

Burglary offences guideline Consultation

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Consultation

Published on 9 June 2021

The consultation will end on 1 September 2021

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** **From 9 June to 1 September 2021**
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Royal Courts of Justice
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by **1 September 2021** to:
Mandy Banks
Email: consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:
www.sentencingcouncil.org.uk
A series of consultation meetings is also taking place. For more 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.
Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

Why Burglary offences?

The Sentencing Council's *Burglary Offences Definitive Guideline* was the second guideline developed by the Council and came into force in 2012. It includes guidelines for sentencing aggravated burglary (section 10, Theft Act 1968), domestic and non-domestic burglary, (both section 9, Theft Act 1968).

An [initial evaluation](#) of the guideline was published in January 2016. The assessment indicated that sentencing severity had increased for domestic burglary and aggravated burglary since the guideline came into force, although this appeared to be part of a longer term trend. The assessment also showed that there had been a steep increase in sentencing severity for non-domestic burglary since mid-August 2011, which was subsequently maintained. It was not known, however, if the continuation of this increase was a result of the guideline, or the ongoing impact of the riots (the widespread public disorder featuring the looting of shops that took place in August 2011, and therefore pre-dated the coming into force of the guideline). It was therefore decided to conduct additional analysis to investigate possible reasons for the increases seen in sentencing severity.

The findings from the [further evaluation](#) (published in July 2017), appeared to show that, overall, the burglary guideline had, to some extent, contributed to the unanticipated increases seen in sentencing severity for non-domestic and aggravated burglary offences (although due to low volumes for aggravated burglary this conclusion is less explicit).

As a result of these findings, the Council decided to review the current *Burglary Definitive Guideline*. Due to pressure of other work it was not possible to commence this work until recently.

Overall volumes of burglaries sentenced in the courts have been dropping in recent years. In 2019 around 10,080 adult offenders were sentenced for offences covered by the existing guideline.

The Council is consulting on three revised guidelines covering the same offences as the existing guidelines. This consultation paper has been produced in order to seek views from as many people as possible interested in the sentencing of burglary offences.

During the 12- week consultation period, views on the draft guidelines will be explored with sentencers, and consultation events will be held with interested parties. Following the consultation, all the responses will be considered, and definitive guidelines published. The Council has also produced a resource assessment for the guidelines, along with a statistical bulletin and data tables showing current sentencing practice for these offences. These documents can be found on the Council's website: www.sentencingcouncil.org.uk.

It is important to note 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.**

How to give your views

The paper discusses each draft guideline section by section. A summary of the consultation questions can be found at **Annex A**. You can give your views by answering the questions within each section (you do not need to respond to any questions or sections that are not relevant to you) either by email or using the online questionnaire on the Sentencing Council website.

Age applicability

When issued as definitive guidelines these will only apply to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Council's definitive guideline, a link to which is below.

<https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

Section one: General approach

Approach to revising the guidelines

When the existing guideline came into force in 2012, it was not expected to result in any change in sentencing severity: the resource assessment which had been carried out, using the data and evidence which were available at that time, had concluded that sentencing was likely to stay at the existing levels. However, the evaluations of the impact of the guideline (published in January 2016 and July 2017) found that sentences increased unexpectedly for non-domestic burglary when the guideline came into force. At the time of the original resource assessment (which was only the second the Council had prepared), the Council's methods for estimating the resource impact of a guideline were less well-developed than they are today. For example, the Council did not at that stage conduct research with sentencers and so lacked that evidence as to how offences had previously been categorised, how frequently the factors in the guideline would apply, and how the guideline would work in practice. The Council was therefore limited in its ability to assess how offences would be categorised and sentenced under the guideline.

In developing this new guideline, the Council has considered the evidence as to the reasons for the observed increases in sentencing severity, as well as data from the Crown Court Sentencing Survey (CCSS) and transcripts of judges' sentencing remarks and more up to date data on sentencing outcomes¹. These have helped the Council to understand the details of the offences sentenced under the existing guideline and the sentences imposed. The new guideline has been developed so that sentences that the Council considers proportionate are imposed for each type of case. This has led the Council to the conclusion that although the aggregate impact of the guideline on sentencing outcomes was not predicted, sentencing practice in individual types of cases is proportionate to the seriousness of the offence. This means that the higher sentences under the existing guideline are expected to be maintained for the more serious offences.

The Council has also considered recent case law in the area, and the nature of burglary offences that come before the courts today, reflecting on whether any changes may need to be made in light of these considerations.

Since the existing guideline was developed, the structure of guidelines has evolved. Accordingly as part of this work the Council has revised the format to reflect the current approach to its guideline structure, and the stepped approach to sentencing. Some references in the guidelines have also been updated to reflect the Sentencing Code, which came into effect in December 2020.

¹ The initial evaluation covered burglary offence data in the period 2004 to 2014 whereas data in the latest stats bulletin covers the period 2009 to 2019.

Section two: Non-domestic burglary

This guideline is for non-domestic burglary offences, (section 9, Theft Act 1968). The number of offenders sentenced for this offence has decreased from 8,900 in 2011 to 5,200 in 2019. This offence is triable either way. In 2019, 64 per cent of offenders were sentenced in magistrates' courts. This type of burglary occurs when an offender enters, without permission, a building which is not lived in (this includes everything from garden sheds, to shops and offices, and large warehouses) and either:

- intends to steal anything in the building, inflict grievous bodily harm on anyone in the building or cause criminal damage to the building; or
- steals or attempts to steal anything in the building or inflicts or attempts to inflict grievous bodily harm on anyone in the building.

The statutory maximum for this offence is 10 years.

