

Theft Offences Guideline Consultation

Theft Offences Guideline

Consultation

Published on 3 April 2014

This consultation will end on 26 June 2014

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, the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.

Duration:

From 3 April 2014 to 26 June 2014

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

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Additional ways to feed in your views:

We will accept responses in hard copy or via email. In addition, an online version of this consultation is available at <http://sentencingcouncil.judiciary.gov.uk/get-involved/consultations-current.htm>

This consultation exercise is accompanied by a resource assessment and an equality impact assessment, both 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 on our website.

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.

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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 remit extends to allow consultation on the sentencing of offenders following conviction.¹ The Council is committed to seeking views on its proposals through public consultation.

The Sentencing Council has a broad remit to take forward work on sentencing not only through guidelines but also through the development of a robust evidence base and engaging with the public to improve knowledge and understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members, further information on the members can be found here:

<http://sentencingcouncil.judiciary.gov.uk/about/council-members.htm>

Why theft offences?

Courts see a very high number of theft cases come before them. In 2012, just under one in 10 of all cases sentenced in the courts were for theft offences.² Theft covers a wide range of offences such as stealing goods from shops and the illegal abstraction of electricity. Existing guidance for theft offences is currently contained within the Sentencing Guidelines Council (SGC) guideline, *Theft and burglary in a building other than a dwelling*, published in 2008, and within the *Magistrates' Court Sentencing Guidelines* (MCSG). For some common theft offences, such as theft of a motor vehicle, there is currently no guideline. The SGC theft guideline also contains out of date burglary guidance, as a new *Burglary offences* definitive guideline came into force in 2012.

A new theft definitive guideline will provide guidance for sentencers for the most common theft offences within one self-contained document, which will assist in achieving our objective of consistent sentencing, and provide transparency for the public regarding the possible penalties for theft offences.

Which offences are covered by the guideline?

The new definitive theft guideline will contain guidance for:

- theft from a shop or stall;
- general theft offences including: theft from the person, theft in breach of trust, theft in a dwelling, theft of a motor vehicle, theft from a motor vehicle and theft of a pedal cycle;
- abstracting electricity;
- making off without payment;
- handling stolen goods; and
- going equipped for theft or burglary.

The terms used in the document which refer to theft offences are terms used by the Home Office

¹ ss.118-136 Coroners and Justice Act 2009

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203958/criminal-justice-stats-dec-12.pdf

and the Ministry of Justice, for example, ‘theft from a shop or stall’ is used to describe the offence commonly known as ‘shoplifting’.

Which offences are not covered by the guideline?

The following theft offences for which there are guidelines within the MCSG have not been included within this guideline:

- Taking a motor vehicle without consent.
- Aggravated vehicle taking causing damage, injury, or death.

Although these are charged under the Theft Act as they are, in part, acquisitive crimes the chief harm arises from the manner of driving and the consequent damage to the vehicle/property or injury caused. The sanctions for these offences can therefore be different for other theft offences; for example, disqualification from driving. The Council intends to start work on a new motoring guideline in 2015, subject to any legislative changes, and has decided to consider these offences within that guideline. In the intervening period guidance within the MCSG for these offences will continue to apply.

Metal theft

The Council decided not to prepare a separate guideline for metal theft. There is evidence³ to suggest that levels of metal thefts are dropping; statistics published by the Home Office show that in the financial year ending March 2013, metal theft offences reduced by 40 per cent. Guidance for such offences will be contained within the individual guidelines for general theft, handling stolen goods, and ‘going equipped’ offences. The impact of metal thefts will be reflected at step one, as a key driver of the starting point, in the consideration of harm. Where, for example, ‘disruption is caused to infrastructure’ or there is ‘damage to heritage structures’ as a result of metal theft, the court should consider whether to increase the sentence either within the sentencing range or sentence outside the range.

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 interested in the sentencing of theft offences.

However, it is important to clarify that the Council is consulting on sentencing these offences and not the legislation or the statutory maxima upon which such offences are based. These are matters for Parliament and, therefore, outside the scope of this consultation.

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 types and lengths of sentences that should be passed for theft offences; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at **Annex A**.

³ <https://www.gov.uk/government/publications/metal-theft-england-and-wales-financial-year-ending-march-2013/metal-theft-england-and-wales-financial-year-ending-march-2013>

What else is happening as part of the consultation process?

This is a 12 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 and from sentencers. We are particularly keen to engage with magistrates on our proposals during this period, as the large majority of theft cases are dealt with in magistrates' courts. We will also be conducting interviews with a sample of Crown Court judges, District Judges and magistrates to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once the consultation exercise closes and the results have been considered, a final guideline will be published and used by all adult courts. The Council is also very interested in hearing the views of the public on this issue. Responses can be made through the online consultation paper as outlined below.

Alongside this consultation paper, the Council has produced an online questionnaire that allows people to respond to the consultation questions through the Sentencing Council website. This can be found at <http://sentencingcouncil.judiciary.gov.uk/get-involved/consultations-current.htm>

The Council has also produced a resource assessment and an equality impact assessment. These documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

We welcome all responses to the document, including those limited to particular sections, for example; if you have a special interest in theft from a shop or stall, you may wish to focus on pages 17 to 27 of the consultation, and can answer questions 1 to 12 or any one of those questions.

Section one: Overarching issues and the context of the guidelines

The principal piece of legislation for theft offences is the Theft Act 1968. Section 1 of the Act states:

“a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it”.

Theft offences can range from the act of stealing low value items from shops to a highly sophisticated case of stealing from an employer over a lengthy period. The impact of theft offences should not be underestimated as they have a real impact on individuals, over and above financial value of the items stolen. There can be a perception that thefts, such as thefts from shops, are victimless crimes; however, as the British Retail Consortium has recently stated:

“Far from being victimless, we all pay for this increased stealing through higher prices and, increasingly, shop closures and damage to town centres...as safety is reduced and communities are blighted.”⁴

The draft guideline seeks to give greater recognition to the harm done to victims by applying a two stage assessment of harm. This is consistent with the approach taken in other Sentencing Council guidelines such as fraud.⁵ For a detailed discussion of the approach to harm see page 19.

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 implementation date, 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 guideline which is relevant to the offender’s case, and

⁴ http://www.brc.org.uk/brc_policy_content.asp?iCat=48&iSubCat=646&spolicy=Retail+Crime&sSubPolicy=BRC+Retail+Crime+Survey

⁵ Due to be published as a definitive guideline in May 2014 and will come into force on 1 October 2014

(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.”

General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.⁶

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. 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 only at step four in the decision making process, after the appropriate sentence has been identified.

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

Issues considered in developing the draft guideline

1. Approach to victims

The SGC guideline assessed harm by identifying the offence type and financial loss caused. The assessment of harm within the draft guidelines sets out a second stage of the harm assessment based on impact of the theft on the victim, whether that is emotional distress, the inconvenience caused by having to cancel and replace bank cards, or a loss of confidence caused by crime. There is further information on this point on page 20 of section three.

2. Proportionality of theft and fraud sentencing levels

In preparing this draft guideline, the Council has had regard to the purposes of sentencing⁷ and to its statutory duties.⁸ The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences. As both theft and fraud are closely related offences of dishonesty the development of the draft theft guideline has taken a similar approach to the structure of the draft fraud guideline,⁹ incorporating a number of similar features, including culpability and harm factors where appropriate. It has also taken a similar approach to preparatory offences.

6 http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf

7 s.142 Criminal Justice Act 2003

8 s.120(11) Coroners & Justice Act 2009

9 Due to be published as a definitive guideline in May 2014 and will come into force on 1 October 2014

Moreover, careful consideration has been given to the sentence levels within the two draft guidelines and the need for proportionality between the two. In some circumstances a charge of either theft or fraud may be equally appropriate. As a result there is a close relationship between the sentencing tables within the two guidelines, but the tables are not identical. They reflect the different statutory maximum sentences and the circumstances of the offence charged.

The Council considered available statistical data, including current sentencing practice, for the offences covered in the guideline and relevant case law. Further information regarding the statistics for theft offences can be found in the statistics bulletin at:

<http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

The approach taken in developing the draft guideline aims to regularise practice rather than to alter it substantially. The sentence ranges within some categories in the draft guidelines are broad, which are intended to offer sentencers flexibility when sentencing the variety of ways in which these offences can be committed.

3. Short custodial sentences

Statistics in relation to current sentencing practice reveal that short term custodial sentences are regularly passed by the courts for theft offences; for example, the average custodial sentence length for theft from a shop is eight weeks.¹⁰ Short custodial sentences are also passed for other theft offences contained within this guideline.

Parliament has set out when custodial sentences should be imposed:

“The Court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.”¹¹

The circumstances in which an offence is ‘so serious’ that it passes the custody threshold will vary but generally, custodial sentences are reserved for the worst types of offending behaviour. One of the issues for sentencers dealing with theft cases is that the low value of items stolen and the unsophisticated nature of an individual offence would not ordinarily pass the custody threshold. However, another feature of these types of offences is the persistent nature of some offenders, many of whom appear before the courts on a regular basis for similar offences. Those offenders are likely to have been subject to a series of court orders, such as community orders, which have been imposed to rehabilitate the offender and they may also have previously been imprisoned.

Sentencers must consider carefully in each case whether an offence passes the custody threshold; sentencers recognise that there are limitations on short sentences for offenders as there will be little, if any, time for the prison authorities to engage with, and rehabilitate, the offender. The sentencer must carefully balance this with the facts of the individual offence, the persistent nature of an offender’s behaviour and their response to other types of sentence; in some cases, this combination will result in a decision that the offence is ‘so serious’ that a short custodial term is the appropriate sentence.

¹⁰ <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

¹¹ s.152 (2) Criminal Justice Act 2003

As the sentence ranges within the draft guidelines reflect current sentencing practice, short sentences are present within the sentencing ranges. This differs from earlier guidelines where the Sentencing Council has sought to avoid starting points of custodial sentences of less than six months, where possible. However, to adopt this approach for theft offences would mean substantially altering current sentencing practice.

The Council considered whether it should remove these sentences and substitute them with either community orders or custodial sentences of at least six months. Having regard, as required by statute,¹² to the resource implications of both alternatives, the Council decided there was not a strong enough evidence base to alter current sentencing practice. Additionally, the proportionate use of short custodial sentences offers some respite to victims, particularly of low level but persistent offenders. However, the Council is interested to hear views on this issue; see section three, pages 26 to 27, which has some sentencing scenarios and the consultation questions on this point.

During its deliberations on the sentencing levels, the Council also had regard to the impact of the Offender Rehabilitation Act, which received Royal Assent on 13 March 2014. One of the frequent criticisms of short custodial sentences is the lack of supervision and assistance available to those who receive them, both whilst in custody and when released back into the community. The Council has noted that the Act introduces statutory supervision and rehabilitation for those sentenced to less than one year's custody. This has the potential to change the nature of short custodial sentences by increasing the focus on the rehabilitation of the offender though the Council has also noted the concerns of the Justice Select Committee about the potential impact of these new provisions.¹³

4. Financial value of thefts

Cases of handling stolen goods or theft in breach of trust cases which involve large sums of money often attract attention in the media but the Council does not give guidance only for those cases. Ninety-two per cent of theft cases are sentenced in magistrates' courts, involving relatively small amounts and it is essential to provide clear guidance for courts dealing with such cases. However, what is clear to the Council is that the financial value of the items stolen is only one aspect of harm that the sentencer should consider; closely allied to this is the impact that the offence has on the victim and the Council proposes a two stage assessment of harm. There is further information on this point on page 19 of section three.

