

Arson and Criminal Damage Offences Guidelines Consultation

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Published on 27 March 2018

The consultation will end on 26 June 2018

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 consultation is open to everyone including members of the public, judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:

From 27 March 2018 to 26 June 2018

Enquiries (including requests for the paper in an alternative format) to:

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Additional ways to feed in your views:

This consultation exercise is accompanied by a resource 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

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish.

If you wish to submit a confidential response, you should contact us before sending the response.

PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.

In addition, responses may be shared with the Justice Committee of the House of Commons.

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Contents

Introduction	5
Section one: Overarching issues and the context of the guidelines	7
Section two: Arson (criminal damage by fire)	9
Section three: Criminal damage/arson with intent to endanger life or reckless as to whether life endangered	17
Section four: Criminal damage (other than by fire) value over £5,000 and racially or religiously aggravated criminal damage	23
Section five: Criminal damage (other than by fire) value under £5,000	29
Section six: Threats to destroy or damage property	33
Annex A: List of consultation questions	41
Annex B: Background to guidelines	44
Annex C: Draft guidelines	51
Annex D: Fine bands and community orders	82

Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit¹ extends to allow consultation on the sentencing of offenders following conviction.

Why arson and criminal damage offences?

Currently the Magistrates' Court Sentencing Guidelines (MCSG) contains limited guidance for the sentencing of arson, criminal damage and racially or religiously aggravated criminal damage offences. These guidelines were not included as part of the recent work to update the MCSG, as that project focused on summary only offences. As these are serious, either way offences, the Council felt it was appropriate instead to update them as part of a guideline with other related offences. There are currently no sentencing guidelines for criminal damage/arson with intent to endanger life or reckless as to whether life endangered, or the threats to destroy or damage property offences, so new guidance for these offences form part of this guideline.

The Council decided not to include guidance for the offence of possessing an article with intent to destroy or damage property, as the volumes of this offence are very low, (in 2016 25 offenders were sentenced for this offence), so the Council decided to focus on guidance for the higher volume offences.

We welcome all responses to the consultation, including those limited to particular sections. So if, for example, your interest is only in the arson guideline, you may wish to focus on pages 9 to 16, and can answer questions 1 to 5 or any one of those questions.

Which offences are covered by the consultation?

The consultation covers:

- Arson
- Criminal damage/arson with intent to endanger life or reckless as to whether life endangered
- Criminal Damage with a value exceeding £5,000, including racially or religiously aggravated criminal damage
- Criminal damage with a value not exceeding £5,000
- Threats to destroy or damage property

¹ ss.118-136 Coroners and Justice Act 2009

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of as many people as possible with an interest in the sentencing of the offences included within this consultation.

However, it is important to clarify that the Council is consulting on sentencing these offences and **not on the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.**

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guideline more or less serious;
- the additional factors that should influence the sentence;
- the approach taken to structuring the draft guidelines;
- the sentences that should be passed for these offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A. Scenarios illustrating how some of the guidelines are to be used and the resulting sentence can be found on pages 39 and 40.

What else is happening as part of the consultation process?

This is a 13 week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from groups with an interest in this area as well as with sentencers. The draft guidelines will also be tested with sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment and a statistical bulletin detailing current sentencing practice. The online questionnaire and these documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk: **www.sentencingcouncil.org.uk**

Section one: Overarching issues and the context of the guidelines

Background to offences

Offences of damage to property can vary in seriousness, from destruction by fire which causes damage of great value and danger to life, to minor incidents of damage to items of little financial value. However, even damage to items that have little financial value can cause great distress to victims, as the items may be of great sentimental value, and may be irreplaceable. Additionally, property may have a wider public value.

The Council's aims

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council's aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

Approach to victims

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principal factor of the offence. In the development of this guideline, the Council gave very careful thought as to how to reflect the impact these offences can have on victims, their families, and the wider community.

Sentence ranges

To develop the sentence ranges, the Council considered the available statistical data from the Ministry of Justice's Court Proceedings database (CPD) for the existing offences included in this guideline. As many of the offences are dealt with in the magistrates' court, data from the Council's Crown Court Sentencing Survey (CCSS) may not have covered the full range of sentences available for these offences, and therefore this data was not used to inform sentencing ranges. The Council also considered relevant case law, and utilised the expertise of Council members to develop the sentence ranges.

Data analysis and research

To support the development of the guideline, content analysis was conducted of judges' sentencing remarks of 110 offenders sentenced in the Crown Court for all the offences included within this draft guideline. This provided indicative but valuable information on some of the key factors influencing sentencing decisions for these cases.

In addition, at an early stage, a small-scale survey of magistrates was conducted, to which 25 responded. This provided views on the current guidance where it existed for these offences, and suggestions as to what the Council may want to take into consideration when developing guidance for the remaining offences. Some of the comments from the survey were that revised guidelines should place a greater emphasis on the impact of the offences on victims, as the current guidance relied too crudely on the value of the damage caused. It was suggested that the new guidance should focus more on the intention and motivation of offenders in what can be quite complex offences.

The Council also discussed its proposals with interested organisations, to help inform the development of the guidelines.

Section two: Arson (criminal damage by fire)

(Draft guideline at page 51)

This guideline is for arson offences under section 1 of the Criminal Damage Act 1971. This draft guideline provides much fuller guidance than currently exists in the MCSG, which merely signposts the more serious offences to the Crown Court.

For this guideline, and for all the guidelines included within this document, there is a reference on the front of the guideline, to the *Domestic Abuse: Overarching Principles*² guideline. This instructs sentencers that when the offence has been committed in a domestic context, they should also refer to the domestic abuse guidance.

STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors. There are three levels of culpability: however, the offender may exhibit characteristics from different levels of culpability, in such cases the court is directed to balance the characteristics to reach a fair assessment of the offender's culpability. The factors at step one are exhaustive.

