

Burglary Offences Guideline

Professional Consultation



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A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This professional consultation is primarily aimed at members of the judiciary, legal practitioners and any individuals and organisations involved in the criminal justice system.

Duration:

From 12 May 2011 to 4 August 2011

Enquiries:

(including requests for the paper in an alternative format)

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Additional ways to feed in your views:

This consultation exercise is accompanied by a shorter public consultation paper, a separate draft guideline, a resource assessment, an equality impact assessment, and an online questionnaire, all of which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the 'Enquiries' contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk

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Introduction

The Sentencing Council is consulting on a draft guideline for burglary offences and seeks views from as wide an audience as possible.

Why Burglary?

There is a Crown Court guideline on non-domestic burglary¹ but none on domestic or aggravated burglary. The *Magistrates' Court Sentencing Guidelines (MCSG)* provide guidelines on both domestic and non-domestic burglary. 17,387 adults were sentenced for burglary in 2009 across both courts.

The Council has developed this guideline to respond to the Sentencing Advisory Panel's (SAP) advice *Sentencing for Domestic Burglary*² and to bring the three burglary offences into a single guideline under a single approach.

The Sentencing Council is grateful to the SAP for its advice on domestic burglary and has considered it in developing the draft. The specific recommendations within the SAP's advice will be discussed in detail in Sections Two and Three of this paper. The Council supports several proposals but takes a different view on others and seeks views upon the latter particularly.

The Council recognises that the public is concerned about burglary. Whilst the number of burglaries has fallen significantly in recent years there remains a disparity between people's perceived likelihood of being a victim of burglary and their actual risk. The risk of being burgled is relatively low – about 2% of households are likely to be victims of burglary in the next year. However, it is still a crime that people worry about – 15% of the public thought they were very or fairly likely to be a victim of burglary in the next year.³

¹ Sentencing Guidelines Council (2008) Theft and burglary in a building other than a dwelling: Definitive Guideline.

² Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

³ p.114–115 Home Office (2010) Crime in England and Wales 2009–10: Findings from the British Crime Survey and police recorded crime.

The Council's aims

The Council wishes to promote a clear, fair and consistent approach to sentencing. In preparing this draft, the Council has had regard to the purposes of sentencing and to a number of statutory duties set out in Annex B of this paper. The Council aims to ensure that sentences are proportionate to the offence committed and in relation to other offences.

In particular it recognises that far from only being a 'property' crime, burglary can often have a significant impact on victims. The draft guideline has been informed by the domestic burglary guideline judgment in *Saw* and seeks to reflect the approach it takes:

'The starting point must always – we emphasise, always – be that a burglary of a home is a serious criminal offence. The principle which must be grasped is that when we speak of a dwelling house burglary, we are considering not only an offence against property, which it is, but also and often more alarmingly and distressingly, an offence against the person.'⁴

When considering ranges and starting points the Council has reviewed data and research material. It proposes to maintain the current level of sentencing for all three burglary offences and to reinforce a consistent approach to the sentencing of these serious offences.

Consultation process

The consultation period is 12 weeks during which meetings will be held to seek views.

Alongside this professional consultation paper and draft guideline the Council has produced a public version, a resource assessment, an equality impact assessment, and an online questionnaire. These can be found on the Sentencing Council's website:

www.sentencingcouncil.org.uk

This professional consultation paper first sets out the offences covered by the draft guideline and then details the decision making process before setting out proposed starting points and ranges. A summary of the consultation questions is at Annex A. The draft guideline is at Annex C.

4 [2009] EWCA Crim 1 at [6].

Section one: Burglary offences

Offences covered by the draft guideline

Aggravated burglary – Theft Act 1968 (s10)

This offence is committed when at the time of a burglary the offender has with him any firearm or imitation firearm, any weapon of offence or any explosive.

The maximum sentence is life imprisonment.
This offence is triable only on indictment.

Burglary of a dwelling – Theft Act 1968 (s9) (referred to in the draft as Domestic burglary)

This offence is committed when an offender either:

- a) as a trespasser enters a dwelling intending to steal, inflict grievous bodily harm or do unlawful damage; or,
- b) having entered as a trespasser steals or attempts to steal, or inflicts or attempts to inflict grievous bodily harm.

A dwelling is generally interpreted as a house or flat and may also include inhabited vessels or vehicles or a domestic outhouse or garage linked to the dwelling.

The maximum sentence is 14 years' imprisonment.
This offence is normally triable either way. It is triable only on indictment if it involves:

- the commission of, or intent to commit, an offence triable only on indictment;

- if any person in the dwelling was subjected to violence or the threat of violence; or,
- if the offender has been convicted of two other domestic burglaries committed on separate occasions after 30 November 1999 and one was committed after the conviction for the other.

Burglary of premises other than a dwelling – Theft Act 1968 (s9) (referred to in the draft as Non-domestic burglary)

This offence occurs when an offender either:

- a) enters as a trespasser intending to steal, inflict grievous bodily harm or do unlawful damage; or,
- b) having entered as a trespasser steals or attempts to steal, or inflicts or attempts to inflict grievous bodily harm.

The maximum sentence is 10 years' imprisonment.

This offence is normally triable either way. It is triable only on indictment if it involves:

- the commission of, or intent to commit, an offence triable only on indictment.

Applicability of the guideline

The Council proposes that the guideline will apply to all burglary offences irrespective of the date of the offence. It is to be used in both the Crown Court and magistrates' courts, and updates to the MCSG will be issued for the relevant burglary offences.

Section two: Developing the guideline

Guideline structure

The structure proposed in this draft replicates that used in the *Assault Definitive Guideline*.