The existing non-domestic burglary guideline and evaluation findings

The assessment of seriousness in the existing non-domestic guideline includes factors indicating higher culpability, lower culpability, greater harm and lesser harm. A combination of the factors will result in one of three potential seriousness assessments, as illustrated below:

Seriousness assessment – existing guideline	
Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

For non-domestic burglary, the initial analysis² showed a substantial increase in sentencing severity in August 2011, followed by an additional ongoing uplift in severity after the guideline came into effect in January 2012. This increase was in excess of what would be expected based on historical trends, however, it was not clear whether the increase was attributable to the guideline. The additional analysis³, however, showed that:

- The increase may have been attributable to the guideline and was primarily driven by an increase in severity in magistrates' courts, where both the average custodial sentence length (ACSL) and custody rate had been increasing. Between 2005-2011 the custody rate remained relatively stable, at around 30 percent, however in 2012 it increased to 34 percent and continued to increase to 37 percent in 2015.

² The 'initial analysis' relates to the evaluation published in January 2016.

³ The 'additional analysis' relates to the evaluation published in July 2017.

- Prior to 2012, the ACSL (prior to any guilty plea reduction) was relatively stable in magistrates' courts, at around 4 months. In 2012 the ACSL increased slightly to around 4.5 months, and since then has remained higher than it had been in the years prior to the introduction of the guideline.
- CCSS analysis found that: a greater proportion of offenders were being placed in the highest category of seriousness (category 1); there was an increase in the custody rate for offenders in this category; and higher culpability and greater harm factors were being taken into account more often than lower culpability and lesser harm factors.
- Transcript analysis also suggested that the new definition of loss as 'economic, sentimental or personal' (compared with the use of monetary values in the previous SGC guideline) may have had the potential to place more offenders in category 1.

The increases in ACSL and custody rate at magistrates' courts have largely driven the increase in sentencing severity seen for non-domestic burglary overall (as the majority of offenders are sentenced here). As these trends started around the same time as the introduction of the guideline, it is possible that the guideline contributed to this effect. However, without further information about sentencing in magistrates' courts, it is not possible to be sure of this, or to identify which specific aspects of the guideline may have led to the increase.

The increase in sentencing severity seen in magistrates' courts may also be partly driven by general sentencing trends seen more widely (in both magistrates' courts and the Crown Court), for example, the use of community orders (COs) had been decreasing (up until 2018) while the use of suspended sentences (SSOs) had been increasing (up until 2016). It is therefore difficult to isolate the effects of the guideline on the use of these disposals from other sentencing trends. Although there was wording within both the domestic and non-domestic guideline specifically asking sentencers to consider whether the custody threshold has been passed, it is possible that this wording did not work as effectively as hoped.

Crown Courts

- Sentencing severity for offenders sentenced in the Crown Court had increased since 2010, but at a less steep rate than the increase seen in magistrates' courts. This indicated that the overall increase in severity was mainly driven by offenders sentenced in magistrates' courts, as opposed to the Crown Court.
- Since 2010 the custody rate for offenders sentenced in the Crown Court had generally increased, from 60 per cent in 2010 to 70 per cent in 2015. Over the same period the ACSL remained relatively stable, at around 1 year 10 months.
- CCSS analysis showed that the proportion of offenders in the most serious category (category 1, which has a sentence range from one to five years' custody) had increased since 2011, from 16 per cent in 2011 to 36 per cent in 2014.
- Within category 1, the custody rate increased from 75 per cent in 2011 to 85 per cent in 2012, and since then remained at a higher rate than in 2011 (between 82 and 83 per cent). The fact that more offenders were now in category 1, combined with a higher proportion of these offenders receiving an immediate custodial sentence, was likely to have contributed to the increase seen in sentencing severity for these offences.
- CCSS analysis shows that 60 per cent of non-domestic burglary cases had one or more higher culpability factors taken into account, whereas only 11 per cent had one or more lower culpability factors taken into account. Similarly, 46 per cent of cases indicated at least one greater harm factor had been taken into account, compared with 33 per cent for lesser harm. This may be partly due to there being more factors to choose from in the higher culpability and harm boxes, indicating that it may be easier

for sentencers to place an offender in higher culpability and harm than in lower culpability and harm, and therefore it may have been more likely that they would be placed in the highest category of seriousness.

- Content analysis of sentencing remarks for non-domestic burglary indicated that several features of the guideline, including the move from a clear monetary value in the SGC guideline, to the perceived value of the goods stolen (i.e. the greater harm factor “Theft of/damage to property causing a significant degree of loss”), and the inclusion of new factors increasing seriousness, may have played a part in increasing sentencing severity.
- Additional content analysis of a small sample of riot cases was undertaken to ascertain whether these cases were sentenced differently to non-riot cases during the same period, as the published assessment suggested it was possible that the riots influenced the general climate at the time. The analysis implied that the riot cases were treated in a slightly different way to non-riot related cases, with the context of the riot leading to relatively high sentences even when the offender’s actions were opportunistic, suggesting that the riots may have had only a time and place-limited effect on sentencing for non-domestic burglary, namely they did not appear to cause the continuing upward trend in sentencing for these offences.

The revised guideline

This revised version converts the guideline into the newer, stepped format, with three levels of culpability and harm. Mindful of the findings of the evaluation discussed above, one of the concerns in revising this guideline has been to try and ensure that only the most serious cases fall into the top categories of harm and culpability, so some factors from the existing guideline have been amended or moved to step two.

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

High culpability factors

The existing guideline had a higher culpability factor of:

‘Premises or victim deliberately targeted (to include pharmacy or doctor’s surgery and targeting due to vulnerability of victim or hostility based on disability, race, sexual orientation and so forth)’

The Council carefully considered whether or not to include this factor in the revised guideline. It was decided that targeting due to hostility based on protected characteristics is not a common feature within these offences, so this wording should not be within culpability but instead it should be moved to be within statutory aggravating factors at step two.

It was also decided that targeting is a very common feature of these offences, with many different types of premises targeted. The risk with this factor is that it captures too many cases in the highest level of culpability, so mindful of the findings of evaluations discussed

above the Council decided not to have any specific reference to targeting, so this factor has been removed altogether. Where relevant targeting can be captured by the other higher culpability factor of significant planning.