5. Impact of previous convictions

As set out in section three, a significant feature of those convicted of theft is the persistent and relatively low level nature of their offending. This complicates the sentencing exercise for the sentencer as they must consider the impact that those previous convictions have on the sentence for the offence which is before them.

The levels of previous convictions held by defendants sentenced for all theft offences has been carefully considered by the Council drawing on data from its own Crown Court Sentencing Survey (CCSS).¹⁴ The information on previous convictions from the CCSS relates to recent and relevant convictions, which are those that the sentencer must take into account.¹⁵ The data held by the

¹² s.120(11)(e) Coroners and Justice Act 2009

¹³ <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/1004/100404.htm#a3>

¹⁴ The CCSS is administered by the Sentencing Council, and collects information directly from Crown courts at the time of sentencing

¹⁵ s.143(2)(4)(5) Criminal Justice Act 2003

CCSS shows that the propensity of offenders to have large numbers of recent and relevant previous convictions for theft offences is greater than for most other criminal offences.

In order to deal with this factor, the guidelines contain a mechanism which allows sentencers to take into account levels of previous convictions in sentencing where appropriate, without escalating overall sentencing levels. This is discussed in more detail at page 22 of section three of this paper. In brief, there is narrative within the guideline which gives discretion to increase a sentence based on relevant recent convictions.

Consideration was given to alternatives to this mechanism, such as having two sentencing tables for the same offence; one for offenders without previous convictions, and one for offenders with multiple previous convictions. However, this option was discounted as it was felt that it would be cumbersome and unnecessary to have two tables for the same offence, when one could be developed which could be flexible enough to sentence most offenders. Views are sought on the Council's proposed approach in question 4.

6. Drug treatment

As with other guidelines, the Council recognises that in appropriate cases, the purposes of sentencing and, in particular, rehabilitation of the offender and prevention of further offences may be best met by the imposition of a community order with a drug rehabilitation requirement. This will be a matter for the sentencer but a reminder appears within all of the draft guidelines that where the offender's misuse of drugs is an issue, and there is sufficient prospect of success, a community order with a drug rehabilitation requirement can be imposed as an alternative to a short or moderate custodial sentence.

7. Prevalence

The impact of the prevalence of particular types of theft offending within certain geographical areas is a matter to which the Council has given considerable thought. For example, thefts from the person are more prevalent in tourist areas as the sheer number of people provides both victims and cover for the offender. Guidance on prevalence is currently within the SGC guideline *Overarching Principle: Seriousness* at page nine. In developing a definitive theft guideline all the relevant guidance will be in one standalone document. The current theft guideline refers to that guidance whilst also reminding sentencers that national prevalence should not be used to justify including a deterrent element in sentences as this is already taken into account in Council guidelines.¹⁶ There is some evidence to suggest that this current guidance is being inconsistently applied. The Council is aware that some courts have sought to remedy this by issuing local guidance on this issue. The Council is concerned by this approach, as the Council wishes to ensure a consistency of approach to sentencing across the country, and these guidelines seek to address the issue in a clear and consistent manner.

The Council proposes to deal with prevalence as an aggravating factor at step two, enabling the sentencer to move upwards from the starting point. This is set out at pages 23 to 24. The draft guideline reminds sentencers that they should have supporting evidence of prevalence from an external source **and** be satisfied that there is a compelling need to treat the offence more seriously than elsewhere. Views on this aspect of the draft guideline are sought at question 6.

Section two: Developing the guideline

Research

As part of the development of the draft guideline, a number of strands of research and analysis have been undertaken to inform the proposals.

1. In the initial phases, a review was conducted of relevant evidence and published academic documents to provide some background for the work. This highlighted that information on some important areas was not readily available (for example the values involved in some thefts).
2. As a result, the Council put in place observational research in magistrates' courts (covering 43 cases) and undertook content analysis of transcripts of hearings for 121 defendants sentenced in the Crown Court for theft or receiving stolen goods. This provided indicative but valuable information on some of the key factors influencing sentencing decisions for these cases.¹⁷
3. This research will be supplemented by interviews with sentencers during the consultation period. This research process involves testing the draft guidelines against case scenarios for common theft offences, such as theft from a shop, or handling stolen goods. This research is conducted face to face with a number of magistrates, District Judges, and Crown Court Judges, based at a selection of different courts around the country.
4. At an early stage in the work on the new guideline, Sentencing Council officials discussed the proposals for the guidelines with a number of people who had an interest in the sentencing of theft offences. These discussions helped to better inform the development of the guidelines at an appropriate initial stage in the process.

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 courts are following a consistent approach to sentencing across England and Wales.

The particular circumstances of each offence which reaches court will be different. The draft guideline aims to help the court to decide how serious an offence is and what the sentence should be.

The first two steps that the court follows when deciding the sentence are about assessing the seriousness of an individual offence. These two steps are described on the next page.

¹⁷ The sample sizes for each of these exercises is very small compared to the overall number of theft cases sentenced. The information gained from this work has therefore been treated as indicative only, rather than conclusive

STEP ONE**Determining the offence category**

The first step that the court will take is to consider the principal factors of the offence. 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 or intended. Culpability relates to the role the offender has played and the degree of sophistication with which the offence was carried out. 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.

In these types of offences, harm is, broadly speaking, assessed in terms of the financial value involved in the offence and the effect on the victim but there are variations to the approach within each guideline.

Each draft guideline lists the principal harm and culpability factors relevant to 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.

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. It is at this step that the court should consider any adjustment for previous convictions, if appropriate. The court should also consider any relevant aggravating and mitigating factors and the weight that they are to be given. The factors at step two are non-exhaustive.

The ranges and starting points in the draft guidelines have been proposed based on statistical data collected by the Ministry of Justice and from the Crown Court Sentencing Survey. The way in which the data is collected allows sentence levels to be separated by offence, such as theft from a shop, or handling stolen goods. The ranges and starting points have then been tested against reported cases. For some offences the data is of limited assistance in determining sentence ranges and starting points due to the lack of data available from the magistrates' courts; as there are no recordings of the process in that jurisdiction there is a lack of data concerning the financial values of thefts sentenced in these courts. In these instances the ranges and starting points have been proposed on the basis of a combination of the current guidelines (where applicable), reported cases, press reports and data gathered from the research activities described above.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are six further steps to follow. The steps listed below apply to all the draft guidelines.

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.¹⁸

STEP FIVE**Totality principle**

Where an offender is before the court for more than one offence, the court must consider whether the sentences passed should be consecutive or concurrent. The court must also consider whether the total sentence is just and proportionate to the overall offending behaviour. Further guidance on the totality principle can be found in the Sentencing Council guideline *Offences taken into consideration and totality: definitive guideline*.¹⁹

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so. Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order or a restitution order.

¹⁸ http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-Revised_2007.pdf

¹⁹ http://sentencingcouncil.judiciary.gov.uk/docs/Definitive_guideline_TICs__totality_Final_web.pdf

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 passed.

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.

Section three: Theft from a shop or stall

(Draft guideline at page 73)

This section considers offences of theft from shops or stalls, charged under section 1 of the Theft Act 1968, which has a statutory maximum of seven years' imprisonment. In 2012, 67,871 offenders were sentenced for theft from a shop, which represents just under three quarters of all offenders sentenced for the theft offences included in this guideline. Within this offence, there is a broad spectrum of offending behaviour ranging from unsophisticated, opportunistic offences, often committed by those with drug or alcohol addictions, to highly planned, organised thefts from shops by groups of professional offenders. Due to its high volume and range of offending the Council considered that theft from a shop should continue to have a distinct guideline, as it currently does within the SGC guideline.

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. 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.

It is intended that the culpability factors will enable a court to assess the relative roles of offenders when sentencing theft from a shop.

It is important to note that the factors at step one are exhaustive.

STEP ONE **Determining the offence category**

The court should determine the offence category with reference only to the factors identified in the tables on the next page. 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
Involvement of others through coercion, intimidation or exploitation
Sophisticated nature of offence/significant planning
Significant use or threat of force
Offender subject to a banning order from the relevant store
Offender accompanied by a child who is involved in, aware of, or used to facilitate the offence

B – Medium culpability:

A significant role where offending is part of a group activity
Some degree of planning involved
Limited use or threat of force
All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction
Involved through coercion, intimidation or exploitation
Not motivated by personal gain
Opportunistic offence; little or no planning
Mental disorder/learning disability where linked to commission of the offence

Category A – High culpability

There are a number of factors which have been identified to demonstrate the most serious type of offending committed within this offence, designed to reflect the organised, professional offender, an offender who may lead a group, exploit others, or who uses force. In addition, offences where the offender is banned from a store, or offences which involve a child in the offence are proposed as factors which may place an offender in high culpability.

Category B – Medium culpability

The factors listed in this category are intended to specifically capture the offender who is not committing the most serious offences of theft from a shop, but is committing offences which involve some degree of planning, or plays a significant role within a group, or uses a limited amount of force in the offence. In addition, the last factor, 'all other cases where characteristics for categories A or C are not present', is intended to be used where, when the offending has been considered in the round the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

This category has factors which will identify the type of offender who has committed a more impulsive or unsophisticated type of offence. This could be by playing a limited role in a group offence, or someone who has been coerced into committing the offence by others, or who has a mental disorder linked to the commission of the offence, or where not motivated by personal gain.

Q1

Do you agree with the proposed factors within these 3 categories?
If not, please tell us why.

Harm factors

Once the court has determined the culpability category, it moves on to consider the harm caused by the offence. The Council considers that the financial loss caused or intended to be caused should form the basis of the assessment of harm. But, as with the draft fraud guidelines, the Council is proposing that the wider impact on the victim should also be included at step one, as a driver of the starting point, rather than as a step two aggravating factor. The assessment of harm is two fold: the financial values are used as the initial harm factor at harm A, with additional victim impact considered at harm B. This approach is intended to ensure consistency in terms of how financial amounts are considered in determining harm but also allows the sentencer to increase the overall harm category proportionally to reflect the level of victim impact.

Building on the positive responses received to its approach in the draft fraud guidelines, the Council is of the view that victim impact should be an integral component of the harm assessment as the financial loss alone does not fully reflect the harm this type of offending causes. The same sum may represent quite different harm depending on the type of establishment the theft takes place in or the type of victim involved.