The decision making process

In developing the *Assault Definitive Guideline*, published in March 2011, the Council consulted on a revised structure, intended to aid both sentencers and the public. The structure incorporates all necessary information into individually tailored decision making processes for each offence. The Council developed the structure with a view to replicating the process, where appropriate, in future guidelines.

The process has therefore been proposed in the draft drug offences guideline (currently out for consultation) and again here for burglary. The Council considers it suitable for burglary because in the first two steps it provides a method for determining seriousness, and then sets out in logical order further matters which inform sentence.

The process is summarised on the next page:

STEP ONE Determining the offence category

Assess the harm caused and the culpability of the offender so as to decide into which of three categories of seriousness the offence falls.

STEP TWO Starting point and category range

After determining category, identify the starting point. Then identify factors which could result in a sentence within the range lower or higher than the starting point.

STEP THREE Consider any factors which indicate a reduction in sentence, such as assistance to the prosecution

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

STEP FOUR Reduction for guilty pleas

Take account of potential reduction for a guilty plea in accordance with s.144 Criminal Justice Act 2003 and the guilty plea guideline.

STEP FIVE Dangerousness

Where the offence is serious or specified within the meaning of Ch. 5 Criminal Justice Act 2003 consider whether it would be appropriate to impose a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should form the basis for the minimum term.

STEP SIX Totality principle

If sentencing for more than one offence, or where the offender is already serving a sentence, consider whether the total is just and proportionate.

STEP SEVEN Compensation and Ancillary Orders

In all cases, consider compensation and/or other ancillary orders.

STEP EIGHT Reasons

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

STEP NINE Consideration of remand time

Take into consideration any time served in relation to the final sentence at this final step. Consider whether to give credit for time spent on remand or on bail in accordance with s. 240 and 240A Criminal Justice Act 2003.

These nine steps are to be followed for each of the three offences detailed in this draft.

STEP ONE**Determining the offence category****Offence category model**

The approach in the *Assault Definitive Guideline* was a three offence category model based on equally weighted assessments of harm and culpability. The Council recommends a three offence category model is applied to the burglary guideline.

The Council proposes that in determining the level of seriousness the court should position the offence in one of three categories below. The category should be based on the factual elements of the offence.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The Council believes that these three categories provide a clear structure for assessment of the level of seriousness of an individual offence. The categories are intended to provide sufficient distinction between each other without constraining the application of discretion. The Council considers that the sentencer is best placed to determine where on the gradient of greater or lesser harm or culpability the offence would fall. Where the offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment. Therefore the Council has inserted text in the draft guideline at step one that confirms this approach.

Replicating the categories from assault, where appropriate, is also intended to aid consistency of approach as it is a format with which sentencers and practitioners will become

familiar. In the consultation on the draft drug offences guideline the Council developed an approach which results in more categories for some offences. However that approach takes account of the complex nature of the offences, the variations and different elements to be taken into consideration, and such complexity is not present in burglary.

Q1

Do you agree that there should be three offence categories?

Determining harm and culpability

In order to assess the harm caused, or intended to be caused, and the offender's culpability in committing the offence, it is proposed that the court should use the factors listed within step one of each of the guidelines at Annex C. The Council believes that these lists of factors comprise the principal factual elements of each of the offences and are the most important in an assessment of seriousness and therefore establishing the offence category.

In proposing the step one and step two factors, and distinguishing which should be at each step, the Council has reviewed the available data and research on burglary relating to: victims' experiences of burglary and the impact it can have on their lives; public views on burglary; and, offender behaviour. The Council has also considered: the existing guidelines; the SAP advice; and, the relevant guideline judgments. Many of the factors proposed are the same across all the burglary offences however the lists have been tailored for each offence and the approach the Council has taken is summarised below.

Step one factors indicating greater or lesser harm

The Council recognises that far from only being a ‘property’ crime, burglary can often have a significant impact on victims. Burglary has long been recognised as a serious offence, because it involves an invasion of privacy and can leave the victim with a sense of violation and insecurity. The guideline judgment in *Saw* emphasised that the impact on the victim is an important factor in determining the offence seriousness of domestic burglary. It was emphasised that whether or not a burglar has any specific intention to cause harm, he runs the risk that the victim or victims may suffer serious adverse consequences. The Council agrees with this emphasis on the impact on victims, not only for domestic burglary but also for aggravated and non-domestic burglary.

Theft or damage to property

One element of harm arising from burglary is the economic harm caused by the loss of the items stolen and any damage done (over a third of burglary victims state the cost of the stolen items was over £1,000)⁵; however it is important to recognise that this loss is not limited to the economic value of the property. The Council recognises that when a domestic burglary occurs, the property that is lost may not only have an economic value to the victim but may also be of significant sentimental or personal value (for example, the loss of family photographs or identity documents).⁶

The Council proposes that non-domestic burglaries should also be considered in relation to the relative value of the loss to the victim rather than the absolute economic value of the property. It is therefore proposing a change to the approach taken in the current guideline

which sets out offence categories based on losses below £2,000, between £2,000 and £20,000, and above £20,000.⁷ The Council believes that the loss and inconvenience to the victim of a non-domestic burglary can relate to economic, commercial or personal items (for example, the loss of crucial business information or staff possessions stored on the premises) and that the guideline should specifically allow for these losses to be reflected in the sentence.

Soiling, ransacking or vandalism

Where soiling, ransacking or vandalism of properties occurs, the Council believes that this also indicates greater harm to the victim, regardless of whether items of significant value are stolen.