The Council decided it was appropriate to retain two of the other higher culpability factors from the existing guideline '*a significant degree of planning or organisation*' and '*knife or other weapon carried (where not charged separately)*'.

The existing higher culpability factor of '*equipped for burglary (for example, implements carried and/or use of vehicle)*' has become a medium culpability factor, given it is not as serious as the knife or other weapon carried factor in higher culpability. It has been reworded to remove the examples and to clarify that it is only to be used if not already captured within higher culpability, so becomes '*equipped for burglary (where not in high culpability)*'.

The factor '*member of group or gang*' has been moved from higher culpability to be an aggravating factor at step two, as the Council decided that being in a group for this offence was not so serious that it should be a step one factor, and the risk with leaving it in high culpability is that too many cases may potentially fall into high culpability.

The Council has given careful thought as to what factors should go into the new medium culpability category, to ensure that only the most serious cases go into the higher culpability. The existing guideline did not have a medium culpability category, so the introduction of one should capture cases that are neither the most or least serious of their kind, and avoid cases being placed inappropriately into higher culpability.

Alongside the equipped for burglary factor in the new medium culpability category is '*some degree of planning or organisation*' and:

- 'Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C'

The factors within lower culpability are the same as within the existing guideline, with a slight rewording of '*offender exploited by others*', to '*Involved through coercion, intimidation or exploitation*'.

The proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

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

Culpability demonstrated by one or more of the following :

A - High culpability

- A significant degree of planning or organisation
- Knife or other weapon carried (where not charged separately)

B – Medium culpability

- Some degree of planning or organisation
- Equipped for burglary (where not in high culpability)
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C

C- Lower culpability

- Offence committed on impulse, with limited intrusion into property
- Involved through coercion, intimidation or exploitation
- Mental disorder or learning disability, where linked to the commission of the offence

Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused or intended to be caused by the offence. The Council again gave careful thought to these factors, mindful of the findings of the evaluations, to ensure that only the most serious cases would be captured by category one harm. The introduction of three levels of harm, compared to two in the existing guideline it is hoped will help ensure that only the most serious cases fall into category one harm. The evaluation indicated that the inclusion of the factor *'theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial or personal value)* may have played a part in increasing sentencing severity. Accordingly, the Council considered whether to move this factor to become a step two aggravating factor instead but concluded that it should stay at step one as consideration of loss is an integral part of this offence. It has been reworded to change *'significant'* to *'substantial'*. There is a new version of this factor in category two harm *'theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value).'*

The existing greater harm factor of *'trauma to the victim, beyond the normal inevitable consequence of intrusion and theft'*, has been reworded to *'much greater emotional impact on the victim than would normally be expected'*. There is a new version of this factor in category two harm, of *'greater emotional impact on the victim than would normally be expected'*. The existing factor of *'soiling, ransacking or vandalism of property'* has been reworded and sub divided, with *'soiling of property and/or extensive damage or disturbance to property'* in category one harm, and *'ransacking or vandalism of property'* in category two harm. This is because the Council felt that soiling and extensive damage caused are more serious than vandalism or ransacking.

The rest of the greater harm factors in the existing guideline remain in category one harm. The only other change the Council has made is to reorder the factors so that the ones relating to the impact on the victim appear first, then the ones that follow are the ones relating to property, as the impact on people is more important than that of impact on property. Category three harm contains the same harm factors as contained within lesser harm in the existing guideline.

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

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

Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

In considering sentence levels for the revised guideline the Council was mindful of the findings of the evaluation, that sentences increased unexpectedly for non-domestic burglary when the guideline came into force. However, as discussed earlier, the Council has concluded that although the aggregate impact of the guideline on sentencing outcomes was not predicted, sentencing practice in individual types of cases is proportionate to the seriousness of the offence. This means that the higher sentences under the existing guideline are expected to be maintained for the more serious offences. The Council did decide for this offence however that careful thought needed to be given to the sentences at the lower end of offending for this offence.

With this in mind, the Council has decided to add wording around consideration of a community order with an alcohol treatment requirement, to the wording in the existing guideline which asks sentencers to consider a community order with a drug treatment requirement order. This wording is shown below. Considering the proportions of offenders who have alcohol and drug addictions committing this offence the Council decided that including this wording may prompt courts to consider a community order with a treatment requirement instead of a short or moderate custodial sentence. This may help reduce reoffending in future if offenders are less likely to be committing offences to fund addictions.

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

Question 3: Do you agree with the additional wording relating to consideration of a community order with an alcohol treatment requirement order?

Sentence levels

The sentence ranges, as shown in the table below, have been formulated using statistical data from the Ministry of Justice's Court Proceedings Database (CPD). This showed that 73 per cent of offenders sentenced to immediate custody were given a sentence of less than one year. The post guilty plea ACSL in 2019 was 11 months custody. The top of the range is the same as in the existing guideline, at 5 years custody. At the bottom of the range, discharge replaces the band B fine that is in the existing guideline. This is because the CPD shows that a small number, 2 per cent, received discharges in 2019. Now that there is a nine box sentence table, community orders are more available as sentencing disposals than under the existing guideline, which should assist in the appropriate sentence being given at the lower end of offending seriousness.

The revised guideline no longer includes the wording in the existing guideline relating to cases of particular gravity meriting upward adjustment from the starting point. This wording had been included in the existing guideline for exceptional cases such as the 2011 riots, which occurred whilst the guideline was being developed. As this is no longer a relevant concern the Council believes this wording can be removed.

Also not included is the wording regarding previous convictions being likely to result in an upwards adjustment. Figures⁴ for the proportion of offenders within these offences with previous convictions are very high: over half of those convicted for burglary in 2018 had three or more previous convictions or cautions for the same offence. For this reason it is proposed not to include this wording - as there is the risk of sentence inflation owing to the presence of the statutory aggravating factor regarding previous convictions.