Harm A has three categories of financial values that are based on either the loss caused or intended to be caused by the offence. The values have been chosen to reflect usual amounts for these offences based on reported cases, the small scale research carried out in the magistrates' courts and the Crown Court, and the judicial Council members' experiences of these offences. The assessment of harm is based on actual or intended loss to the victim. Intended loss relates to offences where circumstances prevent the actual loss that is intended by the offender committing the theft. For example, where an offender is apprehended outside the shop, and the stolen items are retrieved, the fact the offender is prevented from keeping the stolen goods does not necessarily reduce the level of harm for the purposes of sentencing.

Harm is initially assessed by reference to the loss that results from the theft.

Intended loss should be used where actual loss has been prevented.

Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified range.

Harm A

Loss caused or intended

Category 1	Above £1,000	Starting point based on £2,500
Category 2	£250 to £1,000	Starting point based on £500
Category 3	Up to £250	Starting point based on £125

The starting points in the draft guideline are intended to provide assistance to magistrates’ courts which regularly deal with offences at the lower end of the scale of financial loss. Current sentencing statistics show that 98 per cent of thefts from shops are heard in magistrates’ courts. However, the guideline also needs to cover high value thefts from shops, so category 1 has a starting point of £2,500. Guidance is also included advising courts sentencing cases that involve values that greatly exceed the starting point in the highest category of £2,500 where it may be appropriate to move outside the top of the offence range.

Q2 Do you think the financial amounts in the three categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.

The court is then directed to take account of any additional harm caused to the victim at ‘Harm B’ and where additional harm has resulted, to consider whether there should be an upward adjustment of the sentence either within or above the range. The ‘victim’ in this offence can refer to the owner of the shop whether a sole trader, or a large store and to any staff.

Harm B
 To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect on the victim, examples of such detrimental effect can include:

Emotional distress
Damage to property
Loss of business
The victim is particularly vulnerable (due to factors including, but not limited to, their age or disability)
A greater impact on the victim due to the size or type of their business

The draft guideline intends to better reflect the impact of the theft on the victim in the starting point than the SGC guideline, which only lists damage caused, with the vulnerability of the victim as an additional aggravating factor. The financial and personal impact of shop thefts clearly can have a greater impact on the owners of small businesses, but larger retailers can also be affected by the impact of repeated shop thefts. Whilst this can be financial it can also be a personal impact; for example, some large retail chains may have only one sales person working in their smaller units at any one time, who can be left distressed by persistent and aggressive shoplifters.

In line with most other guidelines, the list of factors within step one is exhaustive, so only those factors listed within the guideline can be considered by sentencers. At the consideration of additional harm caused by the offence at harm B, additional harm can **only** be demonstrated by a ‘detrimental effect on the victim’. However, the examples that may illustrate this detrimental effect are not exhaustive. Some examples have been given, such as ‘emotional distress’, but the court may

consider other examples, as long as they demonstrate a detrimental effect of the offence on the victim.

Q3

Is the wording at harm B clear? Is it clear how the additional harm should be considered?

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 Above £1,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 26 weeks' – 4 years' custody	Category range Medium level community order – 36 weeks' custody	Category range Low level community order – 13 weeks' custody
Category 2 £250 to £1,000	Starting point 13 weeks' custody	Starting point Medium level community order	Starting point Band C fine
Starting point based on £500	Category range High level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – Medium level community order
Category 3 Up to £250	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
Starting point based on £125	Category range Low level community order – 13 weeks' custody	Category range Band B fine – High level community order	Category range Discharge – Low level community order

Sentence levels

The starting points and ranges have been developed based on current sentencing practice, reported cases, and the small scale research carried out in magistrates' courts. The latter indicated a wide variation in sentencing for lower level shop theft reflecting both the value of the offence and the offender's circumstances. The sentencing ranges have therefore been drafted deliberately widely with the intention that sentencers are given as much flexibility as possible to ensure a just outcome.

Once the sentencer has arrived at a starting point, they should then consider further 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 a factor 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.

As set out at pages 11 to 12, a particular feature of offenders convicted of these offences is the high number of relevant and recent convictions and the impact that these have on sentencing for what, taken in isolation, may be low value offences. In order to assist the court in dealing with such convictions, the Council has included the following narrative wording in all the draft guidelines (between the sentencing levels tables and the lists of aggravating and mitigating factors):

*'In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.'*

As discussed in section one, the sentencing ranges within the draft guidelines are intended to reflect current sentencing practice for these cases, which in turn reflects the sentencing of offenders with many previous convictions. The Council seeks to regularise sentencing practice, rather than alter it substantially. The wording on previous convictions is intended to provide sentencers with the discretion and flexibility to adjust sentences upwardly, including outside the category range, based on the individual facts before them, rather than prescriptively stating how sentencers should reflect this issue in every case.

Q4

Do you agree with the proposed approach to the treatment of previous convictions? If you do not agree, please tell us why.

Another feature of this offence is the frequency with which offenders appear for multiple offences. The guideline reminds sentencers of the availability of consecutive sentences at step two, and of the need to consider the totality guideline.

This offence is frequently committed by those with underlying drug problems as a way of financing their drug habit. The treatment of the underlying addiction has the possibility of removing the need to offend so there is also a reminder as to the possible use of a community order with a drug

rehabilitation requirement as an alternative to short or moderate custodial sentences where there is sufficient prospect of success.

Aggravating and mitigating factors

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Stealing goods to order

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Offender motivated by intention to seek revenge

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence – there may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. It is essential that the court:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, and is causing particular harm in that community, and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

‘Previous convictions’ and ‘offence committed whilst on bail’ are factors which the court is required in statute to consider when assessing the seriousness of an offence and their inclusion is therefore not subject to consultation. As with previous guidelines issued by the Council, it is proposed that these factors are considered at step two after the starting point has been established.

The following factors are standard aggravating factors that have been included in other definitive guidelines and which are relevant to this offence:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact (for issues other than prevalence)

Additional factors tailored to this offence include:

- ‘Offender motivated by intention to seek revenge’ which appeared in the SGC guideline as indicating high culpability, and reflects harm caused by offences motivated by personal reasons. The Council included it within this guideline as an aggravating factor, as it felt it was not a principal feature of this offence, but rather provides context to the commission of the offence.
- ‘Stealing goods to order’ is proposed as an aggravating factor, which is wider than the SGC guideline factor of ‘offender targeted high value goods’.

As discussed in section one on page 12, there is a factor at this step within the guideline to assist courts with the assessment of prevalence issues. The Council believes that the correct approach to prevalence is to enable the court to move a sentence up from the starting point, either within or above the range. However, the factor is intended to remind sentencers that in order to influence sentencing levels, it should only be applied where:

- there are ‘exceptional local circumstances’;
- the court has supporting evidence of this; and
- the court is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

The issues considered under this prevalence wording are separate to the considerations of the impact of a one-off incident, for example an act of civil disobedience in an area, which would be captured within ‘established evidence of community/wider impact (for issues other than prevalence)’. This distinction has been made to avoid ‘double-counting’ of the same issue.

Q5

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

Q6

Do you agree with the treatment of prevalence as an aggravating factor? If not, please tell us how else you think this issue could be reflected within the guideline.

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

There are no statutory mitigating factors. The first three factors listed above have been consulted on in earlier guidelines and the Council decided to include them in all guidelines where appropriate. The factors listed below have also been used in other guidelines, they do not have to be taken into account if they are not relevant in a particular case.

‘Serious medical conditions requiring urgent, intensive or long-term treatment’ is a factor that may be considered when the court is weighing up whether to suspend a custodial sentence or the suitability of a community order or the length of sentence.

‘Age and/or lack of maturity where it affects the responsibility of the offender’ is a standard factor included in Sentencing Council guidelines that is intended to deal with offences committed by those who are only just over the age of 18 or who are over 18 but immature in comparison to their peers. This factor may also be applicable when sentencing elderly offenders.

‘Mental disorder or learning disability (where not linked to the offence)’ may be cause for mitigation if it has affected an offender’s understanding of the severity of their actions. This is different to the factor included within lesser culpability, which is when a mental disorder or learning disability **is** linked to the commission of the offence.

Where the offender is the ‘sole or primary carer for dependent relatives’ the court will want to consider the impact of any sentence, but particularly a custodial term, on dependants.

‘Determination and/or demonstration of steps having been taken to address addiction or offending behaviour’ is a standard factor included in Sentencing Council guidelines to reflect circumstances where the offender has not only taken responsibility for their behaviour but has also shown commitment to addressing it.

Q7

Are there any other mitigating factors which are not listed here which you think should be? Please tell us any others you think should be included and why.

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario A – Theft from a shop

D entered a supermarket at the end of the afternoon, when the store was at its busiest, with a foil lined carrier bag. He selected a DVD boxed set valued at £25, which he placed within the bag, and then left without paying. The foil lining on the bag prevented the security alarm being activated as he left the store, but D's actions had been seen by a security guard and he was stopped. The stolen item was recovered in a saleable condition. D has 50 previous convictions for similar theft offences, committed over the last 10 years, the most recent being four months earlier for which he was sentenced to 8 weeks' custody. D had previously been made subject of a number of community sentences all of which he had failed to comply with.

Step one: D had used some degree of planning to commit the offence, (adapting the foil lined bag, and targeting the store when it was at its busiest) which places him in culpability B. The value of the goods taken was £25, which falls into harm category 3. There is no evidence of additional harm (harm B).

Step two: The starting point would be a low level community order with a range of band B fine to high level community order. His previous convictions indicate that this is a case involving significant persistent offending and this could justify an upward adjustment to the sentence including a custodial sentence which is outside the category range.

The magistrates sentencing D concluded that his offence (aggravated by his persistent offending of a like nature) is so serious that neither a fine nor a community order can be justified. The sentence they pass is one of 12 weeks' custody, after a one-third reduction for a guilty plea.

Q8

Do you consider that the sentence passed in Scenario A is proportionate? Specifically, do you consider that a short custodial sentence in such a case is appropriate?

Q9

If you do not agree, please say what sentence should be passed and why.

Scenario B – Theft from a shop

S stole a handbag worth £200, from a small designer boutique. She had asked to see the bag which had been in a locked cabinet, and then asked to see another bag from the window display. While the shop owner was taking the bag out of the window, S hid the first bag under her coat, and tried to leave the shop. The shop owner challenged S, who pushed past her and ran off. She was identified from CCTV and arrested. S has one previous conviction for shop theft two years ago. The bag was not recovered. In a victim personal statement, the shop owner stated that she had found the incident very upsetting, and that her small business could not support the loss of a valuable stock item.

Step one: These facts suggest culpability B, (some level of planning involved, limited use of force), with loss caused of £200, which falls into harm category 3. Applying the further assessment at harm B, the court is likely to consider that the additional harm caused amounts to a detrimental effect on the victim such as would justify moving to the top of the category 3 range, or possibly outside the range due to the harm caused by the emotional distress to the victim, and the impact of the theft on her business due to its size.

The likely sentence would therefore be in the range of a high level community order to 26 weeks' custody before any reduction for a guilty plea.

Q10

Please give your views on the proposed sentence levels for this offence in Scenario B.

Q11

Do you think the mechanisms to move upwards from the starting point, including outside a category for previous convictions or for additional harm, offer flexibility to sentencers? Are they clearly explained within the guidelines?