Victim at home or on the premises

The Council agrees with the SAP⁸ that the presence of the victim at home (including where they return home during the burglary) is a principal harm feature of domestic burglary. It applies equally to aggravated burglary and non-domestic burglary. It is likely that the victim will suffer greater harm if they are present when the burglary takes place, particularly where they come face to face with the offender.

Trauma beyond the normal level

The Council also agrees with the SAP⁹ that where the victim suffers trauma beyond the normal inevitable consequences of intrusion and theft this indicates greater harm. Burglary can be traumatic and can have lasting impacts on people’s lives, although it is noted that not everyone is affected in the same way (30% of people report they were very much affected by a burglary in their home¹⁰ and businesses can be similarly affected¹¹). The trauma can be

5 Ancillary tables on burglary, table 1.7. Home Office (2010) Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime.

6 p.44, Mawby, R.I. (2001) Burglary, Willan Publishing: Devon.

7 Sentencing Guidelines Council (2008) Theft and burglary in a building other than a dwelling: Definitive Guideline.

8 Recommendation 1, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

9 *ibid.*

10 Ancillary tables on burglary, table 1.7 - Home Office (2010) Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded Crime.

11 ‘24% of victims [of non domestic burglary] said it had an emotional effect on themselves or their staff’ p.157, Mawby, R.I. (2001) Burglary, Willan Publishing: Devon.

particularly significant for aggravated burglary. Therefore the Council proposes that the greater harm factor in the aggravated burglary guideline relating to trauma refers to the significant physical or psychological injuries or other trauma that can be caused in the most serious of these offences.

Violence

The use or threat of violence is a factor that is an indicator of greater harm in the context of a burglary and if this factor is present, in domestic burglary, the offence is triable only on indictment.

Lesser harm

The factors indicating lesser harm in domestic and non-domestic burglary are those where nothing or very little was stolen or where there may have been limited damage or disturbance to the property. This aligns with the approach in *Saw* where the Court of Appeal stated that ‘if nothing or only property of very low economic value, is taken, that obviously reduces the gravity of the offence’.¹² In aggravated burglary lesser harm can be indicated where there is no injury or trauma to the victim or no violence is used or threatened and a weapon is not produced. The Council has not included nothing stolen or limited damage in aggravated burglary as it wanted to avoid the potential for a case where there was significant threat to the victim but potentially no theft resulted (for example, where the offender could not get into the safe), being regarded as lesser harm.

Step one factors indicating higher or lower culpability

Victim deliberately targeted

In line with the approach taken in the *Definitive Assault Guideline* the Council is proposing that evidence of the offence being motivated by hostility relating to race, religion, sexual orientation, disability, age, sex or gender identity should all be step one factors indicating higher culpability. In the Council’s experience, offences of burglary are less likely to be motivated by such hostility, as in most cases of burglary the offender will select a dwelling on the basis of factors unrelated to the personal characteristics of the occupier.¹³ However, the Council believes that where there is evidence of this hostility this should be considered at step one.

Broader characteristics relating to the victim may also result in them being targeted. Evidence of targeting a victim may be found where an offender has intentionally selected a dwelling that has been burgled before; repeat victimisation can be a significant issue in relation to burglary. Older adults may be particularly targeted by offenders;¹⁴ and the targeting of vulnerable victims, particularly due to age, is a factor that the public believes is powerfully aggravating.¹⁵ People, who are in the public eye and perceived to be wealthy, can also be specifically targeted. A step one factor relating to the deliberate targeting of a victim is therefore proposed.

¹² [2009] EWCA Crim 1 at [26].

¹³ Nee C. and Meenaghan A. (2006) Expert decision making in burglars *Brit J Criminol* 46(5) 935–949.

¹⁴ *ibid.*

¹⁵ p. 64, ICPR and GfK NOP (2009) *Public Attitudes to the Principles of Sentencing*.

Planning

The Council agrees with the SAP that the more an offence is planned the greater the culpability. The Council is therefore proposing two factors relating to the degree of planning. The first relates to the carrying of burglary implements and/or the use of vehicles which indicates a degree of forethought about the offence and how it will be committed. The second relates to offences that have involved a significant degree of planning or organisation and indicates the very high levels of culpability of the small number of offenders whose working methods involve significant advanced planning and preparation.

Knife or other weapon carried

A knife or other weapon being carried where it is possessed at the time of entry is likely to result in a charge of aggravated burglary. If aggravated burglary has not been charged and the carrying of the weapon has not been charged separately it is a factor indicating higher culpability in domestic and non-domestic cases because it suggests a willingness to threaten or use violence. As with the targeting of vulnerable victims it is also a factor that the public believe is powerfully aggravating.¹⁶

Member of a group or gang

The Council proposes that an offender committing an offence of burglary as a member of a group or gang is always an indicator of greater culpability, and would be seen as such by the victim.

Lower culpability

The offender having been exploited by others or where the offender has a mental disorder or learning disability linked to the commission of the offence are proposed as lower culpability factors at step one for all three offences. Both of these factors are included in the *Assault Definitive Guideline* and are referenced in *Saw*.

The Council has considered the SAP proposal to include the lower culpability factor of an offence having been committed on impulse. Whilst the Council agrees that an opportunistic burglary may be less serious than a planned one, it has sought to narrow its application. The Council proposes that 'offence committed on impulse with limited intrusion into property' is included in both domestic and non-domestic burglary. It is not included in aggravated burglary as the Council does not propose that aggravated burglary, where the offender has both trespassed and taken a weapon or picked one up at the scene, should be considered as an impulsive act.