The guideline also no longer includes the wording relating to category two or three offences and the custody threshold, as there is guidance on these points within the [Imposition](#) guideline, which all guidelines on the website link to.

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

⁴ Source: Ministry of Justice, Criminal Justice System Statistics: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018> (See Overview tables, table A7.5)

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

Question 4: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Aggravating and mitigating factors

As discussed at step one of this offence above, there is a new reference at step two to a statutory aggravating factor of '*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*'. Also, moving from step one to step two within the list of aggravating factors is a reference to '*vulnerable victim*', and '*offence was committed as part of a group*'.

The latter factor has been reworded from '*member of a group or gang*' in the existing guideline to be consistent with the associated expanded explanation. This makes it clear that mere membership of a group is not relevant to the sentencing. The word '*gang*' is no longer used as it could be said to be emotive and could be applied disproportionately to some demographic groups (particularly young Black, Asian and Minority Ethnic males).

The Council has decided not to include '*offence committed at night especially where staff present or likely to be present*', a factor in the existing guideline, as there is already a reference to '*victim on the premises (or returns) while offender present*' at step one. The rest of the factors are the same as in the existing guideline, with a few slight alterations to wording to be consistent with newer guidelines.

The mitigating factors are the same as in the existing guideline, save for some slight rewording of factors to be consistent with newer guidelines. The proposed aggravating and mitigating factors are shown below.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) **nature** of the offence to which condition relates and **relevance** to current offence; and b) **time** elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol/drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- The offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

Question 5: Do you agree with the proposed aggravating and mitigating factors?

Question 6: Do you have any other comments on the non-domestic burglary guideline?

Section three: Domestic burglary

This guideline is for domestic burglary offences, (section 9, Theft Act 1968). The number of offenders sentenced for this offence has decreased from 11,100 in 2011 to 4,700 in 2019. This offence is triable either way, although the majority are sentenced in the Crown Court, in 2019 only 13 per cent of offenders were sentenced in magistrates' courts. This type of burglary occurs when an offender enters, without permission, a building which people live in (this includes everything from houses, flats, boats and caravans, and can include domestic outhouses or garages if they are linked to a house) and either:

- intends to steal anything in the building, inflict grievous bodily harm on anyone in the building or cause criminal damage to the building or anything therein; or
- steals or attempts to steal anything in the building or inflicts or attempts to inflict grievous bodily harm on anyone in the building.

This offence has a statutory maximum of 14 years and can be a much more serious offence than non-domestic burglary. This is because of the violation and sense of invasion that victims can feel after a burglary in their home, a place where they are entitled to feel safe.

The existing domestic burglary guideline and evaluation findings

The assessment of seriousness in the existing domestic guideline includes factors indicating higher culpability, lower culpability, greater harm and lesser harm. A combination of the factors will result in one of three potential seriousness assessments, as illustrated below:

Seriousness assessment – existing guideline	
Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The initial analysis showed a long-term increase in sentencing severity for domestic burglary offences which seemed unlikely to be a result of the guideline. The additional analysis undertaken however showed that:

- The guideline may in fact have had a slight effect on increasing severity: more offenders were placed in category 1; the custody rate in category 1 had been increasing; and greater harm/higher culpability factors were taken into account more often than their counterparts.
- Transcript analysis suggested that the definition of loss as 'economic, sentimental or personal' may have caused more offenders to have been placed in category 1.

This is not necessarily a cause for concern, as the post-guideline increase is within the range expected based on historical trends.

The key findings from the additional analysis are described in more detail below.

Magistrates' courts

Only a minority of domestic burglary cases are sentenced in magistrates' courts (13 per cent in 2019). When the guideline came into force, the ACSL in magistrates' courts increased from 4.7 months in 2011 to 5.2 months in 2012 (prior to any guilty plea reduction) and has since remained stable. Unlike non-domestic burglary, however, the impact on sentence severity at magistrates' courts was minimal; as only a small proportion of offenders are sentenced there.

Crown Court

- Since 2010, the ACSL increased for offenders sentenced in the Crown Court, from 2 years 10 months in 2010 to 3 years 2 months in 2015 (prior to any guilty plea reduction).
- Similarly to non-domestic burglary, the use of COs had generally been decreasing, while the use of SSOs had been increasing; as mentioned earlier it is difficult to isolate the effects of the guideline on the use of these disposals from other sentencing trends.
- Analysis of third strike domestic burglary offences indicated that the number of offenders sentenced for a third domestic burglary, as a proportion of all domestic burglary, had generally been increasing over time (as would be expected). Of the offenders sentenced for a third domestic burglary, the proportion sentenced to custody had also increased over time (again, this is to be expected). These trends may have contributed to the increase in sentencing severity for domestic burglary as a whole during this period, although as this group of offenders comprises less than 15 per cent of offenders sentenced for domestic burglary, it is unlikely that this is the sole reason for the increase in severity.
- CCSS analysis showed that the proportion of offenders who were placed in the most serious category (category 1, with a sentence range of two to six years' custody) increased since the guideline came into force, from 15 per cent in 2011 to 35 per cent in 2014 (as with non-domestic burglary).
- As with non-domestic burglary, the custody rate for offenders in category 1 had increased since the guideline came into force, from 80 per cent in 2011 to 93 per cent in 2014. The fact that there were more offenders in category 1, and that a higher proportion of these offenders were sentenced to custody, could in part explain the increase seen in sentencing severity for domestic burglary.
- CCSS analysis showed that 48 per cent of domestic burglary cases had one or more higher culpability factors taken into account, whereas only 14 per cent had one or more lower culpability factors taken into account. Similarly, 62 per cent of cases indicated at least one greater harm factor had been taken into account, compared with 31 per cent for lesser harm. This may be partly due to there being more factors to choose from in the higher culpability and harm boxes, indicating that it may have been easier for sentencers to place an offender in higher culpability and harm than in lower culpability and harm, and therefore it may have been more likely that they were placed in the highest category of seriousness.
- Content analysis of sentencing remarks indicated that several features of the guideline may have played a part in increasing sentencing severity, including the broad definition of loss ('economic, sentimental and personal'), denoted by the greater harm factor "Theft of/damage to property causing a significant degree of loss", which was frequently cited as a factor in the cases sentenced after the guideline came into force.