Culpability factors

Category A – High culpability

Only the most serious cases within these offences are intended to be captured within culpability A, as shown in the table below. *'High degree of planning or premeditation'* reflects offenders who have committed offences with a high degree of planning or premeditation, such as specially purchasing items like gas bottles or fireworks (as opposed to using items more readily to hand such as matches) and planning how to create maximum impact from the act, such as setting fires at the exit or entrance to a building. *'Revenge attack'* has been included as this is frequently mentioned in sentencing remarks as making the offence more serious if the act is committed in revenge for a previous altercation or incident with the victim. Similarly, sentencing remarks often refer to the use of accelerants (petrol, lighter fuel, etc) as making the offence more serious, due to the volatility and intensity of the blaze that can occur if accelerants are used, so *'use of accelerant'* has also been included. *'Intention to cause very serious damage to property'* and *'recklessness or intention to create a high risk of injury to persons'* are included to appropriately reflect the intention and motivation behind the offending.

2 <https://www.sentencingcouncil.org.uk/publications/item/overarching-principles-domestic-abuse-definitive-guideline/>

Category B – Medium culpability

In this category is *'Intention to cause significant damage to property'* and *'recklessness or intention to create a significant risk of injury to persons'*, both of which are 'lesser' versions of the latter two factors in high culpability. The Council gave careful thought to what factors should be within this category, but it is possible that not every case will be captured by the factors specified, so for this reason the wording *'all other cases that fall between categories A and C'* has been included. This wording has been used in a number of other guidelines.

Category C – Lesser culpability

The factors in this category will apply to offenders who have the lowest level of culpability for these offences. *'Little or no planning; offence committed on impulse'* is designed to reflect offenders who commit offences on the spur of the moment. *'Involved through coercion, intimidation or exploitation'* has been included as a number of cases studied referred to offenders who had been coerced or intimidated into committing the offence by others.

The factor of *'Offender's responsibility substantially reduced by mental disorder or learning disability'* has been included to ensure that sentencers focus particularly closely on the extent to which an offender's mental disorder or learning disability reduces their culpability, so that only offenders whose responsibility for the offences may be greatly reduced because of mental disorder or learning disability are captured within lesser culpability. This factor is also caveated with the words *'reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.'* Accordingly, it may be appropriate for those offenders whose mental disorder or learning disability reduces their culpability to a lesser extent than others, or where a factor from high culpability also applies, are placed within category B, medium culpability.

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Use of accelerant • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender’s responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Q1

Do you agree with the proposed factors within culpability? If not, please tell us why.

Harm Factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. A great deal of consideration was given by the Council to the assessment of harm, in recognition that the impact on victims will differ between victims, but that even a ‘minor’ arson offence can cause very real harm, particularly psychological, to a victim. Three levels of harm are proposed, as set out below.

Category one reflects the most serious types of harm caused by these offences, whether this is because of serious physical or psychological harm caused to the victim, or because of a high level of damage caused. There can also be consequential economic harm caused to neighbouring houses or businesses, or there can be a social impact on communities - if a school is unable to open after a fire, for example.

Category three reflects cases where either there was minimal physical or psychological harm caused, and/or a low value of damage caused. Category two has been designed to capture harm that falls between categories one and three. The Council considered articulating these types of cases, by

the use of the words ‘some’ or ‘considerable’ harm caused, but felt that it was not appropriate to prescribe exactly what level of harm would cause a case to fall into category two, but instead would allow courts to decide based on the facts before them.

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Serious consequential economic or social impact of offence • High value of damage caused
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal physical and/or psychological harm caused • Low value of damage caused

Q2

Do you agree with the proposed harm factors for this offence? If not, please tell us why.

STEP TWO

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

Sentence levels

The sentence ranges, as shown below, have been formulated using statistical data from the Ministry of Justice’s CPD, studies of case transcripts from the Crown Court, case law, and Council members’ own experience. Above the table is wording which states ‘*In exceptional cases within category 1A, sentences of above 8 years may be appropriate.*’ The Council decided to include this wording, given that the maximum sentence for this offence is life imprisonment, so that courts could go above the top of the range in 1A for exceptional cases.

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.

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 2 – 8 years' custody	Category range 9 months – 3 years' custody	Category range 6 months – 1 year 6 months' custody
Category 2	Starting point 2 years' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 – 4 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 6 months – 2 years' custody	Category range Medium level community order – 9 months' custody	Category range Discharge – High level community order

Q3

Do you agree with the proposed sentence table? If not, please tell us why.

Immediately below the sentence table in the draft guideline is text regarding psychiatric reports, as shown below. This text signposts to further detailed information within the criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline, discussed in section three. In developing this guideline the Council was mindful of the proportion of offenders within arson offences who have mental health conditions which relate to, or underpin, the offending behaviour. Although sentencers routinely consider whether an offender's mental health is a relevant factor in sentencing, the Council felt that it was particularly important to note this consideration within this guideline. Increased recognition and appropriate treatment of mental health conditions will potentially help to rehabilitate offenders, protect the public and reduce further crime.

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

Q4

Do you agree with the inclusion of this text within the guideline?

The court should then consider adjustment for any aggravating or mitigating factors. These factors are included to give the court the opportunity to consider the wider context of the offence and any relevant circumstances relating to the offender. It is at the court's discretion whether to remain at the starting point or to move up or down from it. The presence of any of the factors included within the list does not mean it must be taken into account if the sentencer does not consider it to be significant in the particular case. The court will need to attribute appropriate weight to the factors. These lists are non-exhaustive but are intended to contain the most common factors which provide context to the commission of the particular offence.

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:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Fire set in or near a public amenity

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

'Previous convictions', 'offence committed whilst on bail' and 'offence motivated, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity' are factors which the court is required by law to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are self explanatory. They are not subject to consultation.

- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

'Commission of offence whilst under the influence of alcohol or drugs' is included as this is a relatively common feature within this type of offending, and can make the offending more serious. *'Victim is particularly vulnerable'* recognises the greater impact this type of offending has on a victim who may be more vulnerable than others, perhaps someone who lives in specially adapted accommodation, which is then rendered uninhabitable after the offence. *'Fire set in or near a public amenity'* is included to recognise the impact on a community if for example, a clinic or railway station is damaged in a fire, and cannot be used for a period of time. *'Damage caused to heritage assets'* reflects the particular impact of arson on historic buildings or structures, which may be one of a kind and irreplaceable if damaged through fire. *'Significant impact on emergency services or resources'* is included to reflect the additional seriousness of offences when a number of fire engines or ambulances are tied up dealing with a fire, meaning that less resources are then available to deal with any other incidents in the area.