The step one factors proposed for aggravated burglary, domestic burglary and non-domestic burglary are set out in the draft guideline at Annex C.

Q2

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

¹⁶ *ibid.*

STEP TWO**Starting point and category range**

Step two of the guideline is the second stage of assessing seriousness and is where the court should identify further aggravating and mitigating factors, relating to the contextual elements of the offence, and the offender, that could result in a provisional sentence that is lower or higher than the suggested starting point. The lists are not intended to be exhaustive and any other factors present should be taken into account by the court at this step. In some cases, having considered these step two factors, it may be appropriate for a court to move outside the identified category range.

Factors increasing seriousness

The Council agrees with the SAP that a domestic burglary is aggravated if a child is present¹⁷ and believes that this is appropriately reflected at step two as additive to the step one factor of the occupier being at home in aggravated and domestic burglary.

The Council recognises that the SAP did not recommend that the time the offence was committed should affect seriousness.¹⁸ However, about 60% of domestic burglaries happen in the evening or at night¹⁹ and although the time of day in isolation is not thought by the public to be relevant they do believe that a burglary is worse at night because it is more reasonable for the burglar to expect that someone will be at home.²⁰ It may also make the experience more frightening. The Council has therefore included the offence being committed at night as a step two factor in aggravated and domestic burglary. It is also included in non-domestic burglary particularly where staff are present or likely to be present; over a quarter of retailers and manufacturers report having some concern about their safety at work after dark.²¹

Factors reducing seriousness or reflecting personal mitigation

The step two factors relating to the offender largely mirror those in the *Assault Definitive Guideline*.

The Council is proposing, in line with the SAP recommendation,²² the addition of the mitigating factor ‘where the offender has made voluntary reparation to the victim’. This would apply where the offender voluntarily returns the goods taken in a burglary which reduces both the harm to the victim and the gain to the offender. In general, the earlier the property is returned the greater the degree of mitigation the offender should receive.

The Council is including subordinate role in a group or gang as a step two factor in all three offences. As stated above, the Council believes that where the offender is committing the offence as part of a group or gang this is always an indicator of greater culpability at step one, and would be seen as such by the victim. However, at step two if there is evidence that their role was a minor one this can be a factor indicating mitigation.²³

The Council has not included the mitigating feature of financial pressure. The Council agree with the SAP that where the financial pressure is exceptional and not of the offender’s own making, it may in very rare circumstances constitute offender mitigation.²⁴ However, it considers that these circumstances are so rare as to not require it to be included as a step two factor on the basis that the step two factors are not an exhaustive list.

The step two factors proposed for aggravated burglary, domestic burglary and non-domestic burglary are set out in the guidelines at Annex C.

17 Recommendation 2, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

18 *ibid.*, Recommendation 1.

19 Ancillary tables on burglary, table 1.4 - Home Office (2010) Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded crime.

20 p.45 Russell N. and Morgan R. (2001) Sentencing of domestic burglary.

21 p.6 Home Office (2004) Crime against retail and manufacturing premises: findings from the 2002 Commercial Victimization Survey.

22 Recommendation 6, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

23 [2009] EWCA Crim 1 at [26].

24 Recommendation 6, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

Q3

Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

Victims

When preparing guidelines, the Council must have regard to the impact of sentencing decisions on victims.²⁵ The Council has sought to have full regard to the impact of burglary on victims in all three offences, and these considerations have been set out above in relation to the factors included in step one and step two.

The Council has included factors relating to victims of domestic violence, including where domestic violence victims are forced to leave their homes. Whilst burglary is not commonly associated with domestic violence²⁶ it can occur, and the Council felt this should be recognised.

The Council recognises the impact that burglary offences can have on the wider community. In order to take account of this ‘established evidence of community impact’ has been included as a factor increasing seriousness at step two. The consideration of this factor is reliant upon the provision of a community impact statement or equivalent document to the court, which sets out the concerns of a particular community regarding the impact of crime in the area.

Step seven of the guideline states that in all cases, courts should consider whether to make compensation and/or other ancillary orders. This will include consideration of:

- a restitution order, where a court may order that stolen goods are restored to the victim

or that a sum not exceeding the value of the goods be paid to the victim from money taken out of the offender’s possession at the time of apprehension;

- a compensation order, the court must consider making a compensation order to the victim if the offence has resulted in personal injury (including distress), loss or damage;
- a deprivation order, the court may deprive an offender of property used or intended to be used to commit, or facilitate the commission of an offence, for example a vehicle; and,
- a confiscation order, where there is evidence in a case before the Crown Court that the offender has benefited financially from his or her offending the court must consider whether to make a confiscation order.

In response to the consultation on the assault guideline the Council considered the proposal made by some respondents that the guideline would be stronger from the point of view of victims if victim impact statements were referenced in the guideline. As set out in the response to the assault consultation the Council considered that existing guidance in the Consolidated Criminal Practice Direction and the decision of the Court of Appeal in *Perks*²⁷ covers the use of these statements in court. Therefore, the Council has concluded that it is not necessary to replicate this in offence specific guidelines.

The Council would welcome views on whether it can do more in the guideline in relation to the impact on victims, in particular from victims themselves and from representative bodies of victims.

Q4

Are there any further ways in which you think victims can and/or should be considered?

²⁵ s.120 (11)(c) Coroners and Justice Act 2009.

²⁶ p.2 Home Office (2003) Domestic violence offenders: characteristics and offender related needs.

²⁷ [2001] 1Cr.APPR.(S)19.