The revised guideline

This revised version converts the guideline into the newer, stepped format, with three levels of culpability and harm. Mindful of the findings of the evaluation discussed above, one of the concerns in revising this guideline has been to try and ensure that only the most serious cases fall into the top categories of harm and culpability, so some factors from the existing guideline have been amended or moved to step two.

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

High culpability factors

The existing guideline had a higher culpability factor of:

'Premises or victim deliberately targeted (to include pharmacy or doctor's surgery and targeting due to vulnerability of victim or hostility based on disability, race sexual orientation and so forth)'

As with non-domestic burglary, the Council decided that targeting due to hostility based on protected characteristics is not a common feature within these offences, so this wording is not included within culpability for this offence but instead is placed within statutory aggravating factors at step two.

Similarly to non-domestic burglary, the Council thought that targeting is a very common feature of these offences; homes with expensive cars on the drive, homes thought to contain large sums of cash/expensive jewellery and so on. The risk with including this factor is that it captures too many cases in the highest level of culpability, and in any case, to a large extent it can be captured by the other higher culpability factor of significant planning. However, the Council did feel that it was important that serious cases where vulnerable victims, such as the elderly or disabled people are targeted, can be placed into high culpability. Accordingly part of the existing factor is retained, *'targeting of vulnerable victim'*.

The rest of the culpability factors are the same as those within the non-domestic guideline; for a discussion on these please see pages seven to eight. The proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

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

Culpability demonstrated by one or more of the following :

A - High culpability

- Targeting of vulnerable victim
- A significant degree of planning or organisation
- Knife or other weapon carried (where not charged separately)

B – Medium culpability

- Some degree of planning or organisation
- Equipped for burglary (where not in high culpability)
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender’s culpability falls between the factors described in A and C

C- Lower culpability

- Offence committed on impulse, with limited intrusion into property
- Involved through coercion, intimidation or exploitation
- Mental disorder or learning disability, where linked to the commission of the offence

Question 7: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Harm factors

The proposed harm factors for this offence are the same as those proposed for the non-domestic offence, with one exception, a category one factor of ‘*occupier at home (or returns home) while offender present*’ for this offence compared to ‘*victim on the premises (or returns) while offender present,*’ in non-domestic burglary. The proposed factors are set out below. For a full discussion on these harm factors please see pages ten to eleven.

Harm

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

Category 1

- Much greater emotional impact on the victim than would normally be expected
- Occupier at home (or returns home) while offender present
- Violence used or threatened against the victim
- Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)

	<ul style="list-style-type: none"> • Soiling of property and/or extensive damage or disturbance to property • Context of public disorder
Category 2	<ul style="list-style-type: none"> • Greater emotional impact on the victim than would normally be expected • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism of the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal value) • Limited damage or disturbance to property

Question 8: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

In considering sentence levels for the revised guideline the Council was mindful of the findings of the evaluation, that although the post-guideline increase was within the range expected based on historical trends, the guideline may have had a slight effect on increasing severity. However, as discussed earlier, the Council has concluded that although the aggregate impact of the guideline on sentencing outcomes was not predicted, sentencing practice in individual types of cases is proportionate to the seriousness of the offence. This means that the higher sentences under the existing guideline are expected to be maintained for the more serious offences, especially for domestic burglary.

The wording discussed earlier on page 11, shown below is also included for this guideline.

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

Question 9: Do you agree with the additional wording relating to consideration of a community order with an alcohol treatment requirement order?

Sentence levels

The sentence ranges, as shown in the table below, have been formulated using statistical data from the Ministry of Justice's CPD. This showed that 77 per cent of offenders received immediate custody. The post guilty plea ACSL in 2019 was 28.6 months custody.

As only 2 per cent of offenders received sentences above six years' custody, the Council felt it was appropriate to keep the top of the range the same as in the existing guideline, at 6 years' custody. However, for this offence the Council wished to ensure that the most serious cases would receive the appropriate sentence, without risking sentence inflation. For that reason, there is wording immediately above the sentence table that states:

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

The bottom of the range is the same as in the existing guideline, a low- level community order.

As with non-domestic burglary, the wording regarding previous convictions being likely to result in an upwards adjustment, and the wording relating to category two or three offences and the custody threshold is not included.

Included in this guideline above the sentence table is the wording shown below, this has been updated from the wording in the existing guideline to reflect the recent Sentencing Code. The Council has noted the proposed changes to the minimum term provisions in the Police, Crime and Sentencing and Courts Bill before Parliament. The Council will continue to monitor developments in this area and make any changes as necessary post consultation.

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

Culpability			
Harm	A	B	C
Category 1	<p>Starting point</p> <p>3 years' custody</p> <p>Category range</p> <p>2– 6 years' custody</p>	<p>Starting point</p> <p>2 years' custody</p> <p>Category range</p> <p>1-4 years' custody</p>	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category range</p> <p>6 months- 3 years' custody</p>
Category 2	<p>Starting point</p> <p>2 years' custody</p> <p>Category range</p> <p>1-4 years' custody</p>	<p>Starting point</p> <p>1 year 6 months custody</p> <p>Category range</p> <p>6 months – 3 years' custody</p>	<p>Starting point</p> <p>1 year's custody</p> <p>Category range</p> <p>High level community - 2 years' custody</p>
Category 3	<p>Starting point</p>	<p>Starting point</p>	<p>Starting point</p>

	1 year- 6 months' custody	1 year's custody	Band B fine
	Category range	Category range	Category range
	6 months – 3 years' custody	High level community order- 2 years' custody	Low level community order- 6 months' custody

Question 10: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Question 11: Do you agree with the inclusion of wording regarding cases of particular gravity above the sentence table? If not, please tell us why.