Q12

Do you feel the shop theft guideline gives the right level of guidance? If not, please tell us why.

Section four: General theft

(Draft guideline at page 79)

This section considers a number of the most common and high volume section 1 theft offences which have been grouped together within one guideline called 'general theft'.

The offences included are:

- theft from the person;
- theft in a dwelling;
- theft in breach of trust;
- theft from a motor vehicle;
- theft of a motor vehicle;
- theft of pedal cycles;
- all other section 1 1968 Theft Act offences, excluding theft from a shop or stall.

All of these offences are charged under section 1 offences under the Theft Act 1968, which has a statutory maximum of seven years imprisonment. In 2012, 14,815 offenders were sentenced for these offences, of whom 78 per cent were sentenced in magistrates' courts.

The Council carefully considered the nature, impact and levels of culpability within these 'general theft' offences, and considered a number of options as to how to group them together. The Council decided that as a number of the culpability and harm factors were very similar, it was possible to group all the offences into one guideline. By doing so, the Council felt that this would encourage consistency in sentencing across similar types of high volume theft offences.

A separate guideline for each of the six offences was considered, but the Council felt that this would result in a number of guidelines having very similar culpability and harm factors, and make the overall guideline very lengthy, so this option was discounted.

Another option the Council considered was to have one guideline for the arguably more invasive, personal type of thefts, theft in a dwelling, theft in breach of trust, and theft from the person, and a second guideline for the less personal thefts, theft of a motor vehicle, theft from a motor vehicle, and theft of a pedal cycle. In considering this option, the Council felt it could be argued that all thefts are 'personal'; having a handbag stolen from a person's car could have as much impact on the victim as if it had been stolen from their home. The Council concluded that one guideline which adequately encompassed all the harm and culpability factors within the offences, especially with regard to the seriousness of some of the types of offence within breach of trust cases, was the most effective way to provide guidance for some of the most common section 1 1968 Theft Act offences.

Theft from the person covers 'pick-pocketing', where the victim has property stolen, for example handbags, wallets, or mobile telephones.

Theft in a dwelling covers situations where a theft is committed by an offender who is present in a dwelling with the authority of the owner or occupier. This could include thefts by lodgers or visitors to a victim's residence, such as friends, relatives or salespeople. Where an offender enters a dwelling as a trespasser in order to commit theft, this conduct will generally constitute the more serious offence of burglary.

Theft in breach of trust can include theft in the course of an employee/employer relationship, or in a professional advisor/client relationship. It also covers cases in which an offender is in a position of authority over the victim or one whereby they would be expected to have a duty to protect the interests of the victim, such as medical, social or care workers.

Theft from a motor vehicle covers any theft from a motor vehicle, such as a handbag or satellite navigation device.

All other section 1 1968 Theft Act offences – this guideline can be used for any other section 1 theft offences (other than theft from a shop or stall) which are not listed above. It is intended that in this way the guideline can deal with any changes to offending behaviour that are charged under section 1.

Q13

Do you agree that a single guideline is appropriate for general theft offences? If not, please tell us why not, including any other options for grouping these offences together.

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in 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.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors identified in the tables on the next page. 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant breach of high degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Offence conducted over sustained period of time
- Large number of victims
- Use of deception
- Theft involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability
- Significant steps taken to avoid detection and/or conceal identity

B – Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic offence; little or no planning
- Limited awareness or understanding of offence
- Offence not involving vulnerable victim

Category A – High culpability

There are a number of factors which have been identified to demonstrate the most serious type of offending. Offenders at this level may have committed a sophisticated, highly planned offence, have lead or exploited others, or used force. A number of the factors in this category have been adapted from the existing SGC guideline; for example, culpability relating to the targeting of vulnerable victims, breach of a high degree of trust, and use of deception. The Council believes that these are principal features of these offences and should be included at step one. It has also elevated ‘Offence conducted over a sustained period of time’ from an aggravating factor in the SGC guideline, because of the planning required for an offence to be conducted over a long period. ‘Large number of victims’ has also been included.

Category B – Medium culpability

The factors listed in this category are intended to identify the offender who is not committing the most serious offences, but equally is not committing offences at the lowest level of culpability. This is encapsulated within the factor ‘all other cases where characteristics for categories A or C are not

present'. This is intended to be used where, when the offending has been considered in the round, the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

This category has factors which will identify the offender who has committed a more impulsive or unsophisticated type of offence. This could be by playing a limited role in a group offence, or someone who has been coerced into committing the offence by others, or has limited understanding of the offence, or has committed an opportunistic offence.

Q14

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

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence. The approach to the consideration of harm here is identical to the approach taken in theft from a shop or stall, which is discussed on page 19, with consideration of harm A and B. However, to reflect the wide range of forms that theft can take the financial amounts have been altered, particularly to reflect the higher values that are often seen in offences involving thefts from employers or otherwise committed in breach of trust. Guidance is also included for cases that involve values greatly exceeding the starting point in the highest category of £250,000 when it may be appropriate to move outside the category range.

Harm is initially assessed by reference to the loss that results from the theft.

Intended loss should be used where actual loss has been prevented.

Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified category range.

Harm A

Loss caused or intended

Category 1	£50,000 or more	Starting point based on £250,000
Category 2	£5,000 to £50,000	Starting point based on £25,000
Category 3	£500 to £5,000	Starting point based on £2,500
Category 4	Up to £500	Starting point based on £250

Q15

Do you agree the financial amounts in the four categories for general theft are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.

Harm B

To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upwards adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect on the victim or others; examples of such detrimental effect can include:

Items stolen of an economic, sentimental or personal value
--

High level of inconvenience caused to victim or others
--

Consequential financial harm to victim or others
--

Disruption caused to infrastructure

A risk of, or actual, injury to persons or damage to property

Damage to heritage structures

Emotional distress, fear/loss of confidence caused by the crime

Impact of theft on a business (loss of reputation or jobs)
--

Greater impact on the victim due to their circumstances

In line with the approach in the theft from a shop or stall guideline, this draft guideline intends to better reflect the impact on victims, as shown by the list of factors above.

Three of the factors also relate specifically to the impact caused by metal thefts:

- ‘Disruption caused to infrastructure’ refers to the disruption that can be caused by metal theft from, for example, railways, power-lines or telephone cables.
- ‘A risk of, or actual injury to persons or damage to property’ refers to the risk of, or actual injury caused to people by, for example, the theft of manhole covers or electrical cabling, or the damage to property caused by the theft of lead from roofs.
- ‘Damage to heritage structures’ is intended to cover, for example, the theft of metal plaques from war memorials.

In line with most other guidelines, the list of factors within step one is exhaustive, so only those factors listed within the guideline can be considered by sentencers. At the consideration of additional harm caused by the offence at harm B of the guideline, additional harm can **only** be demonstrated by a ‘*detrimental effect on the victim or others*’. However, the examples that may illustrate this detrimental effect are not exhaustive. Some examples have been given, such as emotional distress, but the court may consider other examples, as long as they demonstrate a detrimental effect of the offence on the victim.

Q16

Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

STEP TWO

Starting points and category ranges

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £50,000 or more	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
Starting point based on £250,000	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 1 year 6 months' custody
Category 2 £5,000 to £50,000	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 13 weeks' custody
Starting point based on £25,000	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody
Category 3 £500 to £5,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 13 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody
Category 4 Up to £500	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
Starting point based on £250	Category range Medium level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody	Category range Discharge – High level community order

Sentence levels

The starting points and ranges have been developed based on current sentencing practice, case law, research carried out in magistrates' courts and an analysis of Crown Court transcripts. These sources have also been used to test the proposed sentence levels within this consultation. The sentencing ranges have been drafted deliberately widely with the intention that sentencers are given as much flexibility as possible to ensure a just outcome.

The text relating to relevant recent convictions as discussed on page 22, is also included within this guideline, and gives discretion to increase a sentence based on relevant recent convictions.

Aggravating and mitigating factors

Once the court has arrived at a starting point, it should then consider further adjustment for any aggravating or mitigating factors.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Stealing goods to order

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Offender motivated by intention to cause harm or out of revenge

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence – there may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. It is essential that the court:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, and is causing particular harm in that community, and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

The list of aggravating factors is very similar to the ones proposed within the theft from a shop or stall guideline; a discussion of these factors is at pages 23 to 24. There is one additional factor included here, 'blame wrongly placed on others,' which will apply where the offender has attempted to divert attention away from themselves in an investigation either by deliberately blaming an innocent party, or by being slow to admit their own guilt, resulting in blame falling on others which can occur in offences committed in breach of trust.

There is also wording regarding prevalence within the list of aggravating factors, which is discussed at page 12 of the theft from a shop or stall section. It is included here as an aggravating factor for consideration by courts due to the prevalence of theft from the person offences within certain areas, and enables the court to upwardly adjust a sentence if appropriate.

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

Inappropriate degree of trust or responsibility

The list of mitigating factors is very similar to those proposed within the draft theft from a shop or stall guideline, discussed at pages 24 to 25. There is one additional factor listed here which is specific to breach of trust offences: 'Inappropriate degree of trust or responsibility'. This is taken from the SGC guideline, and could be considered mitigation for theft in breach of trust cases if an offender succumbed to temptation having been placed in a position of trust or given responsibility to an inappropriate degree.

Q17

Do you agree with the proposed aggravating and mitigating factors for general theft? If not, please specify which you would add or remove and why.

The following scenarios have been included to provide illustrations of cases where the guideline would be applicable and the resulting sentence ranges.

Scenario C – Theft from the person

Mrs L, aged 85 and in a wheelchair, was in her local supermarket and when she went to the till to pay, she found that her purse which contained £60 in cash was missing from her handbag. Staff in the store reviewed the CCTV footage, which showed the defendant P, following Mrs L along one of the aisles and taking the purse out of Mrs L's handbag when Mrs L was taking an item from a display. The CCTV was handed to the police and the defendant was identified and subsequently arrested. Neither the cash nor the purse were recovered. As a result of the offence Mrs L says she has been left shaken, and no longer thinks she will be able to go out on her own to do her shopping. P has 60 previous convictions for dishonesty offences.

Step one: the facts suggest culpability A, as P had deliberately targeted Mrs L on the basis of her vulnerability, and an initial harm assessment of £60 (plus the value of the purse itself), which falls into category 4. A further assessment at harm B would lead to an upward adjustment within category 4 for the distress and loss of confidence, caused to the victim.

Step two: the extensive number of relevant previous convictions would lead to a further upward adjustment and would be likely to take the sentence outside the initial category range and into the range of 13 weeks' to 2 years' custody.

The police provided the court with a community impact statement, which asserted that theft from the person was prevalent in this particular shopping locality, with incidents of 'pick-pocketing' three times higher than the national average. A local visitor survey showed that as a result of this type of crime, visitors were being put off coming to the area to shop. This would represent a further increase from the starting point to take account of prevalence and could lead to an upward adjustment into the category range of 1 to 4 year's custody.