Previous convictions

There is a statutory requirement for sentencers to take account of previous convictions when assessing the seriousness of the offence. In line with the *Assault Definitive Guideline* and the draft drug offences guideline the Council proposes that previous convictions are an aggravating feature at step two of the draft burglary guideline.

Previous convictions have been given a particular emphasis in burglary offences by statute and in sentencing practice. Therefore the Council is proposing two ways in which the draft burglary guideline will highlight previous convictions.

The first is the addition of text relating to the statutory minimum sentence for an adult offender convicted of a third time domestic burglary. The draft aggravated and domestic burglary guidelines highlight the statutory position as an ‘aide memoire’ for sentencers.

The Council agrees with the SAP that no specific guidance is required in relation to circumstances where an offender has a second qualifying conviction.²⁸ However, it has not adopted the SAP recommendation that the guideline should provide guidance on the decision not to impose the minimum sentence.²⁹

The Council recognises that the SAP consulted on the topic and concluded that, in line with the examples in *McInerney*³⁰ (with an amendment to one example in relation to age), the guideline should state the principle on which a court should base the decision not to impose the minimum sentence and should provide examples including situations:

- a) where the two qualifying offences were committed when the offender was aged under 18;
- b) where there had been a long lapse of time between the second and third qualifying offence; and,
- c) where the offender was making a real effort to reform or conquer an addiction and the court considers that the offender would be best able to continue that effort in the community (except where the current offence is too serious for a community sentence).

However, the Council proposes not to include these examples in the guideline because they are well understood by sentencers. To add these examples might imply a level of prescription in the application of the discretion available to the court in relation to the minimum term, when in fact the discretion is very wide.

The second addition to the guideline for all the burglary offences relating to previous convictions is a statement in the text that describes the function of the step two factors. The Court in *Saw* endorsed the statement in *Brewster* (as it had done in *McInerney*) that ‘the record of the offender is of more significance in a case of domestic burglary than in the case of some other crime’. The Council’s review of the sentencing data from 2009³¹ demonstrates that whilst a third of adults sentenced for burglary have no previous convictions for burglary, 45% of adults sentenced for burglary have three or more previous convictions or cautions (no data is available on when these convictions or cautions occurred). This rate of previous convictions is significantly lower than for shoplifting where 67% of sentenced offenders have three or more previous convictions. However, it is an element that the Council thought required emphasis as it is higher than for some other offences.

²⁸ Recommendation 3, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

²⁹ *ibid.*, Recommendation 4.

³⁰ [2003] 2 Cr App R (S) 39.

³¹ Ministry of Justice (2009) Sentencing Statistics – Secondary analysis.

Therefore, the statement the Council is proposing for the burglary guideline highlights that ‘in particular, relevant recent convictions are likely to result in an upward adjustment’ from the starting point.

Q5

Do you agree with the proposed approach to previous convictions?

Dependency of the offender

As is highlighted in the SAP advice many offenders convicted of acquisitive crimes are motivated by an addiction, often to illegal drugs, alcohol or gambling. Research has indicated that, of those arrested for domestic burglary, three times more are drug misusers than are not.³² However this is not untypical of the overall offender population.

The draft guideline includes ‘determination and/or demonstration of steps having been taken to address addiction or offending behaviour’ as a mitigating factor at step two of the decision making process. This does not make it a key determinant of seriousness but acknowledges that determined efforts to address such an addiction may influence the final sentence imposed, particularly where the offender has limited or no previous convictions.

The SAP recommended that the domestic burglary guideline set out guidance dealing with dependent offenders and highlighted that even if an immediate custodial sentence would otherwise be warranted, in an attempt to break the cycle of addiction, it may sometimes be appropriate to impose a community order including:

- a drug rehabilitation requirement, or
- an alcohol treatment requirement, or
- an activity or supervision requirement including alcohol specific information, advice and support, or
- a programme requirement.³³

The draft burglary guideline, in line with the *Assault Definitive Guideline* and the draft drug offences guideline includes questions relating to the custody threshold:

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

However, it does not include guidance regarding the selection of sentences for dependent offenders and the requirements that may be made.

The Council has taken the provisional view that information in relation to dependency is not required in the burglary guideline. It believes that considerations of dependency and the selection of sentence are well understood by sentencers, are not unique to burglary, are considered in an existing guideline³⁴ and that their inclusion in this guideline would increase the length of the guideline unnecessarily without adding significant value.

The SAP advice also highlighted the importance of committing the offender to the Crown Court for sentence where a court is considering the imposition of a community order because of the offender’s dependency, in circumstances where the custodial sentence that would otherwise have been imposed would have been longer than that available in the magistrates’ court, so that any breach can be sentenced within the powers of the Crown Court.³⁵ The Council

³² Home Office (2000) Drug Use Among Arrestees.

³³ Recommendation 6, Sentencing Advisory Panel (2010) Advice to the sentencing guidelines Council; Sentencing for Domestic Burglary.

³⁴ Sentencing Guidelines Council (2004) New Sentences: Criminal Justice Act 2003.

³⁵ Recommendation 5, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council; Sentencing for Domestic Burglary.

considers that committals for sentence in these circumstances are well understood by the court and specific details are not required in the burglary guideline.

The Council is interested to hear through the consultation whether respondents believe further guidance in the burglary guideline in relation to the sentencing of dependent offenders would be valuable and if so, the specific areas that this guidance might cover.

Q6

What further guidance might usefully be included in relation to the sentencing of dependent offenders?