Aggravating and mitigating factors

The majority of these factors are the same as those discussed for non-domestic burglary, for a discussion on these please see pages 13-14.

Specific to this offence and so not discussed for the non-domestic offence are '*child at home (or returns home) when offence committed*', '*offence committed at night*' and '*victim compelled to leave their home*'. These are all present within the existing guideline and reflect the additional impact of the offence on victims with the offences taking place in their home.

The mitigating factors are the same as in the existing guideline, save for some slight rewording of factors to be consistent with newer guidelines.

The proposed aggravating and mitigating factors are shown below.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) **nature** of the offence to which condition relates and **relevance** to current offence; and b) **time** elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at step two)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol/drugs

- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- The offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

Question 12: Do you agree with the proposed aggravating and mitigating factors?

Question 13: Do you have any other comments on the domestic burglary guideline?

Section four: Aggravated burglary

This guideline is for aggravated burglary, (section 10 of the Theft Act, 1968). It is triable only in the Crown Court, and the maximum sentence is life imprisonment. Volumes of this offence are small, 190 offenders were sentenced in 2019. Aggravated burglary occurs when an offender commits a burglary (domestic or non-domestic) and at the time of committing the burglary the offender has a weapon with them. They may have taken a weapon with them or picked one up at the scene. The weapon could be a firearm or imitation firearm, an explosive, a knife or any other tool or instrument with which the offender intended to cause harm.

This is the most serious offence out of the three types of burglary.

The existing domestic burglary guideline and evaluation findings

The assessment of seriousness in the existing aggravated guideline includes factors indicating higher culpability, lower culpability, greater harm and lesser harm. A combination of the factors will result in one of three potential seriousness assessments, as illustrated below:

Seriousness assessment – existing guideline	
Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The initial analysis showed an increase in sentencing severity for aggravated burglary offences in the period following the introduction of the guideline. Due to low volumes, it was not possible to conclude whether the guideline had caused this increase. However the further analysis of sentencing data showed that this increase may have been attributable to the guideline: custodial sentence lengths had been increasing; and a higher proportion of offenders were now placed in category 1 (although these findings should be treated with caution due to the low volumes of cases).

- From 2005 to 2011 (before the guideline came into effect), around 8 to 16 per cent of offenders given an immediate determinate custodial sentence were sentenced to seven years or more in custody (after any guilty plea reductions had been applied).⁵ From 2012 to 2015, when the guideline was in effect, this rose to between 30 and 56 per cent.
- In the post-guideline CCSS data for aggravated burglary, around 70 per cent were put in category 1, the most serious category. The starting point for this category is 10 years' custody, with a range from 9 to 13 years. It is possible that the increase in the

⁵ A custodial sentence of 7 years would equate to approximately 10 years prior to a guilty plea reduction of one third.

use of longer sentences for aggravated burglary was due to sentencers putting most offenders into category 1, and then sentencing them according to the guideline range (whereas previously there was no guideline for aggravated burglary).

The further analysis implied that the guideline may have contributed to the increase in sentencing severity; the quantitative analysis showed that offenders had been receiving longer sentences since the guideline came into force, and the qualitative work indicated that the harm and culpability factors included in the guideline had caused the majority of cases to fall into category 1.

The majority of the cases sampled as part of the qualitative analysis⁶ cited two or more greater harm or higher culpability factors (and no lesser harm or lower culpability factors), meaning that using the guideline they ought to be placed in category one. The prevalence of these factors in both the pre-and post-guideline samples suggested that the case mix had not changed, but rather that under the guideline a majority of cases were placed in category one and consequently received sentences towards the top of the overall sentencing range, this appears to have been higher than the level at which judges were sentencing without a guideline.

These findings should be treated with some caution however, due to the low numbers involved. It should also be noted that there was no guideline for aggravated burglary prior to the introduction of the guideline in 2012, (so in the analysis cases sentenced without a guideline are being compared to those with a guideline.)

The revised guideline

This revised version converts the guideline into the newer, stepped format, with three levels of culpability and harm. Mindful of the findings of the evaluation discussed above, as with the two previous guidelines discussed, one of the concerns in revising this guideline has been to try and ensure that only the most serious cases fall into the top categories of harm and culpability. Accordingly some factors from the existing guideline have been amended or moved from step one to step two.

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

High culpability factors

The existing guideline had a higher culpability factor of:

Premises or victim deliberately targeted (to include pharmacy or doctor's surgery and targeting due to vulnerability of victim or hostility based on disability, race sexual orientation and so forth)

⁶ Content analysis was undertaken of 30 aggravated burglary cases to augment understanding of sentencing before and after the introduction of the guideline. This comprised 15 pre-guideline cases and 15 post-guideline. Because of the relatively low numbers, care must be taken in interpreting these data: they merely give an indication of what might be happening in practice, rather than offering a more conclusive view.

As with domestic and non-domestic burglary, the Council decided that targeting due to hostility based on protected characteristics is not a common feature within these offences, so this wording is not included within culpability for this offence but instead is placed within statutory aggravating factors at step two.

As with domestic and non-domestic burglary, the Council thought that targeting is a very common feature of these offences. The risk with including this factor is that it captures too many cases in the highest level of culpability, and in any case, to a large extent it can be captured by the other higher culpability factor of significant planning. However, as with domestic burglary, the Council felt that it was important that serious cases where vulnerable victims such as the elderly or disabled people are targeted, can be placed into high culpability. Accordingly part of the existing factor is retained, but fairly tightly worded, as '*targeting of vulnerable victim*'.

For this offence the Council decided not to include 'equipped for burglary', as the offender will have a weapon, and to some extent this factor may be captured by '*significant degree of planning*'. As with the other offences already discussed, the factor related to group offending has been moved to step two.