Factors reducing seriousness or reflecting personal mitigationNo 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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

There are no statutory mitigating factors. Most of the factors included above within the draft guideline are commonplace within definitive guidelines. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

Q5

Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Information on the rest of the steps in the guideline can be found on pages 47 to 49.

Section three: Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

(Draft guideline at page 57)

Section 1(2) of the Criminal Damage Act 1971 makes it an offence to destroy or damage property intending thereby to endanger the life of another, or being reckless as to whether the life of another would thereby be endangered. If the damage is committed by fire, the offence is charged as arson with intent or being reckless as to whether the life of another would thereby be endangered. Although one offence, those cases involving intent are treated more seriously by the courts than reckless cases and are sentenced differently, with intent offences generally attracting longer sentences.

STEP ONE

Culpability factors

Given the differences in the way that intent and reckless offences are sentenced by the courts, the draft guideline fixes the assessment of culpability by having two set levels of culpability; all intent offences are fixed at culpability A, all reckless offences are fixed at culpability B, as shown below. There is therefore no balancing of factors to decide culpability for this offence. All the other features that might make the offence more serious, such as use of an accelerant, are aggravating factors at step two.

STEP ONE

Determining the offence category

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

Within this offence, culpability is fixed, culpability A is for intent, culpability B is for recklessness.

Culpability A:

- Offender intended to endanger life

Culpability B:

- Offender was reckless as to whether life was endangered

Q6

Do you agree with the proposed approach to culpability for this offence?

Harm factors

There are three levels of harm for this offence, as shown below. Category one reflects the most serious types of harm caused by these offences, whether this is because of very serious physical or psychological harm caused to the victim, or because of very high value of damage caused. There can also be consequential economic harm caused to neighbouring houses or businesses, or there can be a social impact on communities - if a school is unable to open after a fire, for example. There is also a factor that captures the *high* risk of very serious harm posed by an offence, if for example an offender lights a fire near the door leading out onto the main stairwell in a block of flats, at night when all the occupants are asleep, disabling all the fire alarms, this creates a high risk of serious physical or psychological harm being caused.

Given that there can be quite a variation in the harm for these offences, and for this offence culpability is fixed, the Council considered that it would be helpful to articulate the types of harm that would be captured within category two. This category contains factors to reflect significant types of harm that could be caused by these offences, significant physical or psychological harm caused, significant value of damage caused or a *significant* risk of serious physical and/or psychological harm posed by an offence.

Category three reflects cases where either there was minimal physical or psychological harm caused, or a low value of damage caused, or a *low* risk of serious physical and/or psychological harm posed by an offence, for example, an offender who sets fire to their curtains with a match in their room in a hostel during the day, when there are lots of people about, and then immediately sets off the fire alarm, creates a low risk of causing serious harm.

Harm

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

Category 1	<ul style="list-style-type: none"> • Very serious physical and/or psychological harm caused • High risk of very serious physical and/or psychological harm • Serious consequential economic or social impact of offence caused • Very high value of damage caused
Category 2	<ul style="list-style-type: none"> • Significant physical and/or psychological harm caused • Significant risk of serious physical and/or psychological harm • Significant value of damage caused • All other harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal physical and/or psychological harm caused • Low risk of serious physical and/or psychological harm • Low value of damage caused

Q7

Do you agree with the proposed harm factors for this offence? If not, please tell us why.

STEP TWO

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

Sentence levels

Within the sentence table, boxes A1, 2, 3 are for intent cases, and boxes B1, 2, 3 for reckless cases, to reflect the differences in sentencing between intent and reckless discussed above. The sentence ranges, as shown below, have been formulated using statistical data from the Ministry of Justice's CPD, studies of case transcripts from the Crown Court, relevant case law such as *Myrie*,³ and Council members' own experience. The table reflects the differences in sentencing between intent and reckless, as discussed earlier in this section. Above the table is wording which states '*In exceptional cases within category 1A, sentences of above 12 years may be appropriate.*' The Council decided to include this wording, given that the maximum sentence for this offence is life imprisonment, so that courts could go above the top of the range in 1A for exceptional cases.

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.

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 – 12 years' custody	Category range 4 – 10 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 6 months – 3 years' custody	Category range High level community order – 2 years 6 months' custody

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 40.

3 Attorney General's reference no 68 of 2008 (*Myrie*) [2008] EWCA Crim 3188

Q8

Do you agree with the proposed sentence table? If not, please tell us why.

Immediately below the sentence table in the draft guideline is text regarding psychiatric reports, as shown below. In developing this guideline the Council was mindful of the high proportion of offenders within these offences, as with arson offences, who have mental health conditions which relate to, or underpin, the offending behaviour, and for this reason, further detailed guidance on mental health disposals is contained at step three of this guideline, which can be seen on page 61.

In appropriate cases, the court should order a psychiatric report in order to ascertain whether the offence is linked to an underlying mental disorder and, if it is, whether any mental health disposal should be considered.

Q9

Do you agree with the inclusion of this text within the guideline, and the detailed information on mental health disposals at step three?

Aggravating and mitigating factors

As discussed in the section on culpability above, as the assessment of culpability is fixed for this offence, some additional factors which are common to this type of offending, and make the offending more serious, are included within this guideline as aggravating factors, such as *'revenge attack'*, *'significant degree of planning or premeditation'*, *'use of accelerant'*, and *'multiple people endangered'*. The rest of the factors, as shown below, are the same as those discussed for the arson offence at section two of this document, on page 15.

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:

Commission of offence whilst under the influence of alcohol or drugs

Revenge attack

Significant degree of planning or premeditation

Use of accelerant

Fire set in or near a public amenity

Victim is particularly vulnerable

Damage caused to heritage assets

Multiple people endangered

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

There are also two common factors which may reduce the seriousness of the offending added as additional mitigating factors for this offence of *'involved through coercion, intimidation or exploitation'* and *'offender's responsibility substantially reduced by mental disorder or learning disability'* (for a discussion on this later factor please see page 10 in section two). The rest of the mitigating factors are standard mitigating factors used commonly throughout guidelines.