Q18

Do you consider that the mechanisms to move upwards from the starting point, including outside a category range due to the level of previous convictions/ additional harm caused to the victim, and prevalence leads to a proportionate sentence in Scenario C?

Q19

Do you consider the mechanism to adjust the sentence upwards including outside the category range due to the additional harm caused to the victim/amount of previous convictions/prevalence issue is workable?

Scenario D – Metal theft

G stole 150 individual brass plaques from a memorial at a crematorium; each plaque commemorated a person who had been cremated. He removed the plaques using a screwdriver taken with him for that purpose. He later removed the engraving from the plaques using a metal grinder before attempting to sell them for scrap, at which point he was arrested after the scrap metal dealer he approached contacted the police. The scrap value of the plaques was £100, the replacement cost to the crematorium was £4,000. G has one previous conviction for criminal damage a year ago.

Step one: the facts suggest culpability A, due to the large number of victims involved, with harm (represented by the loss to the crematorium) of £4,000, which is category 3. Applying the further assessment at harm B the court is likely to consider that the additional harm caused by the distress to the families of the deceased would justify moving to the top of the range of category 3, or possibly outside the range.

Step two: the likely range would therefore be one to four years' custody before any reduction for a guilty plea.

Q20

Do you think the mechanism to adjust the sentence upwards including outside the category range in Scenario D leads to a proportionate sentence?

Section five: Abstracting electricity

(Draft guideline at page 87)

This section is applicable to offences charged under section 13 of the Theft Act 1968. The offence can be tried in either magistrates' courts or the Crown Court and has a statutory maximum of five years. It is committed by dishonestly using electricity without authority or by dishonestly causing electricity to be wasted or diverted.

Currently, a sentencing guideline for this offence is provided only within the MCSG. In 2012 there were 480 offenders sentenced for this offence, of which 72 per cent were sentenced at magistrates' courts. The numbers of offenders sentenced for this offence is relatively low; however, this figure only reflects where it is dealt with as the primary offence. This offence is commonly used to facilitate other offences, notably the cultivation of cannabis. A recent Ofgem press release²⁰ stated that at least one third of all illegally abstracted electricity in the UK is used to grow cannabis. Recent media coverage has also suggested that this type of offending is becoming more widespread. The Council has therefore concluded that the proposed theft guideline should include a guideline for the sentencing of this offence, to ensure consistency.

Q21

Do you agree that the new theft definitive guideline should include guidance for this low volume offence? If not, please tell us why.

Q22

If you agree that this offence should be included, should it be within a single guideline?

Q23

If not, should it be contained within one of the other five guidelines, with a separate sentencing table? If so, please state which other guideline it should be contained in and why.

20 <https://www.ofgem.gov.uk/ofgem-publications/76213/electheft-2july.pdf>

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in 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.

STEP ONE Determining the offence category

The court should determine the offence category with reference only to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Abuse of position of power or trust or responsibility

Commission of offence in association with or to further criminal activity

B – Medium culpability:

A significant role where offending is part of a group activity

All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Limited awareness or understanding of offence

Category A – High culpability

There are a number of factors which have been identified to demonstrate the most serious type of offending within this offence. Offenders may be organised, professional and lead a group or exploit others. ‘Abuse of position of power or trust or responsibility’, could refer to offenders who have exploited their position or expertise, for example, as an energy company employee, to facilitate the offence. ‘Commission of offence in association with or to further criminal activity’, is intended to deal with cases where the illegal abstraction of electricity is associated with other criminal activity, for example, cultivation of cannabis.

Category B – Medium culpability

The factors listed in this category are intended to identify the offender who is not committing the most serious offences, but equally is not committing offences at a lesser level of culpability. This is encapsulated within the factor ‘all other cases where characteristics for categories A or C are not present’. It is intended to be used where, when the offending has been considered in the round, the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

This category has factors which will identify the offender who has committed the more low level, unsophisticated type of offence. This could be by playing a limited role in a group offence, or someone who has been coerced into committing the offence by others, or has limited understanding of the offence, or has committed an opportunistic offence.

Q24

Do you agree with the culpability factors?

Harm factors

Once the court has determined culpability, the next step is to consider the harm caused by the offence. This is a single stage which requires the court to consider whether the harm caused by the offence is greater or lesser. A two-stage process has not been used here as evidence of precise financial values for this offence is not available.

Harm:

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

Greater Harm:

A significant risk of, or actual injury to persons or damage to property.

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used.

Lesser Harm:

All other cases.

The factors listed within the assessment of greater harm are intended to identify the more serious cases and the greater harm associated with them. These could be cases where the illegal tampering of an electricity meter risked, or caused actual injury to people, or damaged property, or a significant volume was extracted, as evidenced by the length of time of offending, and/or the advanced type of illegal process used in the offence.

Lesser harm does not contain any factors as it is to be used where none of the factors indicating greater harm are present. As part of step one within the guideline, this list of factors is exhaustive.

Q25

Do you agree with the proposed one stage approach to the assessment of harm? If not, please tell us why.

Q26

Do you agree with the factors included in greater and lesser harm? Are there any other factors which you think should be included?

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Greater	Starting point 26 weeks' custody	Starting point 13 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order
Lesser	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 13 weeks' custody	Category range Low level community order – High level community order	Category range Discharge – Low level community order

Sentence levels

The sentence levels have been developed based on current sentencing practice, reported cases and the analysis of Crown Court transcripts.

The text relating to relevant recent convictions as discussed on page 22, is also included within this guideline, and gives discretion to increase a sentence based on relevant recent convictions.

Aggravating and mitigating factors

Once the court has determined the appropriate starting point, it should then consider any further adjustment for any aggravating or mitigating factors.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact

The list of aggravating factors is very similar to the one proposed within the theft from a shop or stall and general theft guidelines, which are discussed at pages 23 and 35 respectively. Only factors relevant to this offence are included; for example, 'offender motivated by intention to cause harm or out of revenge' is not included. It is also thought that the issue of prevalence is not relevant to this offence, so the text regarding prevalence has not been included here.

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

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

The list of mitigating factors is very similar to that proposed within the draft theft from a shop or stall guideline which are discussed at page 24. Only factors relevant to this offence are included; for example, 'remorse, particularly where evidenced by voluntary reparation to the victim' is not thought to be relevant here.

Q27

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

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario E – Abstracting electricity

Police conducted a search of R's home on an unrelated matter and discovered that the electricity meter had been tampered with so that the unit counting disc had been slowed down. An analysis of R's electricity bills indicated that he had been paying for less than half the electricity he had been using for a period of 14 months. The tampering to the meter had left it in a dangerous state, which led to a significant risk of fire. The flats where R lived were evacuated while the meter was made safe. R had no previous convictions, and pleaded guilty to the offence.

Culpability would be assessed as B (none of the factors in A or C present) and harm would be assessed as greater. The likely sentence would be in the range of a medium level community order to 26 weeks' custody, before any reduction for guilty plea.

Q28

Please give your views on the proposed sentence levels for this offence in Scenario E.

Section six: Making off without payment

(Draft guideline at page 93)

This section is applicable to offences charged under section 3(1) of the Theft Act 1978. These offences can be tried in either magistrates' courts or the Crown Court and carry a statutory maximum of two years' custody. In 2012 1,725 offenders were charged with this offence, 95 per cent of which were sentenced at magistrates' courts. This offence covers situations such as driving off from a petrol station without paying for fuel, failing to pay a taxi fare, or leaving a hotel or restaurant without paying. The values involved are generally relatively low but in some cases may be significant. There is currently a guideline within the MCSG.

There is considerable similarity between the culpability and harm factors for this offence, and those listed within the general theft guideline discussed at section four. For this reason the Council considered including this offence within the general theft guideline, with a separate sentencing table to reflect the difference in the statutory maxima between the two offences. However, as there are differences in the legal elements between the two offences and the general theft guideline as drafted covers a number of theft offences, the Council decided that for greater clarity, this offence should be contained within a separate guideline.

Q29

Do you agree that making off without payment should be contained within its own guideline? If not, please state why and where you think guidance for this offence would best be placed.

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in 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.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Large number of victims

Theft involving intimidation or the use or threat of force

Deliberately targeting the victim on the basis of vulnerability

B – Medium culpability:

A significant role where offending is part of a group activity

All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Opportunistic offence; very little or no planning

Limited awareness or understanding of offence

Offence not involving a vulnerable victim

The list of culpability factors is very similar to those proposed in the draft general theft guideline, which are discussed at pages 30 to 31 of that section.

Q30

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

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence.

The harm assessment mirrors that of the general theft guideline, comprising two stages. Firstly, the court is to put the offence into one of the categories in the harm A table. The categories are split into two ranges of financial values based on the loss caused. The values have been chosen to reflect usual amounts for these offences based on reported cases and the judicial Council members' experience of these offences.

There is no reference to 'intended loss' here as with this offence there will only ever be actual loss. The court is then directed to take account of the level of harm caused to the victim in the harm B table, to see whether any greater harm has been caused by the offence, which may warrant an upward adjustment of the sentence. The 'victim' refers to the owner or employees of the establishment in which the offence occurs.

Harm is initially assessed by the actual loss that results from the offence.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

Harm A**Loss caused**

Category 1	£200 or over	Starting point based on £500
Category 2	Up to £200	Starting point based on £50

The values and starting points in the draft guideline are intended to provide assistance to magistrates' courts which regularly deal with offences at the lower end of the scale of financial loss. Current sentencing statistics show that 95 per cent of making off without payment cases are heard in magistrates' courts. Guidance is also included advising courts sentencing cases that involve values that greatly exceed the starting point of £500 in the highest category that it may be appropriate to move outside the range.

Q31

Do you think the financial amounts in the two categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

Harm B

To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect on the victim: examples of such detrimental effect can include:

- | |
|--|
| A high level of inconvenience caused to the victim |
| Emotional distress, fear/loss of confidence caused by crime |
| A greater impact on the victim due to the size or type of their business |

The draft guideline intends to better reflect the impact of the offence on victims than the guidance in the MCSG. The impact of making off without payment offences could have a greater impact depending on the size and nature of the business involved. In some organisations employees are required to compensate employers for losses ‘on their watch’.

In line with most other guidelines, the list of factors within step one is exhaustive, so only those factors listed within the guideline can be considered by sentencers. At the consideration of any additional harm at harm B of the guideline, additional harm can **only** be demonstrated by a ‘*detrimental effect on the victim*’. However, the examples that may illustrate this detrimental effect are not exhaustive. Some examples have been given, such as emotional distress, but the court may consider other examples, as long as they demonstrate a detrimental effect of the offence on the victim.

Q32

Is the wording at harm B clear? Is it clear what impact additional harm can have?

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £200 and over Starting point based on £500	Starting point High level community order	Starting point Low 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 Band A fine – Medium level community order
Category 2 Up to £200 Starting point based on £50	Starting point Medium level community order	Starting point Band C fine	Starting point Band A fine
	Category range Low level community order – 13 weeks’ custody	Category range Band A fine – High level community order	Category range Discharge – Band B fine

Sentence levels

The sentence levels have been developed based on current sentencing practice, and reported cases.