The Council gave considerable thought to the '*weapon present on entry*' factor in the existing guideline. The Council noted the recent case of *Sage*⁷ and concerns raised around double counting, as set out below.

If an offender commits an aggravated burglary with intent to steal/inflict GBH/do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. The point from *Sage* is that '*weapon present on entry*' is an essential element of an aggravated s.9(1)(a) offence and so should not automatically be put into high culpability.

The Council considered different options to deal with this issue, either to remove the factor altogether, or try to differentiate between types of weapon, or try to focus on the use of the weapon, rather than whether it was being carried when the premises were entered or picked up whilst in the premises. The Council also noted that there was a category 1 harm factor of '*violence used or threatened against the victim, particularly involving a weapon*'.

This issue was quite a difficult one to resolve. However after careful deliberation the Council decided to remove the factor from high culpability and move it to step two, to become an aggravating factor of '*weapon carried when entering the premises*'. By doing so, and retaining the harm factor referencing a weapon, it would avoid the problem of double counting referred to in *Sage*, but at the same time would:

- Enable the court to distinguish between the burglar who goes armed and the burglar who does not [with a warning, to avoid double counting]
- Enable the court to deal more severely with a burglar who uses/threatens a weapon which he brought into the premises
- Capture offences where an armed burglar finds the premises empty and therefore has no opportunity to use/threaten violence.

⁷ [AG's Ref Sage \[2019\] EWCA Crim 934](#), [2019] 2 Cr App R (S) 50, paras 38 and 45

The new factors in medium culpability are the same as those discussed on pages seven to eight, with the omission of the '*equipped for burglary*' factor. The proposed lower culpability factors are the same as those discussed on pages seven to eight, with one exception, the '*offence committed on impulse*' factor is omitted for this offence, as in the existing guideline. This is because for this offence trespassing and having a weapon can be hard to describe as an impulsive act.

The proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

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

Culpability demonstrated by one or more of the following :

A - High culpability

- Targeting of vulnerable victim
- A significant degree of planning or organisation

B – Medium culpability

- Some degree of planning or organisation
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C

C- Lower culpability

- Involved through coercion, intimidation or exploitation
- Mental disorder or learning disability, where linked to the commission of the offence

Question 14: Do you have any comments on the culpability factors? Do you agree that the factor relating to a weapon has been moved from culpability to step two?

Harm factors

For this offence the first category one harm factor is '*substantial physical or psychological injury or other substantial impact on the victim.*' This factor is worded differently to the impact on the victim factor for the other two offences, as arguably for aggravated burglary the factors need to be more specifically about physical/psychological injury. For category two harm there is '*some physical or psychological injury or some other impact on the victim*' and in category three harm there is '*limited physical or psychological injury or other limited impact on the victim*'. The second category one harm factor is '*victim at home or on the premises (or returns)*', which is worded to reflect that the offence can take place in a dwelling and a non-dwelling. The third factor is '*violence used or threatened against the victim, particularly involving a weapon*', reflecting the more serious type of harm that can be caused within this offence when a weapon is involved.

The rest of the category one and two harm factors not already discussed above are the same as those discussed for non-domestic burglary on pages ten to eleven.

There are no category three harm factors, such as nothing stolen or limited damage caused to property, as there is for the other two offences already discussed. This is because the Council agrees with the approach taken in the existing guideline, that it wishes to avoid a situation where there is a significant threat to the victim, but no theft resulted (because the offender could not get into the safe etc), and/or only limited damage caused being regarded as lesser harm. Instead there is a mitigating factor of '*nothing stolen/property of low value*'. There is also the limited physical/psychological impact factor and also '*no violence used or threatened and a weapon is not produced*' factor in category three.

The proposed harm factors are set out below.

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

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism of the property
Category 3	<ul style="list-style-type: none"> • No violence used or threatened and a weapon is not produced • Limited physical or psychological injury or other impact on the victim

Question 15: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

In considering the sentence ranges the Council was mindful of the findings of the evaluation, that there was an increase in sentencing severity following the introduction of the guideline which may have been attributable to the guideline, (albeit that these findings should be treated with caution due to the low volumes of cases.) However, this needs to be balanced against the fact that this a serious offence with a maximum of life imprisonment. For this reason there is no reference to consideration of community orders with treatment requirements as alternatives to custody as there are in the other two offences. This is the same approach as taken in the existing guideline. Instead the Council decided to include a link to the Imposition guideline.

Question 16: Do you agree that it is helpful to include a link to the Imposition guideline?

Sentence levels

The sentence ranges, as shown in the table below, have been formulated using statistical data from the Ministry of Justice's CPD. This showed that for this offence the majority of offenders, 91 per cent were sentenced to immediate custody, 9 per cent were otherwise dealt with⁸. The ACSL in 2019 was 7 years 4 months (post guilty plea).

The Council gave careful thought to the sentence levels, considering the findings of the evaluations, and comparison with sentence levels for other serious offences. As it is estimated that only a small number of offenders received a sentence above 13 years it is proposed that the top of the range is maintained at 13 years, as in the existing guideline. The bottom of the range is the same as in the existing guideline.

The proposed sentence levels are shown below.

⁸ 'Otherwise dealt with' in these cases are recorded as 'otherwise dealt with on conviction (or finding of guilt)'.

Culpability			
Harm	A	B	C
Category 1	Starting point 10 years' custody	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 9– 13 years' custody	Category range 6-11 years' custody	Category range 4-9 years' custody
Category 2	Starting point 8 years' custody	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 6-11 years' custody	Category range 4 –9 years' custody	Category range 2 -6 years' custody
Category 3	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4-9 years' custody	Category range 2-6 years' custody	Category range 1- 4 years' custody

Question 17: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Aggravating and mitigating factors

As discussed within the culpability section, there is a new aggravating factor of 'weapon carried on premises'. The Council have decided to include some additional guidance on the use of this factor, (shown below) which will be contained in a drop down box when a user clicks on the factor in the guideline on the website.