Equality and diversity

Alongside this consultation document and draft guideline the Council has published an equality impact assessment. This assessment has been informed by the SAP's consultation on domestic burglary and a wider review of the relevant literature and data. No equality matters have been identified to date that have raised concerns in relation to the development of the burglary guideline however, the Council would be keen to hear through the consultation of any matters that should be considered.

Q7

Are there any equality or diversity matters that the Council should specifically consider (please provide evidence where possible)?

Section three: Offence ranges and starting points

Overall approach

In developing the offence ranges, category ranges and starting points which it proposes for burglary the Council has had regard to: the available data on current sentencing practice; the available data on the cost and effectiveness of sentences; the relevant case law; and, the available research on public and victim opinions on sentencing.

The Council seeks to promote a consistent approach to sentencing and proportionality both within and across offence types. The data on existing sentencing practice for burglary suggests that sentencing for this offence is at an appropriate level and is relatively proportionate both within each offence and when comparing the offences with each other.

Therefore the Council is proposing to maintain the current level of sentencing for all three burglary offences and through its guideline reinforce a consistent approach to the sentencing of these serious offences.

Aggravated burglary

Aggravated burglary is a very serious offence and this is reflected in the Council's proposal that the offence range should be wholly custodial.

The Council believes that aggravated burglary is similar in its nature to robbery, however the features of trespass and the possession of a weapon that are always present in aggravated burglary result in it being a relatively more serious offence. The Council therefore wanted to establish a proportionate

approach between robbery and aggravated burglary and is proposing three custodial category ranges and starting points which reflect an uplift on those in the existing robbery guideline.³⁶

It should be noted that within the robbery guideline the range for personal robberies in the home involving physical violence is 13–16 years and the guideline comments that this can in some cases overlap with some cases of aggravated burglary. The Council is of the view that cases of this nature (a robbery involving a brutal and prolonged attack on an elderly person)³⁷ are very rare and that where multiple features of this nature are present in an aggravated burglary it may be appropriate to go outside the ranges proposed here.

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

Q8

Do you agree with the proposed offence range, category ranges and starting points for aggravated burglary?

³⁶ Sentencing Guidelines Council (2006) Robbery.

³⁷ O'Driscoll (1986) 8 Cr App (s).

Domestic burglary

As highlighted in the introduction the Council agrees with *Saw* that ‘the burglary of a home is a serious criminal offence’.

Research demonstrates that whilst some members of the public are of the view that domestic burglary generally merits imprisonment, this is not a universal view. Based on a scenario of a burglary that would fall into category 2 of this guideline 56% of the public believed all or almost all offenders should be imprisoned with 20% indicating that none or only some offenders should receive a custodial sentence.³⁸ Research also demonstrates that victims of burglary are no more punitive than the general public as a whole and are seeking similar sentence outcomes.³⁹ It is therefore important to note that the public are not seeking custodial sentences in every case of domestic burglary and are less convinced that custody is appropriate for domestic burglary than they are for scenarios of potentially similar severity relating to robbery, actual bodily harm and fraud.⁴⁰

The Council has therefore developed the category ranges proposed for domestic burglary to reflect current sentencing practice, the views of the public and victims as summarised above, and the intentions of *Saw*. The proposals the Council has developed are broadly in line with the SAP proposals⁴¹ and will continue to result in the majority of offenders sentenced for domestic burglary receiving a custodial sentence. However, there are two areas where the Council differs from the SAP recommendations.

The first difference is that the Council is proposing a higher starting point and wider offence range for category 1 offences (greater harm and higher culpability). The SAP proposed a 2 year starting point and an offence range

of up to 4 years for its highest category. The Council is proposing a starting point of 3 years and an offence range of up to 6 years. The Council is keen to ensure that longer custodial sentences are available within the category 1 range, and believes that this appropriately reflects current sentencing practice. This higher starting point and wider range also better reflect the category definition used in this guideline, which differs from the SAP definition.⁴² It should be noted that exceptionally serious cases can, and rightly do, result in sentences going outside the offence range.

The second difference is that the Council is proposing a higher starting point and wider offence range for category 3 offences (lesser harm and lower culpability). The SAP proposed a medium community order starting point and an offence range of up to 12 weeks’ custody for its lowest category.

The SAP consulted specifically on whether a community order starting point, where no factors indicating greater culpability or harm are present, was appropriate. There was broad agreement with the approach, though some responses expressed grave concerns that any sentence for domestic burglary should be non-custodial. However, the SAP identified that even those responding in this way seemed to be content for a non-custodial sentence to result following consideration of mitigating factors applying either to the offence or to the offender.⁴³ Therefore the SAP concluded that a community order starting point for the lowest level domestic burglaries was appropriate.⁴⁴

Existing sentencing practice also demonstrates the use of community sentences in some circumstances. The current MCSG guideline, which was reviewed in light of *Saw* and an

38 p.51 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing.

39 p. 4 Russell N. and Morgan R. (2001) Sentencing of domestic burglary. 2001 and p49 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing.

40 p49 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing.

41 Recommendation 9, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

42 Note, the SAP definition proposed a level 1 offence as seriously raised culpability and/or harm.

43 p.27 - 28 Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

44 Recommendation 8, Sentencing Advisory Panel (2010) Advice to the Sentencing Guidelines Council: Sentencing for Domestic Burglary.

update note issued, provides for a community order starting point in cases of unforced entry and low value theft with no aggravating features.

The Council agrees with *Saw* that ‘there will be low level burglaries, with minimal loss and damage, without raised culpability or impact which may be dealt with by some form of punishment in the community rather than an immediate custodial penalty’.⁴⁵ So whilst emphasising through this guideline that the majority of domestic burglaries should receive a custodial sentence the Council also proposes that where there has been no/minimal loss or damage, low harm in any wider sense and low culpability that the appropriate starting point should be a non-custodial sentence.