Factors reducing seriousness or reflecting personal mitigationNo previous convictions **or** no relevant/recent convictions

Involved through coercion, intimidation or exploitation

Remorse

Good character and/or exemplary conduct

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

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

Offender's responsibility substantially reduced* by mental disorder or learning disability

Sole or primary carer for dependent relatives

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

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Q10

Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Information on the rest of the steps in the guideline can be found on pages 47 to 49.

Section four: Criminal Damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage

(Draft guideline at page 65)

Offences of criminal damage where the value is £5,000 or less are summary only, with a maximum of a level 4 fine and/or 3 months custody. If the value involved exceeds £5,000 they are triable either way, with a maximum when tried on indictment of 10 years. Very limited guidance is currently given for these offences within the MCSG. The Council carefully considered the best way to provide guidance for these offences, whether to have one guideline with two separate sentencing tables, or two separate guidelines, and decided on balance that the most appropriate structure would be to have two separate guidelines, one for offences which exceed £5,000, and one for offences below that, discussed at section five.

Racially and religiously aggravated criminal damage is one offence, triable either way, irrespective of value; if tried summarily, the maximum is a level 5 fine and/or 6 months. If tried on indictment, the maximum is 14 years.

STEP ONE

The factors at step one are exhaustive. There are three levels of culpability and harm for this offence, as set out below.

Culpability factors

Category A – High culpability

The factors are quite similar to those proposed for the arson guideline, discussed at section two (given that arson differs from criminal damage only in that the destruction or damage to property must be by fire). Accordingly, *'high degree of planning or premeditation'*, *'revenge attack'*, *'intention to cause very serious damage to property'* and *'recklessness or intention to create a high risk of injury to persons'* are included to reflect appropriately the intention and motivation behind the offending at the most serious level for this offence.

Category B – Medium culpability

In this category is *'intention to cause significant damage to property'* and *'recklessness or intention to create a significant risk of injury to persons'*, both of which are 'lesser' versions of the latter two factors in high culpability. The Council gave careful thought to what factors should be within this category, but it is possible that not every case will be captured by the factors specified, so for this reason the wording *'all other cases that fall between categories A and C'* has been included. This wording has been used in a number of other guidelines.

Category C – Lesser culpability

The factors in this category will apply to offenders who have the lowest level of culpability for these offences. *‘Little or no planning; offence committed on impulse’* is designed to reflect offenders who commit offences on the spur of the moment. *‘Involved through coercion, intimidation or exploitation’* has been included as some cases studied referred to offenders who had been coerced or intimidated into committing the offence by others.

The factor of *‘Offender’s responsibility substantially reduced by mental disorder or learning disability’* has been included to ensure that sentencers focus particularly closely on the extent to which an offender’s mental disorder or learning disability reduces their culpability, so that only offenders whose responsibility for the offences may be greatly reduced because of mental disorder or learning disability are captured within lesser culpability. This factor is also caveated with the words *‘reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice’*. Accordingly, it may be appropriate for those offenders whose mental disorder or learning disability reduces their culpability to a lesser extent, or where a factor from high culpability also applies, are placed within category B, medium culpability.

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender’s responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Q11

Do you agree with the proposed culpability factors? If not, please tell us why.

Harm factors

Category one reflects the most serious types of harm caused by these offences, whether this is because of serious distress caused to the victim, or because of a consequential economic harm or social impact of the offence. This could be if a shop is damaged so that it is unable to open for business and has a loss in takings, or a community centre is damaged and cannot open, which may have a detrimental impact on the local community. There is also a factor regarding a high value of damage caused, or that the damaged items were of great sentimental value, perhaps, of no financial value but of great personal value to the victim.

Category three reflects cases where either there was no or minimal distress caused, or a low value of damage caused. Category two has been designed to capture harm that falls between categories one and three. The Council considered articulating these types of cases, by the use of the words ‘some’ or ‘considerable’ distress caused, but felt that it was not appropriate to prescribe exactly what level of harm would cause a case to fall into category two, but instead would allow courts to decide based on the facts before them.

Harm

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

Category 1

- Serious distress caused
- Serious consequential economic or social impact of offence
- High value of damage or damaged items of great sentimental value

Category 2

- Harm that falls between categories 1 and 3

Category 3

- No or minimal distress caused
- Low value damage

Q12

Do you agree with the proposed harm factors for this offence? If not, please tell us why.

STEP TWO

Once the court has assessed culpability and harm at step one, the next step is to identify the starting point to reach a sentence within the given category range.

Sentence levels

The sentence ranges, as shown below, have been formulated using statistical data from the Ministry of Justice's CPD, studies of case transcripts from the Crown Court, case law, and Council members' own experience. The Council decided not to include any wording above the sentence table, regarding going outside the category ranges, as with other guidelines discussed in this consultation. The Council is mindful that the top of the range at four years is some way below the statutory maximum, but this reflects current sentencing practice for these offences, and the Council is concerned not to cause any unnecessary sentence inflation for these offences. The Council is not aware of any reason to change the current sentencing levels for these offences. In any case, courts can always rely on the provision that courts can go outside the range in the interest of justice in exceptional cases.

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 1 year 6 months' custody	Starting point 6 months' custody	Starting point High level community order
	Category range 6 months – 4 years' custody	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 6 months' custody	Starting point High level community order	Starting point Low level community order
	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order

Q13

Do you agree with the proposed sentence table? If not, please tell us why.

The aggravating and mitigating factors for this offence are identical to those proposed for the arson offence, (with the exception of ‘*fire set in or near a public amenity*’ which is omitted). For further information on these factors, please see the discussion on pages 15 to 17.