The text relating to relevant recent convictions as discussed on page 22, is also included within this guideline, and gives discretion to increase a sentence based on relevant recent convictions.

Aggravating and mitigating factors

The court should then consider further adjustment for any aggravating or mitigating factors as listed on the next page.

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

The list of aggravating factors is very similar to the one proposed within the theft from a shop or stall guideline: discussion of these factors is at page 23. Only factors relevant to this offence are included; for example, ‘stealing goods to order’ is not included. It is also not thought that the issue of prevalence features within this offence, so the text regarding prevalence has not been included here.

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependant relatives

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

The list of mitigating factors is very similar to that proposed within the draft theft from a shop or stall guideline, discussed at page 24. Only factors relevant to this offence are included; for example, ‘inappropriate degree of trust or responsibility’ is not a relevant factor here.

Q33

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

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario F – Making off without payment

S ordered a taxi to take him on a 30 mile journey at one o'clock in the morning. On arrival at his destination, the taxi driver told him that the fare was £50. S got out of the cab and ran off without paying. The taxi driver gave a statement saying that he was struggling to make a living in the current financial climate and that the loss of £50 caused him real hardship. He has had to borrow money to buy fuel to enable him to continue working. S has no previous convictions, and pleaded guilty to the offence.

S would be assessed as medium culpability (B) as there are none of the high or lesser culpability factors present. The amount of money involved would indicate that the sentence would be at the starting point of harm category 2. However, the impact of that loss on the victim would justify moving up the range. The likely sentence, before consideration of any aggravating or mitigating factors and reduction for guilty plea, would be a community order.

Q34

Please give your view on the proposed sentence levels for this offence in Scenario F.

Section seven: Handling stolen goods

(Draft guideline at page 99)

This guideline considers offences committed under section 22 of the Theft Act 1968, which includes the offences of receiving and handling stolen goods. These offences can be tried in either magistrates' courts or the Crown Court and have a statutory maximum of 14 years' imprisonment. In 2012, 6,329 offenders were sentenced for this offence, of whom 70 per cent were sentenced at magistrates' courts. Currently sentencing guidelines appear within the MCSG.

The handling of stolen goods is closely linked to other forms of dishonesty offences, including those of a serious nature such as robbery or burglary. Without people handling stolen goods, many other criminal activities would be less fruitful. These offences can have considerable impact, and indirectly cause great harm to victims, such as in the example of handling metal stolen from railways. The circumstances of handling cases can be wide ranging from low value, unsophisticated offences, to highly organised group operations involving large amounts of money.

The Council proposes that all handling/receiving offences should be dealt with in one guideline.

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in 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.

STEP ONE **Determining the offence category**

The court should determine the offence category with reference only to the factors identified in the tables on the next page. 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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:**

Closeness in time or place to the underlying offence
The provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property
A leading role where offending is part of a group activity
Sophisticated nature of offence/significant planning
Involvement of others through coercion, intimidation or exploitation
Abuse of position of power or trust or responsibility

B – Medium culpability:

A significant role where offending is part of a group activity
Offences are committed by offender as part of commercial activity
Offender makes self available to other criminals as willing to handle the proceeds of crime
All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction
Involved through coercion, intimidation or exploitation
Opportunistic offence; little or no planning/sophistication
Limited awareness or understanding of offence
Low value goods acquired for offender's own personal use

Category A – High culpability

There are a number of factors which have been identified to demonstrate the most serious type of offending within this offence – the organised, professional offender who may lead a group or exploit others.

‘Closeness in time or place to the underlying offence’, or ‘the provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property’ is wording adapted from the current guideline for this offence, which itself refers to case law, and is intended to capture those offenders who have not been charged with a substantive offence but are connected to that offence in some way.

‘Abuse of position of power or trust or responsibility’ refers to offenders who exploit their insider knowledge in order to facilitate the offence; for example, art dealers.

Category B – Medium culpability

The factors listed in this category are intended to identify the offender who is not committing the most serious offences, but equally is not committing offences at the lowest level of culpability. They may play a significant role within a group activity, or act in a professional, solo capacity. The factor

‘all other cases where characteristics for categories A or C are not present’, is intended to be used where, when the offending has been considered in the round, the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

This category has factors which will identify the offender who has committed the more low level, unsophisticated type of offence. This could be by playing a limited role in a group offence, someone who has been coerced into committing the offence by others, or has limited understanding of the offence, or has committed an opportunistic offence.

Q35

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

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence. The approach to the consideration of harm here is identical to the two stage approach taken in theft from a shop or stall, which is discussed on page 19.

Harm is initially assessed by reference to the financial value (to the owner) of the stolen goods.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

Harm A

Loss caused

Category 1	£50,000 or more	Starting point based on £250,000
Category 2	£5,000 to £50,000	Starting point based on £25,000
Category 3	£500 to £5,000	Starting point based on £2,500
Category 4	Up to £500	Starting point based on £250

The financial values for the starting points in the draft guideline are intended to provide assistance to magistrates’ courts which regularly deal with offences at the lower end of the scale of financial loss. Current sentencing statistics show that 70 per cent of handling cases are heard in magistrates’ courts. Guidance is also included advising sentencers considering cases that involve values that greatly exceed the starting point in the highest category of £250,000 that it may be appropriate to move outside the range. The values have been chosen to reflect the usual amounts for these offences based on reported cases, the analysis of Crown Court transcripts, and the experience of the Council’s judicial members in dealing with these offences.

Q36

Do you think the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

Harm B

The handling of stolen goods is ancillary to other offences, often to a serious underlying offence. To complete the assessment of harm, the court should then take into account the level of additional harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range, or, in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect from the underlying offence on the victim or others: examples of such detrimental effects can include:

Property taken from a domestic burglary

Items stolen of an economic, sentimental or personal value

Metal theft causing disruption to infrastructure

Damage to heritage structures

The draft guideline directs the sentencer to consider the impact of the harm associated with the primary offences underlying the handling offences, whether this is the harm caused to an individual by items lost in a burglary of their home, or the harm caused to wider society from the impact of metal thefts.

In line with most other guidelines, the list of factors within step one of the guideline is exhaustive, so only those factors listed within the guideline can be considered by sentencers. At the consideration of additional harm at harm B, additional harm can **only** be demonstrated by a '*detrimental effect from the underlying offence on the victim or others*'. However, the examples that may illustrate this detrimental effect are not exhaustive. Some examples of the detrimental effects on victims have been given, such as the high value of goods to the victim, but the court may consider other examples, as long as they demonstrate a detrimental effect of the offence on the victim or others.

Q37

Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £50,000 or more	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
Starting point based on £250,000	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2 £5,000 to £50,000	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 13 weeks' custody
Starting point based on £25,000	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years 6 months' custody	Category range High level community order – 1 year's custody
Category 3 £500 to £5,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 13 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody	Category range Band C fine – 13 weeks' custody
Category 4 Up to £500	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
Starting point based on £250	Category range Medium level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody	Category range Discharge – High level community order

Sentence levels

The sentence levels have been developed based on current sentencing practice, case law, and the analysis of Crown Court transcripts.

The text relating to relevant recent convictions as discussed on page 22, is also included within this guideline, and gives discretion to increase a sentence based on relevant recent convictions.

Aggravating and mitigating factors

The court should then consider further adjustment for any aggravating or mitigating factors as listed below. These are 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

Other aggravating factors:

Seriousness of the underlying offence, for example, armed robbery

Deliberate destruction, disposal or defacing of stolen property

Damage to third party for example, loss of employment to legitimate employees

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

The list of aggravating factors is very similar to the one proposed within the theft from a shop or stall guideline, a discussion of these factors is at page 23.

The additional factors included here are:

- ‘seriousness of the underlying offence, for example, armed robbery’;
- ‘deliberate destruction, disposal or defacing of stolen property’; and
- ‘damage to third party for example, loss of employment to legitimate employees’.

These are included as they may be aggravating factors for offences involving stolen goods. The ‘damage to third party’ factor is included to cover instances where a business with legitimate employees who are not involved in criminal activity, has been used to handle stolen goods and may then cease to trade, as a result of the offences.

The wording relating to prevalence has not been included here as it is not thought to be a consideration within this offence.

Factors reducing seriousness or reflecting personal mitigation:No previous convictions **or** no relevant/recent convictions

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

The list of mitigating factors is very similar to that proposed within the draft theft from a shop or stall guideline, discussed at page 24. Only factors relevant to this offence are included; for example, 'inappropriate degree of trust or responsibility' is not a relevant factor here.

Q38

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

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario G – Handling stolen goods

H was arrested after he offered to sell a watch for £75 to an off duty police officer in a pub. The watch was identified as one of four stolen earlier that day from a department store by another male. H declined to say how he had acquired the watch but accepted that he knew it was stolen. The watch was priced at £250. H has two previous convictions for theft, the most recent in 2012 for which he was fined £200. He has a number of older convictions for criminal damage and public order offences.

The facts suggest culpability B, as H had committed the offence as part of a commercial activity, to sell on (rather than acquiring goods for his own use, which would suggest culpability C), with a harm level at category 4. It would not appear that there is any additional harm caused by the offence, nor does his level of previous convictions define him as a 'significant persistent' offender. The likely sentence would therefore be a band B fine to 13 weeks' custody before any reduction for a guilty plea.

Q39

Please give your view on the proposed sentence levels for this offence in Scenario G – do you think it is proportionate?

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario H – Handling stolen goods

K, with no previous convictions, was convicted after a trial of handling stolen goods. Through his shipping agency he arranged for containers to transport four stolen cars valued at £200,000 to Brazil. The cars had been stolen when keys were taken in domestic burglaries. They had been re-sprayed and given false number plates. K arranged for their export within one week of the relevant burglary.

The facts suggest culpability A, as K's role was close in time to the underlying offence and this was a sophisticated offence with significant planning. The harm category would be 1. As the goods were taken as a result of domestic burglaries, harm B applies allowing the sentencer to move up from the starting point of 6 years. The likely sentence would therefore be in the region of seven years' custody.

Q40

Please give your view on the proposed sentence level for this offence in Scenario H – do you think it is proportionate?

Q41

Do you think the mechanism to increase the sentence for the additional harm in this case works in a proportionate manner?

Section eight: Going equipped for theft or burglary

(Draft guideline at page 105)

This section considers offences under section 25 of the Theft Act 1968. They can be tried in either magistrates' courts or the Crown Court and carry a statutory maximum of three years' custody. In 2012, 1,663 offenders were sentenced for this offence, of which 88 per cent were sentenced in magistrates' courts. There is currently a guideline in the MCSG.

Going equipped is a preparatory offence; it is charged where the offender is in possession of items to be used in the course of a theft, burglary or robbery offence. Examples might include having items designed to evade security measures in a shop or carrying a crowbar to gain entry to premises.

Culpability factors

The court considers the main factual elements of the case to determine the offence category. In the draft guideline the role of the offender and the level of planning and sophistication of the offence form the basis of the culpability factors.