The Council is proposing that a high level community order, is an appropriate starting point. It also proposes that the sentencing range should be up to 26 weeks. This is particularly because the Council wants to ensure that a combination of aggravating factors at step two, in particular previous convictions, could result in a custodial sentence for the offender and that there is scope for the sentencer to make this sentence of sufficient length where there may be several step two factors. As is set out in Section Two of this document, previous convictions can be particularly relevant to burglary and are likely to result in an upward adjustment from the starting point and potentially movement into a higher category.

Given the strong views expressed in response to the SAP consultation in relation to starting points and sentencing ranges for domestic burglary the Council is particularly keen to hear through this consultation views about the starting points and ranges that are proposed here.

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

Q9

Do you agree with the proposed offence range, category ranges and starting points for domestic burglary?

⁴⁵ [2009] EWCA Crim 1 at [30].

Non-domestic burglary

The offence range, category ranges and starting points for non-domestic burglary have been proposed to directly reflect current sentencing practice and to be proportionate to the ranges proposed for aggravated and domestic burglary.

The Council is therefore proposing category ranges and starting points that are broadly in line with the existing guideline⁴⁶ however the top of the range for category 1 (greater harm and higher culpability), at 4 years, is lower than the existing range which is up to 7 years. It should be emphasised, as set out in the accompanying resource assessment, that this change should not result in any change to sentencing practice. 99.6% of sentences for over 18s in 2009 for non-domestic burglary were for four years or less and even when assumptions are made for the impact of the guilty plea discount on the sentence it is estimated that 98.6% of provisional sentences (after step two of the decision making process) would have been for sentences of four years or less. Therefore, the range being proposed both reflects what is currently happening and aligns the offence range in non-domestic burglary with the other burglary offences. It should also be noted that exceptional cases can, and rightly do, result in sentences going outside the offence range.

Offence Category	Starting Point	Category Range
Applicable to all offenders		
Category 1	2 years' custody	1–4 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

Q10

Do you agree with the proposed offence range, category ranges and starting points for non-domestic burglary?

Q11

Are there any further comments you wish to make?

Further data on current sentencing practice is in the accompanying analysis and research bulletin.

⁴⁶ Sentencing Guidelines Council (2008) Theft and burglary in a building other than a dwelling: Definitive Guideline.

Annex A: Summary of consultation questions

Q1

Do you agree that there should be three offence categories?

Q2

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

Q3

Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

Q4

Are there any further ways in which you think victims can and/or should be considered?

Q5

Do you agree with the proposed approach to previous convictions?

Q6

What further guidance might be usefully included in relation to the sentencing of dependent offenders?

Q7

Are there any equality or diversity matters that the Council should specifically consider (please provide evidence where possible)?

Q8

Do you agree with the proposed offence range, category ranges and starting points for aggravated burglary?

Q9

Do you agree with the proposed offence range, category ranges and starting points for domestic burglary?

Q10

Do you agree with the proposed offence range, category ranges and starting points for non-domestic burglary?

Q11

Are there any further comments you wish to make?

Annex B:

Background to guideline

Sentencing guidelines

The Sentencing Council was set up on 6 April 2010 as the new, independent body responsible for developing sentencing guidelines and promoting greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The Sentencing Council also has a key role to play in promoting public awareness and confidence in sentencing.

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and the Sentencing Advisory Panel (SAP), which were disbanded. The Sentencing Council is a more streamlined body with a broader remit for work on sentencing through improvements to guidelines, the development of a robust evidence base, and better engagement with the public to improve understanding of sentencing. The Council brings together wide experience in sentencing and in the Criminal Justice System and comprises eight judicial and six non-judicial members.

On 16 March 2011, the Sentencing Council issued its first definitive guideline on assault, which incorporated a new structure aimed to be straightforward for sentencers to apply and clearer for victims and the public to understand.

Statutory requirements

Purposes of sentencing

In producing this draft guideline, the Council has had regard to the purposes of sentencing as stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and,
- the making of reparation by offenders to persons affected by their offences.

Sentencing Guidelines

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;

- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;⁴⁷
- the Council must publish a resource assessment in respect of the guidelines;⁴⁸ and,
- the Council must monitor the operation and effect of its sentencing guidelines.⁴⁹

Under the previous bodies (the SGC and SAP), courts had to ‘have regard to any guidelines which are relevant to the offender’s case’⁵⁰ and give reasons if a sentence fell outside of the range.⁵¹ Section 125(a) of the Coroners and Justice Act states that ‘every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case’. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so, and the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:⁵²

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and,
- the resources required for the provision of youth justice services.⁵³

The Council has had regard to these duties throughout the preparation of this draft guideline and their considerations are reflected in this consultation document as well as the resource assessment which accompanies this consultation paper.

Structure of the guidelines

The Coroners and Justice Act 2009 proposes a structure for guidelines and the Council is to have regard to the desirability of following this structure.⁵⁴ As in the definitive guideline for assault, the Council has taken this proposed structure into consideration and has adopted parts of this model for the new draft guideline. The Council has taken into consideration in the draft guideline:

- the offender’s culpability in committing the offence;
- the harm caused, or intended to be caused, or which might foreseeably have been caused; and,
- other factors the Council considers to be particularly relevant to the seriousness of the offence.