Racially or religiously aggravated criminal damage offences

Racially and religiously aggravated criminal damage is one offence, triable either way, irrespective of value. If tried summarily, the maximum is a level 5 fine and/or 6 months. If tried on indictment, the maximum is 14 years. It is understood that the court will generally know the value (whether it is over or under £5,000) in racially or religiously aggravated cases. It is therefore proposed that the court would use the appropriate guideline, for cases either over £5,000, or under £5,000 to sentence the basic offence, and then increase the sentence for the level of aggravation involved, as set out below.

The approach for these offences is based on Court of Appeal guidance set out in *R v Saunders*⁴ and *R v Kelly and Donnelly*,⁵ which essentially sets out that the court should sentence the basic offence first, then make an uplift to the sentence to reflect the level of aggravation involved. Accordingly, this guidance appears within the guideline after the steps that will have enabled the court to have reached an initial sentence for the basic offence.

The guidance provides a short list of non-exhaustive factors, as shown below, specific to the aggravated offence, to decide whether the level of aggravation is high, medium or low. This short list of specific hostility factors is to avoid the possibility of double counting, as more generic factors, such as the level of planning, may have already been considered at step one. The court is then given guidance on how to increase the sentence for each of these levels.

The Council decided that this was the most appropriate way to provide guidance for these offences, volumes of which are low (132 in 2016). It is not possible to provide more specific guidance for these offences, such as a specific sentencing table, or percentage ranges for the uplift, due to the limited amount of data available for these offences. The vast majority of cases, 119 out of 132, were sentenced in the magistrates’ court, so there is not enough available evidence with which to develop a sentence table, what factors would make an offence more serious, and so on, or what the sentence ranges should be. From the sample of case transcripts from the Crown Court studied, the aggravated offence often seems to be one of a number of other offences, such as assault, robbery and so on, making it difficult to separate out the aggravated offence, from other factors which have influenced the sentence.

Q14

Do you agree with the proposed approach to the sentencing of racially or religiously aggravated criminal damage offences? If not, please tell us why and suggest any alternative approaches which you think should be considered.

⁴ *R v Saunders* [2000] 2CrApp R(S)

⁵ *R v Kelly and Donnelly* [2001] EWCA Crim 170

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 14 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months).

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

Information on the rest of the steps in the guideline can be found on pages 47 to 49.

Section five: Criminal damage (other than by fire) value under £5,000

(Draft guideline at page 71)

This guideline is very similar to the guideline for offences that exceed £5,000 discussed at section four, so a number of the culpability and harm factors are the same. Offences of criminal damage where the value is £5,000 or less are summary only, with a maximum of a level 4 fine and/or 3 months' custody. Given the limit of sentencing powers for offences under £5,000, a slightly different structure is proposed, (three culpability categories and two harm categories), in order to have a sentence table which contains the available sentencing disposals appropriately distributed.

STEP ONE

There are three levels of culpability and two levels of harm proposed for this offence, as shown below.

Culpability factors

The culpability factors are exactly the same as those proposed for the criminal damage over £5,000 offence; for a full explanation of these factors, please see page 23 within section four.

Q15

Do you agree with the proposed culpability factors? If not, please tell us why.

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm factors

For this offence, the Council decided that there should be just two categories of harm. The factors in category one are exactly the same as those proposed for offences which exceed £5,000, discussed on page 25 at section four. Category two is for all other cases. This structure may potentially lead to less of a full consideration of harm for this offence, but if there were three categories of harm, leading to a nine box sentence table, this would result in sentence ranges with only minimal differences to one another in the adjacent boxes, given the statutory maximum.

Q16

Do you agree with the proposed harm factors for this offence? If not, please tell us why.

Harm The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or items damaged of great sentimental value
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO

Sentence levels

The proposed sentence levels for this offence are set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 3 months' custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order
Category 2	Starting point Low level community order	Starting point Band B fine	Starting point Band A fine
	Category range Band C fine – High level community order	Category range Discharge – Low level community order	Category range Discharge – Band B fine

A scenario illustrating how the guideline is to be used and the resulting sentence ranges is at page 39.

Q17

Do you agree with the proposed sentence table? If not, please tell us why.

The aggravating and mitigating factors for this offence are identical to those proposed for the arson offence, (with the exception of '*fire set in or near a public amenity*' which is omitted). For further information on these factors, please see the discussion on page 15.

Information on the proposed approach to sentencing racially or religiously aggravated criminal damage offences can be found at page 27 onwards in section four.

Information on the rest of the steps in the guideline can be found on pages 47 to 49.

Q18

Do you agree that there should be two separate guidelines, one for offences where the value exceeds £5,000, and one for offences where the value is under £5,000? If you do not agree, please tell us why and suggest any alternative approaches.

Section six: Threats to destroy or damage property

(Draft guideline at page 77)

There is currently no guidance available for this offence, and with 506 cases in 2016, the Council felt that sentencers may find guidance, for what is a serious offence, helpful.

STEP ONE

There are three levels proposed for culpability and harm within this offence, as shown below.

Culpability factors

'Offence motivated by revenge' and *'significant planning or premeditation'* are proposed as some offences are premeditated and planned, making an offender more culpable than someone who makes a threat on impulse, with no prior thought or planning, a factor proposed in lesser culpability. *'Threat to burn or bomb property'* is proposed as this is a more serious threat than a threat to cut up or damage clothing, for example.

Medium culpability states *'all other cases that fall between categories A and C'*, and in lesser culpability there are two factors proposed; *'little or no planning; offence committed on impulse'*, as discussed above, and *'offender's responsibility substantially reduced by mental disorder or learning disability'*. This latter factor is discussed more fully at page 10.

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Significant planning or premeditation • Offence motivated by revenge • Threat to burn or bomb property
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender’s responsibility substantially reduced* by mental disorder or learning disability

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Q19

Do you agree with the proposed culpability factors for this offence? If not, please tell us why.

Harm

There are three levels of harm proposed, as shown below. These factors for a threat offence are necessarily briefer than those within the substantive arson and criminal damage offences considered within this document, as there is no level of physical damage to be considered, for example.

Category one reflects the most serious types of harm caused, such as ‘*serious distress caused to the victim*’, and ‘*serious disruption/inconvenience caused to others*’.