There are three levels of culpability: high, medium and lesser. The offence may feature characteristics in 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.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors identified in the tables on the next page. 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant steps taken to conceal identity and/or avoid detection
- Sophisticated nature of offence/significant planning, for example, possession of a magnetic device to remove security tags
- Going equipped for robbery or burglary

B – Medium culpability:

- A significant role where offending is part of a group activity
- Some level of planning and sophistication used in the offence
- All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence
- Opportunistic offence; little or no planning

Category A – High culpability

There are a number of factors which have been identified to demonstrate the most serious type of offending within this offence, the organised, professional offender, or an offender who may lead a group or exploit others. ‘Significant steps taken to conceal identity and/or avoid detection’, and ‘going equipped for robbery or burglary’ are adapted from factors contained within the current guidance in the MCSG, and are thought to be still relevant to demonstrate high culpability within this model.

Category B – Medium culpability

The factors listed in this category are intended to identify the offender who is not committing the most serious offences, but equally is not committing offences at the lowest level of culpability. They may play a significant role within a group, or have committed offences involving some degree of sophistication and planning. The factor ‘all other cases where characteristics for categories A or C are not present’, is intended to be used where, when the offending has been considered in the round, the culpability is neither at the highest or lowest level or where the offending bears none of the characteristics in high or lesser culpability.

Category C – Lesser culpability

This category has factors which will identify the offender who has committed the more low level, unsophisticated type of offence. This could be someone who has been coerced into committing the offence by others, or has limited understanding of the offence, or has committed an opportunistic offence.

Q42

Do you agree with the culpability factors?

Harm factors

Once the court has determined the culpability category, the next step is to consider the harm caused by the offence. As this guideline refers to a preparatory offence where no theft has been committed, there are no financial amounts for consideration; the Council is therefore proposing a single consideration of harm based on what would have happened if the items were used to commit a substantive offence.

This guideline refers to preparatory offences where no theft has been committed. The level of harm is determined by weighing up all the factors of the case to determine the harm that would be caused if the item(s) were used to commit a substantive offence.

Harm**Greater harm:**

Possession of item(s) which have the potential to facilitate a theft affecting a large number of victims, for example, items intended to be used to steal metal from railway lines.

Possession of item(s) which have the potential to facilitate a theft involving high value goods or large sums of money, for example, a master key for high value motor vehicles.

Lesser harm:

All other cases.

The factors listed within the assessment of greater harm are intended to identify the more serious cases and the greater harm associated with them. Lesser harm does not contain any factors as it is a baseline of harm to be used where none of the factors indicating greater harm are present. As part of step one within the guideline, the factors listed are exhaustive.

Q43

Do you agree with the proposed one stage approach to the assessment of harm?

Q44

Do you agree with the greater and lesser harm factors?
Are there any other factors which you think should be included?

STEP TWO
Starting point and category range

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

Harm	Culpability		
	A	B	C
Greater	Starting point 1 year’s custody	Starting point 26 weeks’ custody	Starting point High level community order
	Category range 26 weeks’ – 18 months’ custody	Category range High level community order – 1 year’s custody	Category range Medium level community order – 26 weeks’ custody
Lesser	Starting point 26 weeks’ custody	Starting point High level community order	Starting point Band B fine
	Category range High level community order – 1 year’s custody	Category range Medium level community order – 26 weeks’ custody	Category range Discharge – Medium level community order

Sentence levels

The sentence levels have been developed based on current sentencing practice, and reported cases.

The text relating to relevant recent convictions as discussed on page 22, is also included within this guideline, and gives discretion to increase a sentence based on relevant recent convictions.

Aggravating and mitigating factors

The court should then consider any further adjustment for any aggravating or mitigating factors.

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

The list of aggravating factors is very similar to the one proposed within the theft from a shop or stall guideline, discussion of these factors is at page 23. The only difference is that the list is slightly shorter, as some factors, such as ‘offender motivated by intention to seek revenge’ are not relevant to this offence. Also, the wording relating to prevalence has not been included here as it is not thought to be a consideration within this offence.

Factors reducing seriousness or reflecting personal mitigation:

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

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

The list of mitigating factors is very similar to that proposed within the draft theft from a shop or stall guideline, discussed at page 24. Only factors relevant to this offence are included; for example, ‘inappropriate degree of trust or responsibility’ is not a relevant factor here.

Q45

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

The following scenario has been included to provide an illustration of a case where the guideline would be applicable and the resulting sentence ranges.

Scenario I – Going equipped

T was seen by police behaving suspiciously on a residential street at night. He was stopped and found to be in possession of a screwdriver, a torch, gloves and a mask. He pleaded guilty to going equipped to steal. He had 25 previous convictions for offences of dishonesty (including one for burglary of a dwelling) and possession of class A drugs.

On these facts the culpability level would be high as T was in possession of items for use in a domestic burglary. There are no factors which indicate higher harm, so the starting point for the sentence would be 26 weeks' custody with a range of a high level community order to one year's custody. T's previous convictions are an aggravating factor which would justify a sentence at the top of that range.

Q46

Do you think the likely sentence levels in Scenario I are proportionate?

Annex A: Consultation questions

Section three – Theft from a shop or stall

- Q1** Do you agree with the proposed factors for theft from a shop or stall within these 3 categories? If not, please tell us why.
- Q2** Do you think the financial amounts in the three categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.
- Q3** Is the approach at harm B clear? Is it clear how the additional harm should be considered?
- Q4** Do you agree with the proposed approach to the treatment of previous convictions across all offences? If you do not agree, please tell us why.
- Q5** Do you agree with the proposed aggravating factors for theft from a shop or stall? If not please specify which you would add or remove and why.
- Q6** Do you agree with the principle of treating prevalence as an aggravating factor? If not, please tell us how else you think this issue could be reflected within the guideline.
- Q7** Are there any other mitigating factors which are not listed here which you think should be? Please tell us any others you think should be included and why.
- Q8** Do you consider that the sentence passed in Scenario A is proportionate? Specifically, do you consider that a short custodial sentence in such a case is appropriate?

- Q9 If you do not agree, please say what sentence should be passed and why.
- Q10 Please give your views on the proposed sentence levels for theft from shop in Scenario B.
- Q11 Do you think the mechanisms to move upwards from the starting point, including outside a category for previous convictions or for additional harm offer flexibility to sentencers? Are they clearly explained within the guideline?
- Q12 Do you feel the shop theft guideline gives the right level of guidance? If not, please tell us why.

Section four – General theft

- Q13 Do you agree that a single guideline is appropriate for general theft offences? If not, please tell us why not, including any other options for grouping these offences together.
- Q14 Do you agree with the proposed factors within these three categories? If not, please tell us why.
- Q15 Do you agree the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.
- Q16 Is the wording at harm B clear? Is it clear what the impact of additional harm can have?
- Q17 Do you agree with the proposed aggravating and mitigating factors for general theft? If not, please specify which you would add or remove and why.
- Q18 Do you consider that the mechanisms to move upwards from the starting point, including outside a category range due to the level of previous convictions/additional harm caused to the victim, and the prevalence leads to a proportionate sentence in Scenario C?

Q19 Do you consider the mechanism to adjust the sentence upwards including outside the category range due to the additional harm caused to the victim/amount of previous convictions/prevalence issue is workable?

Q20 Do you think the mechanism to adjust the sentence upwards including outside the category range in Scenario D leads to a proportionate sentence?

Section five – Abstracting electricity

Q21 Do you agree that the new theft definitive guideline should include guidance for this low volume offence of abstracting electricity? If not, please tell us why.

Q22 If you agree that this offence should be included, should it be within a single guideline?

Q23 If not, should it be contained within one of the other five guidelines, with a separate sentencing table? If so, please state which other guideline it should be contained in and why.

Q24 Do you agree with the culpability factors?

Q25 Do you agree with the proposed one stage approach to the assessment of harm? If not, please tell us why.

Q26 Do you agree with the factors included in greater and lesser harm? Are there any other factors which you think should be included?

Q27 Do you agree with the proposed aggravating and mitigating factors for abstracting electricity? If not please specify which you would add or remove and why.

ANNEX A
Q28

Please give your views on the proposed sentence levels for this offence in Scenario E.

Section six – Making off without payment

Q29

Do you agree that this offence of making off without payment should be contained within its own guideline? If not, please state why and where you think guidance for this offence would best be placed.

Q30

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

Q31

Do you think the financial amounts in the two categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

Q32

Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

Q33

Do you agree with the proposed aggravating and mitigating factors for making off without payment? If not please specify which you would add or remove and why.

Q34

Please give your view on the proposed sentence levels for this offence in Scenario F.

Section seven – Handling stolen goods

Q35

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

Q36

Do you think the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

Q37 Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

Q38 Do you agree with the proposed aggravating and mitigating factors for handling stolen goods? If not please specify which you would add or remove and why.

Q39 Please give your view on the proposed sentence levels for this offence in Scenario G – do you think it is proportionate?

Q40 Please give your view on the proposed sentence level for this offence in Scenario H – do you think it is proportionate?

Q41 Do you think the mechanism to increase the sentence for the additional harm in this case works in a proportionate manner?

Section eight – Going equipped for theft or burglary

Q42 Do you agree with the culpability factors?

Q43 Do you agree with the proposed one stage approach to the assessment of harm?

Q44 Do you agree with the greater and lesser harm factors? Are there any other factors which you think should be included?

Q45 Do you agree with the proposed aggravating and mitigating factors? If not please specify which you would add or remove and why.

Q46 Do you think the likely sentence levels in Scenario I are proportionate?

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;²¹
- the Council must publish a resource assessment in respect of the guidelines;²² and,
- the Council must monitor the operation and effect of its sentencing guidelines.²³

Under the previous bodies (the SGC and SAP), courts had to ‘have regard to any guidelines which are relevant to the offender’s case’²⁴ and give reasons if a sentence fell outside of the range.²⁵ Section 125(a) of the Coroners and Justice Act 2009 states that, ‘every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case’. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

²¹ s.120 Coroners and Justice Act 2009

²² s.127(2) *ibid*

²³ s.128(1) *ibid*

²⁴ s.172(1) Criminal Justice Act 2003

²⁵ s.174(2) *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.²⁶

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.²⁷

In order to achieve these requirements, the Council has considered case law on the offences included within the guidelines, where it is available, 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.

²⁶ s.120(11) Coroners and Justice Act 2009

²⁷ s.127(3) *ibid*

Annex C: Draft guidelines

List of guidelines

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Theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 4 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Significant use or threat of force

Offender subject to a banning order from the relevant store

Offender accompanied by a child who is involved in, aware of, or used to facilitate the offence

B – Medium culpability:

A significant role where offending is part of a group activity

Some degree of planning involved

Limited use or threat of force

All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Not motivated by personal gain

Opportunistic offence; little or no planning

Mental disorder/learning disability where linked to commission of the offence

Harm is initially assessed by reference to the loss that results from the theft.

Intended loss should be used where actual loss has been prevented.

Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified range.