47 s. 120 Coroners and Justice Act 2009

48 s. 127(2) *ibid*

49 s. 128(1) *ibid*

50 s. 172(1) Criminal Justice Act 2003

51 s. 174(2) *ibid*

52 s. 120(11) Coroners and Justice Act 2009

53 s. 127(3) Coroners and Justice Act 2009

54 s. 121 *ibid*

In order to assist the courts in discharging their duties contained in section 125 (3)–(4) of the Coroners and Justice Act 2009, the draft guideline proposed by the Council:

- specifies the range of sentences for each offence ('the offence range');
- specifies for each category the range of sentences ('the category range') within the offence range;
- specifies the sentencing starting point in the offence range of each of those categories; and,
- lists any aggravating and mitigating factors to take into account when considering the seriousness of the offence.

In order to avoid confusion, the Council has adopted the definitions from the Coroners and Justice Act 2009.

Sentencing youths

This guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council's definitive guideline *Overarching Principles – Sentencing Youths*, providing comprehensive guidance on how to sentence offenders under the age of 18. The age and/or lack of maturity are considered in the draft burglary guideline where they affect the responsibility of the offender.

Annex C:

Draft guideline

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)-(4) Coroners and Justice Act 2009, the guideline specifies offence ranges – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in the Sentencing Council’s *Assault Definitive Guideline*, this guideline adopts an offence based starting point. **Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases irrespective of plea or previous convictions.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 39.

Aggravated burglary

Theft Act 1968 (section 10)

AGGRAVATED

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Maximum: Life imprisonment

Offence range: 1–13 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. 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.

Factors indicating greater harm

Theft of/damage to property causing a significant degree of loss (economic, commercial, sentimental, or personal value) to the victim

Soiling, ransacking or vandalism of property

Victim at home or on the premises (or returns) while offender present

Significant physical or psychological injury or other significant trauma to the victim

Violence used or threatened against victim, particularly involving a weapon

Factors indicating lesser harm

No physical or psychological injury or other significant trauma to the victim

No violence used or threatened and a weapon is not produced

Factors indicating higher culpability

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Victim or premises deliberately targeted

A significant degree of planning or organisation

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Weapon present on entry

Member of a group or gang

Factors indicating lower culpability

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

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

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

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 include:

Child at home (or returns home) when offence committed

Offence committed at night

Abuse of power and/or position of trust

Gratuitous degradation of victim

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

In domestic violence cases, victim forced to leave their home

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

Subordinate role in a group or gang

Injuries caused recklessly

Nothing stolen or only property of very low value (economic, commercial, sentimental or personal) to the victim

Offender has made voluntary reparation to the victim

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

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

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

*** Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 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 THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20%.

STEP FIVE**Dangerousness**

An aggravated burglary is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Domestic burglary

Theft Act 1968 (section 9)

This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 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.

Maximum: 14 years' custody

Offence range: Community order – 6 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1 Greater harm **and** higher culpability

Category 2 Greater harm **and** lower culpability **or** lesser harm **and** higher culpability

Category 3 Lesser harm **and** lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. 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.

Factors indicating greater harm

Theft of/damage to property causing a significant degree of loss (economic, sentimental or personal value) to the victim

Soiling, ransacking or vandalism of property

Occupier at home (or returns home) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

Factors indicating lesser harm

Nothing stolen or only property of very low value (economic, sentimental or personal) to the victim

Limited damage or disturbance to property

Factors indicating higher culpability

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Victim deliberately targeted

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Member of a group or gang

Factors indicating lower culpability

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

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

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

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

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

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 include:

Child at home (or returns home) when offence committed

Offence committed at night

Gratuitous degradation of the victim

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

In domestic violence cases, victim forced to leave their home

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

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

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

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

* Where sentencing an offender for a qualifying third domestic burglary, the Court must apply Section 111 of the Powers of the Criminal Courts (Sentencing) Act 2000 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 THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

Where a minimum mandatory sentence is imposed under section 111 Powers of Criminal Courts (Sentencing) Act, the discount for an early guilty plea must not exceed 20%.

STEP FIVE**Dangerousness**

A burglary offence under section 9 Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 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 that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Non-domestic burglary

Theft Act 1968 (section 9)

This is a serious specified offence for the purposes of section 224 Criminal Justice Act 2003 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.

Maximum: 10 years' custody

Offence range: Fine – 4 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. 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.

Factors indicating greater harm

Theft of/damage to property causing a significant degree of loss (economic, commercial, or personal value) to the victim

Soiling, ransacking or vandalism of property

Victim on the premises (or returns) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

Factors indicating lesser harm

Nothing stolen or only property of very low value (economic, commercial or personal) to the victim

Limited damage or disturbance to property

Factors indicating higher culpability

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Premises deliberately targeted (to include pharmacy or doctor's surgery)

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Member of a group or gang

Factors indicating lower culpability

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

Mental disorder or learning disability, where linked to the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	2 years' custody	1–4 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

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

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

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

When sentencing **category 3** offences, the court should also consider the community threshold as follows:

- has the community threshold been passed?

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 include:

Offence committed at night, particularly where staff present or likely to be present

Abuse of a position of trust

Gratuitous degradation of the victim

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

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

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

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

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

A burglary offence under section 9 of the Theft Act 1986 is a serious specified offence within the meaning of chapter 5 of the Criminal Justice Act 2003 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 that chapter it would be appropriate to award imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

STEP EIGHT**Reasons**

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

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

Fine Band	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80–150 hours) • An activity requirement in the middle range (20–30 days) • Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months) • Exclusion requirement, lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours unpaid work • Activity requirement up to the maximum of 60 days • Curfew requirement up to 12 hours per day for 4–6 months • Exclusion order lasting in the region of 12 months

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