Category three reflects cases where either no or minimal distress or harm has been caused to the victim. Category two has been designed to capture harm that falls between category one and three, this allows courts to decide on the facts before them what level of harm would cause a case to fall into category two, rather than the guideline imposing rigid definitions of levels of harm.

Harm The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress caused to the victim • Serious disruption/inconvenience caused to others
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused to the victim

Q20

Do you agree with the proposed harm factors for this offence? If not, please tell us why.

STEP TWO

The sentence levels for this offence, as shown below, have been developed on the current sentencing data for this 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 6 months' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 year – 5 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 2	Starting point 9 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Discharge – Medium level community order

Q21

Do you agree with the proposed sentence table? If not, please tell us why.

Immediately below the sentence table in the draft guideline is text regarding psychiatric reports, as shown below. The Council felt that it was appropriate to include this guidance within this offence, as cases studied have indicated that a number of offenders who commit these offences have mental health conditions. This text signposts to further detailed information within the criminal damage/ arson with intent to endanger life or reckless as to whether life endangered guideline, discussed in section four.

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

Q22

Do you agree with the inclusion of this text within the guideline?

Aggravating and mitigating factors

The proposed aggravating factors for this guideline, as shown below, are similar to those proposed for the arson offence, discussed on page 15. There are also two additional factors specific to this guideline: *'threats made in the presence of children'* and *'considerable damage threatened'*.

There are no statutory mitigating factors. Most of the factors included within the draft guideline below are commonplace within definitive guidelines. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

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:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Threats made in the presence of children

Considerable damage threatened

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

Q23

Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Information on the rest of the steps in the guideline can be found on pages 47 to 49.

Equality Impact

The Council is interested in whether or not the draft guidelines will have any unintended equality impacts, so would welcome views or any evidence on this issue.

Q24

Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.

Case Studies

Case study A – Racially aggravated criminal damage value under £5,000 – guideline at page 71

J, aged 32, was trying to gain forced entry to his ex-partner's home late on Christmas Eve, after he had been drinking. The victim, who lived next door to the ex-partner, came outside his house and asked him what he was doing, at which point J launched into a racist tirade directed at the victim. J also caused minor damage to the victim's house, damaging one of the door panels. The victim was considerably upset by the incident, as was his 12 year old daughter who witnessed the incident. He pleaded guilty at the first opportunity. J is the sole carer for 4 young children, and has a number of previous convictions (including a recent one for criminal damage).

Applying the guideline

Step one: culpability and harm

The offence was committed with little or no planning, and committed on impulse, and as none of the other culpability factors apply, this would be lesser culpability. Serious distress was caused to the victim, so this would be category one harm.

Step two: starting point and category range

The case would fall into C1, which has a starting point of a Band B fine. The aggravating factors of a relevant and recent previous conviction, and commission of an offence whilst under the influence of alcohol or drugs would all apply, so would increase the sentence. The mitigating factor of being a sole or primary carer would apply, but the reduction for mitigation is out weighed by the aggravating factors, so there would be an increase from the starting point to low level community order.

Consideration of the racially/religiously aggravated aspect

Once the sentence has been determined for the basic criminal damage offence, then consideration should be given to the level of racial aggravation involved, in order to decide the increase to the basic sentence. The factors that apply in this case are that the aggravated nature of the offence caused some distress to the victim's family (his daughter), over and above the distress already considered at step one (which was to the victim), and that the aggravated element formed a significant part of the offence as a whole.

On balance this leads to a medium level of aggravation in this case. The guidance for how to reflect an increase to the basic sentence for a medium level of aggravation instructs courts to consider a significantly more onerous penalty of the same type, or consider a more severe type of sentence. On balance the sentence could be a significantly more onerous penalty of the same type – so a high level community order. The court could consider a more severe type of penalty, such as custody, but as he is a sole carer for four young children this would probably not be appropriate in his case.

Q25

Do you have any observations on using the guideline through case study A?

Case study B – Criminal damage/arson with intent to endanger life or reckless as to whether life endangered – guideline at page 57

M, aged 32, had been in a relationship with his partner for 14 years. After she ended the relationship, M, who had taken the break up very badly, and who still had keys to the terraced house his ex-partner lived in with her family, entered the house late at night when all the occupants, (her parents and two young siblings), were asleep. M set fire to some books and newspapers with a match, in the hallway directly in front of the front door. He then left by the back door to the property, locking that door behind him. The fire quickly took hold, spreading to some curtains in the hallway. The next door neighbour, returning home from a night shift, saw the blaze and dialled 999, and alerted the family, who all escaped via the back door, which had to be broken down. The children suffered from smoke inhalation and were taken to hospital. The children recovered quickly from the smoke inhalation, but both suffered anxiety and nightmares for some months afterwards. M was charged with arson with intent to endanger life. M denied the offence and was convicted after a trial.

Applying the guideline

Step one: culpability and harm

As this was an intent to endanger life case, this is culpability A. As there was a high risk of very serious physical and/or psychological harm, given the fire was by the main exit to the house, and all the occupants were asleep, and there was a potential high risk that the fire could have spread to neighbouring terraced houses, this would be category one harm.

Step two: starting point and category range

This case would fall into category A1, with a starting point of 8 years' custody. The aggravating factors of a revenge attack and multiple people endangered apply, and increase the sentence. There are no mitigating factors. The sentence would be around 9 years' custody.

Q26

Do you have any observations on using the guideline through case study B?

Annex A:

List of consultation questions

Section 2 – Arson (criminal damage by fire)

- Q1 Do you agree with the proposed factors within culpability? If not, please tell us why.
- Q2 Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- Q3 Do you agree with the proposed sentence table? If not, please tell us why.
- Q4 Do you agree with the inclusion of this text within the guideline?
- Q5 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Section 3 – Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

- Q6 Do you agree with the proposed approach to culpability for this offence?
- Q7 Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- Q8 Do you agree with the proposed sentence table? If not, please tell us why.
- Q9 Do you agree with the inclusion of this text within the guideline, and the detailed information on mental health disposals at section three?
- Q10 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.