Weapon carried when entering premises'

Care should be taken to avoid double counting in these cases. If an offender commits an aggravated burglary with intent to steal/inflict GBH/ do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. R v Sage (AG's ref SAGE [2019] EWCA Crim 934, [2019] 2 Cr App R (S) 50) sets out that having

a weapon present on entry is an essential element of an aggravated s.9(1)(a) offence and so care needs to be taken in s.9(1)(a) cases that the fact the offender has a weapon present on entry is not taken into account a second time. In s9(1)(b) cases, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence (unless already taken into account at step 1).

Also for this offence the Council has decided to include additional aggravating factors of: *'use of face covering or a disguise'* to cover situations where an offender has used a balaclava etc, and *'offence committed in a dwelling'*. As the offence can be committed in dwelling/non-dwellings the latter is to differentiate an offence committed in someone's home, a place they are entitled to feel safe in, and have to remain in after an offence has been committed. As in the existing guideline, there are specific aggravating factors of *'child at home (or returns home) when offence committed'*, *'offence committed at night'* and *'victim compelled to leave their home'*.

The rest of the aggravating factors are the same as those discussed for non-domestic burglary, for a discussion on these please see pages thirteen to fourteen.

As discussed within culpability, *'nothing stolen or only property of low value to the victim (whether economic, commercial or personal)* is a mitigating factor for this offence. The rest of the mitigating factors are the same as in the existing guideline, save for some slight rewording of factors to be consistent with newer guidelines.

The proposed aggravating and mitigating factors are shown below.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) **nature** of the offence to which condition relates and **relevance** to current offence; and b) **time** elapsed since conviction
- Offence committed on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

- Weapon carried when entering premises (*with additional text in a drop down box*)
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)

- Commission of offence whilst under the influence of alcohol/drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- The offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions or no relevant or recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

Question 18: Do you agree with the proposed aggravating factors? Do you think the proposed text to be provided in a drop down box for 'weapon carried when entering premises' is helpful?

Question 19: Do you agree with the proposed mitigating factors?

Question 20: Do you have any other comments on the aggravated burglary guideline?

Section five: Equality and diversity

The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not.

The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

The Council has considered data available in relation to offenders sentenced for burglary offences. This data includes volumes of offenders sentenced grouped by sex, self-identified ethnicity and age and is available in the statistical bulletin data tables⁹.

The available data does show that those offenders with ‘Black’ as ethnicity seemed to represent a larger proportion of those sentenced for aggravated burglary, at 15 per cent than for the two other types of burglary, (seven percent for domestic burglary and six per cent for non-domestic burglary). Having discovered this, the Analysis and Research team considered this finding and looked to see whether this disparity could be seen earlier on in the criminal justice process, for example, in police recorded crime statistics or prosecution statistics.

Analysis found that Black defendants were over-represented in all three types of burglaries, particularly in aggravated burglary¹⁰. This suggests that the over-representation is happening further upstream of sentencing, at the prosecution stage and possibly before.

⁹ [Burglary offences: Statistical bulletin – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/statistical-bulletin/sentencing)

¹⁰ Sources: Prosecutions and sentencing data taken from the Court Proceedings Database. See the ‘Outcomes by offence data tool’ published at the following link for data on prosecutions: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2019>. See the data tables published alongside this consultation for detailed breakdowns on sentencing. Ethnicity proportions for the wider population (England and Wales) were taken from the most recent estimates from the Office for National Statistics: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/research-report-on-population-estimates-by-ethnic-group-and-religion/latest>

When looking specifically at sentencing outcomes and average custodial sentence lengths, there was no clear evidence of disparities across the different ethnic groups. It therefore seems that the differences observed are in the volumes of offenders coming before the courts and not in sentencing practice itself.

In addition, there are many and varied reasons for the distribution of offender types and prevalence towards a particular type of offending, including wider social issues. The revised burglary offences guidelines are intended to apply equally to all demographics of offenders, and in drafting the guidelines the Council has taken care to guard against any unintended impact.

The Council recognises, however, that the draft guidelines could be interpreted in different ways. We are therefore seeking views on whether any of the factors in the draft guidelines, or the ways in which they are expressed, could risk being interpreted in ways which could lead to discrimination against particular groups.

We are also seeking views as to whether there are any other equality or diversity issues the guideline has not considered, so that we may consider these post-consultation.

Question 21: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

Question 22: Do you have any other comments on the proposed guideline which have not been captured elsewhere?

Annex A

Consultation Questions

Non-Domestic burglary

Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Question 3: Do you agree with the additional wording relating to consideration of a community order with an alcohol treatment requirement order?

Question 4: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Question 5: Do you agree with the proposed aggravating and mitigating factors?

Question 6: Do you have any other comments on the non-domestic guideline?

Domestic burglary guideline

Question 7: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Question 8: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Question 9: Do you agree with the additional wording relating to consideration of a community order with an alcohol treatment requirement order?

Question 10: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Question 11: Do you agree with the inclusion regarding cases of particular gravity above the sentence table? If not, please tell us why.

Question 12: Do you agree with the proposed aggravating and mitigating factors?

Question 13: Do you have any other comments on the domestic guideline?

Aggravated burglary guideline

Question 14: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Question 15: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Question 16: Do you agree that it is helpful to include a link to the Imposition guideline?

Question 17: Do you agree with the proposed sentence table for this offence?

Question 18: Do you agree with the proposed aggravating factors? Do you think the proposed text to be provided in a drop down box for 'weapon carried when entering premises' is helpful?

Question 19: Do you agree with the proposed mitigating factors?

Question 20: Do you have any other comments on the aggravated burglary guideline?

Equality and Diversity

Question 21: Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?

Question 22: Do you have any other comments on the proposed guideline which have not been captured elsewhere?