Harm A**Loss caused or intended**

Category 1	Above £1,000	Starting point based on £2,500
Category 2	£250 to £1,000	Starting point based on £500
Category 3	Up to £250	Starting point based on £125

Harm B

To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upwards adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect on the victim: examples of such detrimental effect can include:

Emotional distress

Damage to property

Loss of business

The victim is particularly vulnerable (due to factors including, but not limited to, their age or disability)

A greater impact on the victim due to the size or type of their business

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table on the next page. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 Above £1,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 26 weeks' – 4 years' custody	Category range Medium level community order – 36 weeks' custody	Category range Low level community order – 13 weeks' custody
Category 2 £250 to £1,000	Starting point 13 weeks' custody	Starting point Medium level community order	Starting point Band C fine
Starting point based on £500	Category range High level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – Medium level community order
Category 3 Up to £250	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
Starting point based on £125	Category range Low level community order – 13 weeks custody	Category range Band B fine – High level community order	Category range Discharge - Low level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table on the next page contains a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken into Consideration* and *Totality Definitive Guideline*.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

Stealing goods to order

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Offender motivated by intention to seek revenge

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence -there may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. It is essential that the court:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, and is causing particular harm in that community, and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

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**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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

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.

General theft

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of pedal bicycles

**and all other section 1 Theft Act 1968 offences,
excluding theft from a shop or stall**

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant breach of high degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Offence conducted over sustained period of time
- Large number of victims
- Use of deception
- Theft involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability
- Significant steps taken to avoid detection and/or conceal identity

B – Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Opportunistic offence; little or no planning
- Limited awareness or understanding of offence
- Offence not involving vulnerable victim

Harm is initially assessed by reference to the loss that results from the theft.

Intended loss should be used where actual loss has been prevented.

Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified category range.

Harm A

Loss caused or intended

Category 1	£50,000 or more	Starting point based on £250,000
Category 2	£5,000 to £50,000	Starting point based on £25,000
Category 3	£500 to £5,000	Starting point based on £2,500
Category 4	Up to £500	Starting point based on £250

Harm B

To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upwards adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect on the victim or others: examples of such detrimental effect can include:

Items stolen of an economic, sentimental or personal value

High level of inconvenience caused to victim or others

Consequential financial harm to victim or others

Disruption caused to infrastructure

A risk of, or actual, injury to persons or damage to property

Damage to heritage structures

Emotional distress, fear/loss of confidence caused by the crime

Impact of theft on a business (loss of reputation or jobs)

Greater impact on the victim due to their circumstances

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £50,000 or more	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
Starting point based on £250,000	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 1 year 6 months' custody
Category 2 £5,000 to £50,000	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 13 weeks' custody
Starting point based on £25,000	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody
Category 3 £500 to £5,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 13 weeks' – 2 years' custody	Category range Low level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody
Category 4 Up to £500	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
Starting point based on £250	Category range Medium level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody	Category range Discharge – High level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration* and *Totality Definitive Guideline*.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Stealing goods to order

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Offender motivated by intention to cause harm or out of revenge

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact (for issues other than prevalence)

Prevalence – there may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. It is essential that the court:

- has supporting evidence from an external source, for example, Community Impact Statements, to justify claims that a particular crime is prevalent in their area, and is causing particular harm in that community, and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

Sole or primary carer for dependent relatives

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

Inappropriate degree of trust or responsibility

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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

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.

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Abstracting electricity

Theft Act 1968 (section 13)

Triable either way
Maximum: 5 years' custody

Offence range: Discharge – 1 year's custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Abuse of position of power or trust or responsibility
- Commission of offence in association with or to further criminal activity

B – Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Limited awareness or understanding of offence

Harm

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

Greater harm:

A significant risk of, or actual injury to persons or damage to property.

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used.

Lesser harm:

All other cases.

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Greater	Starting point 26 weeks' custody	Starting point 13 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order
Lesser	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 13 weeks' custody	Category range Low level community order – High level community order	Category range Discharge – Low level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation:

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

Good character and/or exemplary conduct

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

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

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

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**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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

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.

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Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 9 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified 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 to determine the offender’s role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity
 - Involvement of others through coercion, intimidation or exploitation
 - Sophisticated nature of offence/significant planning
 - Large number of victims
 - Theft involving intimidation or the use or threat of force
 - Deliberately targeting victim on basis of vulnerability
- B – Medium culpability:**
 - A significant role where offending is part of a group activity
 - All other cases where characteristics for categories A or C are not present
- C – Lesser culpability:**
 - Performed limited function under direction
 - Involved through coercion, intimidation or exploitation
 - Opportunistic offence; very little or no planning
 - Limited awareness or understanding of offence
 - Offence not involving a vulnerable victim

Harm is initially assessed by the actual loss that results from the offence.
 Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified range.

Harm A**Loss caused**

Category 1	£200 or over	Starting point based on £500
Category 2	Up to £200	Starting point based on £50

Harm B

To complete the assessment of harm, the court should then take into account any additional harm caused to the victim, to determine whether it warrants upward adjustment of the starting point within the range, or, in appropriate cases, outside the range.

**Additional harm is demonstrated by a detrimental effect on the victim:
examples of such detrimental effect can include:**

- A high level of inconvenience caused to the victim
- Emotional distress, fear/loss of confidence caused by crime
- A greater impact on the victim due to the size or type of their business

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table on the next page. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £200 and over	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
Starting point based on £500	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Band A fine – Medium level community order
Category 2 Up to £200	Starting point Medium level community order	Starting point Band C fine	Starting point Band A fine
Starting point based on £50	Category range Low level community order – 13 weeks' custody	Category range Band A fine – High level community order	Category range Discharge – Band B fine

The court should then consider further adjustment for any aggravating or mitigating factors. The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration* and *Totality Definitive Guideline*.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Attempts to conceal/dispose of evidence

Failure to comply with current orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation:

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

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

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**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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

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.

Handling stolen goods

Theft Act 1968 (section 22)

Triable either way
Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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:**

Closeness in time or place to the underlying offence

The provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property

A leading role where offending is part of a group activity

Sophisticated nature of offence/significant planning

Involvement of others through coercion, intimidation or exploitation

Abuse of position of power or trust or responsibility

B – Medium culpability:

A significant role where offending is part of a group activity

Offences are committed by offender as part of commercial activity

Offender makes self available to other criminals as willing to handle the proceeds of crime

All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Opportunistic offence; little or no planning/sophistication

Limited awareness or understanding of offence

Low value goods acquired for offender's own personal use

Harm is initially assessed by reference to the financial value (to the loser) of the stolen goods.

Where the value greatly exceeds the amount of the starting point in Category 1, it may be appropriate to move outside the identified range.

Harm A**Loss caused**

Category 1	£50,000 or more	Starting point based on £250,000
Category 2	£5,000 to £50,000	Starting point based on £25,000
Category 3	£500 to £5,000	Starting point based on £2,500
Category 4	Up to £500	Starting point based on £250

Harm B

The handling of stolen goods is ancillary to other offences, often to a serious underlying offence. To complete the assessment of harm, the court should take into account the level of additional harm associated with the underlying offence to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range.

Additional harm is demonstrated by a detrimental effect from the underlying offence on the victim or others: examples of such detrimental effects can include:

Property taken from a domestic burglary

Items stolen of an economic, sentimental or personal value

Metal theft causing disruption to infrastructure

Damage to heritage structures

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point (as adjusted in accordance with step one above) to reach a sentence within the appropriate category range in the table on the next page. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward movement as appropriate.

Harm	Culpability		
	A	B	C
Category 1 £50,000 or more	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
Starting point based on £250,000	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2 £5,000 to £50,000	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 13 weeks' custody
Starting point based on £25,000	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years 6 months' custody	Category range High level community order – 1 year's custody
Category 3 £500 to £5,000	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Starting point based on £2,500	Category range 13 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody	Category range Band C fine – 13 weeks' custody
Category 4 Up to £500	Starting point High level community order	Starting point Medium level community order	Starting point Low level community order
Starting point based on £250	Category range Medium level community order – 1 year's custody	Category range Band B fine – 13 weeks' custody	Category range Discharge – High level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the custody range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration* and *Totality Definitive Guideline*.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Seriousness of the underlying offence, for example, armed robbery

Deliberate destruction, disposal or defacing of stolen property

Damage to third party for example, loss of employment to legitimate employees

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation:

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

Good character and/or exemplary conduct

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

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

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

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**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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

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.

Going equipped for theft or burglary

Theft Act 1968 (section 25)

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 18 months' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference **only** to the factors identified 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 to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. 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 leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Significant steps taken to conceal identity and/or avoid detection

Sophisticated nature of offence/significant planning, for example, possession of a magnetic device to remove security tags

Going equipped for robbery or burglary

B – Medium culpability:

A significant role where offending is part of a group activity

Some level of planning and sophistication used in the offence

All other cases where characteristics for categories A or C are not present

C – Lesser culpability:

Involved through coercion, intimidation or exploitation

Limited awareness or understanding of offence

Opportunistic offence; little or no planning

This guideline refers to preparatory offences where no theft has been committed. The level of harm is determined by weighing up all the factors of the case to determine the harm that would be caused if the item(s) were used to commit a substantive offence.

Harm

Greater harm:

Possession of items(s) which have the potential to facilitate a theft affecting a large number of victims, for example, items intended to be used to steal metal from railway lines.

Possession of item(s) which have the potential to facilitate a theft involving high value goods or large sums of money, for example, a master key for high value motor vehicles.

Lesser harm:

All other cases.

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Greater	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody
Lesser	Starting point 26 weeks' custody	Starting point High level community order	Starting point Band B fine
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Discharge – Medium level community order

The court should then consider further adjustment for any aggravating or mitigating factors. The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.

Consecutive sentences for multiple offences may be appropriate – please refer to the *Offences Taken Into Consideration* and *Totality Definitive Guideline*.

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Factors increasing seriousness

Statutory aggravating factors:

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

Offence committed whilst on bail

Other aggravating factors:

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation:

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

Good character and/or exemplary conduct

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

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

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

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**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.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders, such as a deprivation order.

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 or C).

Fine Band	Starting point (applicable to all offenders)	Category range (applicable to all offenders)
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 or high). An illustrative description of examples of requirements that might be appropriate for each level is provided on the next page.

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).

Low	Medium	High
<p>In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary</p>		<p>More intensive sentences which combine two or more requirements may be appropriate</p>
<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> • 40 – 80 hours unpaid work; • prohibited activity requirement; • curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks) 	<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> • greater number of hours of unpaid work (for example, 80 – 150 hours); • prohibited activity requirement; • an activity requirement in the middle range (20 to 30 days); • curfew requirement within the middle range (for example, up to 12 hours for two to three months) 	<p>Suitable requirements might include one or more of:</p> <ul style="list-style-type: none"> • 150 – 300 hours unpaid work; • activity requirement up to the maximum of 60 days; • curfew requirement up to 12 hours per day for four to six months; • exclusion order lasting in the region of 12 months.

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and community orders.