Section 4 - Criminal damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage

- Q11 Do you agree with the proposed culpability factors? If not, please tell us why.
- Q12 Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- Q13 Do you agree with the proposed sentence table? If not, please tell us why.
- Q14 Do you agree with the proposed approach to sentencing racially and religiously aggravated criminal damage offences? If not, please tell us why and suggest any alternative approaches which you think should be considered.

Section 5 – Criminal damage (other than by fire) value under £5,000

- Q15 Do you agree with the proposed culpability factors? If not, please tell us why.
- Q16 Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- Q17 Do you agree with the proposed sentence table? If not, please tell us why.
- Q18 Do you agree that there should be two separate guidelines, one for offences where the value exceeds £5,000, and one for offences where the value is under £5,000? If you do not agree, please tell us why and suggest any alternative approaches.

Section 6 – Threats to destroy or damage property

- Q19 Do you agree with the proposed culpability factors for this offence? If not, please tell us why.
- Q20 Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- Q21 Do you agree with the proposed sentence table? If not, please tell us why.
- Q22 Do you agree with the inclusion of this text within the guideline?
- Q23 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
- Q24 Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.
- Q25 Do you have any observations on using the guideline through case study A?
- Q26 Do you have any observations on using the guideline through case study B?

Annex B:

Background to guidelines

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are 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.

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;⁶
- the Council must publish a resource assessment in respect of the guidelines;⁷ and,
- the Council must monitor the operation and effect of its sentencing guidelines.⁸

Section 125(a) of the Coroners and Justice Act 2009 states that, *‘every court must, in sentencing an offender, follow any sentencing guidelines which are 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.

6 s.120 Coroners and Justice Act 2009

7 s.127(2) *ibid*

8 s.128(1) *ibid*

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

- 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.⁹

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.¹⁰

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, evidence on current sentencing practice and drawn on members' own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged 18 and older, who are sentenced on or after the guideline comes into force, regardless of the date of the offence.

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

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guidelines which are 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.”

⁹ s.120(11) *ibid*

¹⁰ s.127(3) *ibid*

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 Council's definitive guideline, *Sentencing Children and Young People*.

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the 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 earlier Sentencing Council definitive guidelines, 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. 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. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration in the decision making process, after the appropriate sentence has been identified.

Assessing seriousness

The guideline sets out a step-by-step decision making process for the court to use when sentencing each type of offence. This means that all sentencers are adopting a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence covered by the draft guideline which reaches court will be different. The draft guideline aims to help the court to decide how serious an offence is by reference to a series of factors which in turn determine what the sentence starting point should be.

The first two steps that the sentencer follows are about assessing the seriousness of an individual offence. These two steps are described below.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the principal factors of the offence. These are the factors that the Council considers are the most important in deciding the seriousness of the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced. The list of factors at step one is exhaustive.

The draft guideline directs the court to consider the factors relating to the **culpability** of the offender in committing the offence and the **harm** that has been caused. The culpability factors have been developed to assess the differing levels of culpability which may be present in these offences. In broad terms, for this offence culpability relates to how deliberate and intentional or otherwise, an offender's behaviour may have been.

Some offences may have characteristics which fall into different categories. In these cases culpability is to be assessed by balancing the characteristics and reaching an assessment of the offender's overall culpability.¹¹

STEP TWO

Starting point and category range

Once the court has determined the offence category the next step is to decide upon a provisional sentence using the relevant starting point and category range. The court must then consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive; therefore the court is able to take into account factors that have not been listed where they are deemed to be pertinent to the particular case.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are further steps to follow, which vary slightly between the guidelines, as set out below.

STEP THREE

Step three differs between the guidelines. For the criminal damage/arson with intent to endanger life or reckless as to whether life endangered offence step three provides guidance for the consideration of mental health disposals. For all the other offences, step three is as shown below:

¹¹ However a different structure for culpability has been used for the offences discussed in section three

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

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

All of the guidelines include a step relating to a reduction for guilty pleas, as shown below.

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.

Some of the offences (arson and criminal damage/arson with intent to endanger life or reckless as to whether life endangered) include a step relating to dangerousness, as shown below.

Dangerousness

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

All of the guidelines include a step relating to the totality principle, as shown below.

Totality principle

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

All of the guidelines include a step relating to compensation and ancillary orders, as shown below.

Compensation and ancillary orders

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

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

All of the guidelines include a step relating to giving reasons, as shown below.

Reasons

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

All of the guidelines include a step relating to consideration for time spent on bail, as shown below.

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.

Information on community orders and fine bands is set out at Annex D.

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Annex C: Draft guidelines

Arson (criminal damage by fire) Criminal Damage Act 1971, section 1

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

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months' custody

Maximum when tried on indictment: Life imprisonment

Offence range: Discharge – 8 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Use of accelerant • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

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

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused • Serious consequential economic or social impact of offence • High level of damage caused
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal physical and/or psychological harm caused • Low value of damage caused

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.

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 2 – 8 years' custody	Category range 9 months – 3 years' custody	Category range 6 months – 1 year 6 months' custody
Category 2	Starting point 2 years' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 – 4 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 6 months – 2 years' custody	Category range Medium level community order – 9 months' custody	Category range Discharge – High level community order

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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 starting point.

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:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Fire set in or near a public amenity

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

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

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP EIGHT**Reasons**

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

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

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

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Criminal damage/arson with intent to endanger life or reckless as to whether life endangered

Criminal Damage Act 1971, section 1(2)

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

Triable only on indictment

Maximum: Life imprisonment

Offence range: High level community order – 12 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

Within this offence, culpability is fixed, culpability A is for intent, culpability B is for recklessness.

Culpability A	<ul style="list-style-type: none"> Offender intended to endanger life
Culpability B	<ul style="list-style-type: none"> Offender was reckless as to whether life was endangered

Harm

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

Category 1	<ul style="list-style-type: none"> Very serious physical and/or psychological harm caused High risk of very serious physical and/or psychological harm Serious consequential economic or social impact of offence caused Very high value of damage caused
Category 2	<ul style="list-style-type: none"> Significant physical and/or psychological harm caused Significant risk of serious physical and/or psychological harm Significant value of damage caused All other harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> No or minimal physical and/or psychological harm caused Low risk of serious physical and/or psychological harm Low value of damage caused

See page 59.

