on impulse 	1/2	<ul style="list-style-type: none"> Substantial degree of loss Emotional impact (greater or much greater) 	6 months/MLCO	-	None	6 months

9	4.5 months/ MLCO	6 months	C	• Committed on impulse	1	• Substantial degree of loss	6 months/ MLCO	• Previous convictions	None	8 months
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Scenario D – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline									
Expected	SP (mths)	Final Sentence Pre-GP	Culpability	Factors	Harm	Factors	SP	Aggravating	Mitigating	Sentence (Pre-GP)	Final sentence (Post-GP)
				C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	MLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO	MLCO
2	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (200hr UW)	HLCO (180hr UW)
3	HLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Greater emotional impact Damage of property causing some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UPW?)	HLCO (discount hrs)
4	4.5 months	3 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion Victim on premises 	2	<ul style="list-style-type: none"> Greater emotional impact Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO/ Band B fine (100hr UW)	MLCO/Band B fine (66% WI and 66hr UW)
5	4.5 months	2 months 1week	C	<ul style="list-style-type: none"> <i>Defendant was not an intruder as was at the hospital when the offence was committed</i> 	2	<ul style="list-style-type: none"> Greater emotional impact <i>Multiple items stolen</i> 	MLCO	<ul style="list-style-type: none"> Previous convictions Abuse of a position of trust 	<ul style="list-style-type: none"> <i>GP at earliest opportunity</i> 	Custody*	HLCO
6	MLCO	HLCO	B	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	4 months possibly susp

7	MLCO	4.5 months	C	<ul style="list-style-type: none"> Limited intrusion 	2	<ul style="list-style-type: none"> Victim on premises Soiling of property Some degree of loss Theft/damage to property 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (victim comp)	HLCO (lower hours)
8	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion <i>Little planning</i> 	1	<ul style="list-style-type: none"> Victim on premises Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	6 months (credit for GP is not sending to CC)
9	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Emotional impact on victim 	6 months	<ul style="list-style-type: none"> Previous convictions <i>Emotional impact on the victim</i> <i>A place of work</i> <i>Public place</i> <i>Damage to property</i> 	<ul style="list-style-type: none"> <i>Committed on impulse with limited intrusion</i> <i>Low value property but high sentimental value</i> 	6 months	4 months sups. 1 year

* unspecified length.

Scenario E – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline									
SP (years)	Final Sentence Pre-GP (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Pre-GP (months)	Final sentence Post-GP (months)	
Expected			C	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under the influence of alcohol 	None	HLCO	MLCO
1	4.5 months	MLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO	LLCO (ATR; RAR)
2	MLCO	MLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO (100 hrs UPW)	MLCO (50 hrs UPW)
3	LLCO	LLCO	B	<ul style="list-style-type: none"> <i>More than limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	HLCO
4	MLCO	MLCO (120hr UPW) and Band B fine	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some degree of damage to property</i> 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	-	MLCO (120hr UPW) Band B fine (70% weekly income)	MLCO (80 hrs UPW) Band B fine (100% weekly income)
5	4.5 months	2 months	B	<ul style="list-style-type: none"> <i>Not limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	6 months	-	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	4 months

6	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Committed on impulse <i>Intrusion on property</i> 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some damage to property</i> 	6 months	<ul style="list-style-type: none"> previous convictions Under influence of alcohol 	-	6 months	4 months SSO
7	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Offence committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	MLCO	MLCO
8	LLCO (40hr UPW)	LLCO	C	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	3	<ul style="list-style-type: none"> Some degree of loss Nothing stolen 	Band B fine	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Reasonably good character</i> <i>Guilty plea</i> 	Band B fine	Band B fine (1/3 reduction)
9	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism <i>Intrusion</i> 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	6 months	M-HLCO

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

* for the purposes of this guideline a weapon is any article which is made or adapted for use for causing injury, or is intended by the person having it with him for such use'.

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

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

STEP TWO

Starting point and category range

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

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. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

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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Annex D

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

Harm

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

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

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

STEP TWO

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

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

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
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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 (where not already taken into account at step 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

- 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. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

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 E

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	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

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

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

	<ul style="list-style-type: none"> • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • No violence used or threatened and a weapon is not produced • Limited physical or 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
Care should be taken to avoid double counting in these cases. If an offender commits an aggravated burglary with intent to steal/inflict GBH/ do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. *R v Sage (AG's ref SAGE [2019] EWCA Crim 934, [2019] 2 Cr App R (S) 50)* sets out that having a weapon present on entry is an essential element of an aggravated s.9(1)(a) offence and so care needs to be taken in s.9(1)(a) cases that the fact the offender has a weapon present on entry is not taken into account a second time. In s.9(1)(b) cases, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence (unless already taken into account at step 1).
- 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. The court must give reasons if it decides not to order compensation. ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

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](#).