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.

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 years – 12 years' custody	Category range 4 years – 10 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 6 months – 3 years' custody	Category range High level community order – 2 years 6 months' custody

In appropriate cases, the court should order a psychiatric report in order to ascertain whether the offence is linked to an underlying mental disorder and, if it is, whether any mental health disposal should be considered (see Step Three).

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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 starting point.

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:

Commission of offence whilst under the influence of alcohol or drugs

Revenge attack

Significant degree of planning or premeditation

Use of accelerant

Fire set in or near a public amenity

Victim is particularly vulnerable

Damage caused to heritage assets

Multiple people endangered

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Involved through coercion, intimidation or exploitation

Remorse

Good character and/or exemplary conduct

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

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

Offender's responsibility substantially reduced* by mental disorder or learning disability

Sole or primary carer for dependent relatives

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

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

STEP THREE**Consideration of mental health disposals****Where custody is being considered:**

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) that the offending is wholly or in significant part attributable to that disorder,
- (iii) treatment is available, and
- (iv) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider these matters in the following order:

Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the direction will cease to have effect at the end of a determinate sentence.
- b. If the mental disorder can appropriately be dealt with by a direction under s.45A(1), then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

Section 37 hospital order and section 41 restriction order

- c. If a s.45A direction is not appropriate the court must then consider, before going further, whether: (1) the mental disorder is treatable, (2) once treated there is no evidence the offender would be dangerous, and (3) the offending is due to that mental disorder. If these conditions are met a hospital order under s.37/41 is likely to be the correct disposal.

Section 47 transfer to hospital

- d. The court must also have regard to the question of whether other methods of dealing with the offender are available including consideration of whether the powers under s.47 MHA for transfer from custody to hospital for treatment would, taking in to consideration all of the circumstances, be appropriate.
- There must always be sound reasons for departing from the usual course of imposing a custodial sentence and where a custodial sentence is not imposed, the judge must set out these reasons.

Non-custodial option:

If a non-custodial option is considered, and where an offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be appropriate. The offender should express a willingness to comply with the requirement.

STEP FOUR**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

STEP FIVE**Reduction for guilty pleas**

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

STEP SIX**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 15 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SEVEN**Totality principle**

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

STEP EIGHT**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP NINE**Reasons**

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

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

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

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Criminal damage (other than by fire) value over £5,000

Criminal Damage Act 1971, section 1(1)

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years' custody

Offence range: Discharge – 4 years' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1988, section 30

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

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

Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or damaged items of great sentimental value
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused • Low value damage

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 1 year 6 months' custody	Starting point 6 months' custody	Starting point High level community order
	Category range 6 months – 4 years' custody	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 6 months' custody	Starting point High level community order	Starting point Low level community order
	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order

See page 68.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 14 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

STEP THREE**Consider any factors which indicate a reduction, 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**Totality principle**

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

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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

Criminal damage (other than by fire) value under £5,000

Criminal Damage Act 1971, section 1(1)

Triable only summarily

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge to 3 months' custody

Racially or religiously aggravated criminal damage

Crime and Disorder Act 1988, section 30

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

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

Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or items damaged of great sentimental value
Category 2	<ul style="list-style-type: none"> • All other cases

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 High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 3 months' custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order
Category 2	Starting point Low level community order	Starting point Band B fine	Starting point Band A fine
	Category range Band C fine – High level community order	Category range Discharge – Low level community order	Category range Discharge – Band B fine

See page 74.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation, or transgender identity

Other aggravating factors:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Damage caused to heritage assets

Significant impact on emergency services or resources

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

RACIALLY OR RELIGIOUSLY AGGRAVATED CRIMINAL DAMAGE OFFENCES ONLY

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

Maximum sentence for the aggravated offence on indictment is 14 years' custody (maximum when tried summarily is a level 5 fine and/or 6 months)

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

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

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

STEP THREE**Consider any factors which indicate a reduction, 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**Totality principle**

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

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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

Threats to destroy or damage property

Criminal Damage Act 1971, section 2

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months custody

Maximum when tried on indictment: 10 years' custody

Offence range: Discharge to 5 years' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A – High culpability	<ul style="list-style-type: none"> • Significant planning or premeditation • Offence motivated by revenge • Threat to burn or bomb property
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

Harm

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

Category 1	<ul style="list-style-type: none"> • Serious distress caused to the victim • Serious disruption/inconvenience caused to others
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused to 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 convictions.

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years 6 months' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 year – 5 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 2	Starting point 9 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Discharge – Medium level community order

Sentencers should consider whether to ask for psychiatric reports in order to assist in the appropriate sentencing (hospital orders, or mental health treatment requirements) of certain offenders to whom this may be relevant. Where a mental health disposal is indicated refer to Step 3 of the Criminal damage/arson with intent to endanger life or reckless as to whether life endangered guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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 starting point.

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:

Commission of offence whilst under the influence of alcohol or drugs

Victim is particularly vulnerable

Threats made in the presence of children

Considerable damage threatened

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

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 where it affects the responsibility of the offender

Sole or primary carer for dependent relatives

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

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

STEP SIX**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

STEP SEVEN**Reasons**

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

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

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

Annex D:

Fine bands and community orders

FINE BANDS

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

An illustrative 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. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003). If an order does not contain a punitive requirement, suggested fine levels are below.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
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"> Any appropriate rehabilitative requirement(s) 40 – 80 hours of unpaid work curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks) exclusion requirement, for a few months prohibited activity requirement attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> Any appropriate rehabilitative requirement(s) greater number of hours of unpaid work (for example 80 – 150 hours) curfew requirement within the middle range (for example up to 16 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"> Any appropriate rehabilitative requirement(s) 150 – 300 hours of unpaid work Curfew requirement up to 16 hours per day for 4 – 12 months exclusion order lasting in the region of 12 months.
BAND A FINE	BAND B FINE	BAND C FINE

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines. The table above is also set out in the *Imposition of Community and Custodial Sentences* guideline which includes further guidance on community orders.

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