

# Robbery Guideline Consultation



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The consultation will end on 23 January 2015

A consultation produced by the Sentencing Council.

This information is also available on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**

# About this consultation

## To:

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

## Duration:

From 21 October 2014 to 23 January 2015

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

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## Additional ways to feed in your views:

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

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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

## Response paper:

Following the conclusion of this consultation exercise, a response will be published at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

## Freedom of Information:

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

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

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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<sup>1</sup> extends to allow consultation on the sentencing of offenders following conviction.

## Why robbery?

The Sentencing Council recently issued a definitive fraud, bribery and money laundering guideline and held a consultation on guidelines for theft offences. When drawing up the work programme it was considered logical to develop guidelines for acquisitive offences at a similar time. The Council was also mindful that the existing robbery guideline does not include guidance for sentencing all types of robbery.

There is one offence of robbery; section 8(1) of the Theft Act 1968.<sup>2</sup> The predecessor body to the Sentencing Council, the Sentencing Guidelines Council (SGC) published a definitive guideline for robbery in July 2006. The SGC grouped together street robbery, robberies of small businesses and less sophisticated commercial robberies into one guideline. No guidance is provided for robberies in the home or for professionally planned commercial robberies.

## Which offences are covered by the guideline?

Within the SGC guidance is a guideline for sentencing youth offenders. The Sentencing Council guidelines will apply to the sentencing of adult offenders only. This is because work is underway by the Council to review the overarching guidance on the sentencing of youths; this may include specific guidance for sentencing youths convicted of robbery. Until any new definitive guidance is issued the SGC guideline for youth offenders will remain in force.

The draft guidelines are grouped as follows:

- Street robbery (robberies committed in public places including parks, stations, on public transport)
- Commercial robbery (robberies where the target is a business/organisation)
- Robbery in a dwelling

As with all the Sentencing Council guidelines this will also be applicable to conspiracy to commit the substantive offence.

<sup>1</sup> ss.118–136 Coroners and Justice Act 2009

<sup>2</sup> 'a person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force'

## 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 robbery offences.

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

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

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

In section six a number of scenarios have been included in order to obtain detailed responses to how the draft guidelines might be applied and whether there are any difficulties with them. The Council is aware of the time pressures consultees are faced with but would be particularly grateful for responses to any of the scenarios as they are likely to be influential in assessing post consultation options.

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

## What else is happening as part of the consultation process?

During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as sentencers. We will also be conducting interviews with a sample of Crown Court judges to ascertain how they would apply the guideline and to identify whether the guideline presents any practical difficulties for sentencers. Once the consultation exercise is over and the results considered, a final guideline will be published and used by all adult courts.

Alongside this consultation paper, the Council has produced an online questionnaire which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment and an equality impact assessment. The online questionnaire and these documents can be found on the Sentencing Council's website:

**[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)**

# Section one: Overarching issues and the context of the guidelines

## Robbery

The inherently violent nature of robbery differentiates it from other acquisitive offences. Despite the fact physical force may not have been used during a robbery it is classified as a violent crime because the threat of force being used can have significant psychological impact.

Robbery is an indictable only offence which means when committed by an adult it can only be tried and sentenced in the Crown Court. The number of adults sentenced for robbery has decreased in recent years, from about 5,500 in 2011 to 4,400 in 2013, a 20 per cent decrease during this time period. This figure includes offenders convicted of street, commercial and domestic robberies. The most common type of robbery is street robbery which in 2013, accounted for 62 per cent of sentences passed for robbery.<sup>3</sup> Commercial robberies, which include robberies that take place in locations including shops, banks and security vehicles, account for 24 per cent of sentences passed for robbery with 13 per cent being robberies committed in dwellings.

For victims of robbery who have been threatened with or subjected to physical force, either with or without a weapon, robbery can be a terrifying experience. Offenders may consider street robbery to be quick and profitable and may not consider the impact of the offence on the victim. However, in addition to any physical injury that may have been sustained, victims may feel unable to continue to use public transport or walk home from school or work if that is where the offence occurred. In cases where the victim is particularly vulnerable the effect of the offence can be life changing.

Where robbery occurs on commercial premises the impact of the robbery can be manifested in a number of ways including the physical and/or psychological harm caused to business owners or staff; loss of stock or cash; and loss caused by the premises being closed for repair or investigation purposes. These economic effects can be particularly significant for small businesses.

The smallest number of robbery offences by location is those that occur within the home. The offence has many similarities with aggravated burglary but there are differences. For aggravated burglary to be charged trespass has to be proven whereas in the offence of robbery the offender may have been invited into the dwelling or be legitimately present. In 2013 approximately 560 adult offenders were sentenced for robbery in a dwelling. The impact of this type of offence occurring in the home, where one should feel safe, can be profound and long lasting.

<sup>3</sup> Location of robbery offence, where location was indicated, Crown Court Sentencing Survey, 2013



## 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 [date to be confirmed], 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
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

When issued as a definitive guideline this guideline will apply only to offenders aged 18 and older. The existing guidance contained within the Sentencing Guidelines Council’s definitive robbery guideline<sup>4</sup> for sentencing youths will continue to be in force. In addition general principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.<sup>5</sup>

## Structure, ranges and starting points

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

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

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

<sup>4</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_robbery-guidelines.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_robbery-guidelines.pdf)

<sup>5</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_overarching\\_principles\\_sentencing\\_youths.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf)

## **The guideline in relation to current practice and existing guidelines**

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

The Council considered statistical data from the Court Proceedings database and the Crown Court Sentencing Survey for the offences covered in the guideline. This data gives a reasonably accurate picture of current sentencing levels by location of the offence but there are limitations with the level of detail that can be obtained. An example of this is the lack of data relating to the value of the goods stolen. To assist the Council to understand which are the most significant factors taken into account when sentencing robbery offences and the effect these have on the final sentence a qualitative analysis of a random sample of around 200 first instance transcripts of sentencing remarks of robbery offences was undertaken. In addition to these sources of data regard was had to relevant case law.

A qualitative research exercise with the judiciary has been undertaken to explore sentencers views on the draft guidelines. This exercise will continue throughout the consultation period with the results being considered post consultation.

There is some evidence that current sentencing practice does not reflect the existing SGC guideline. Where there is no current guideline, as with professionally planned robberies and robberies in a dwelling, the consistency of sentencing has been tested as far as possible using transcripts and reported cases.

The approach that has been taken in developing the draft guideline aims to regularise practice rather than to substantially alter it. The Council is strongly of the view that sentence levels must reflect the serious social problem of offenders carrying knives. Even in cases where a knife is not produced, and indeed may not exist, if an offender threatens to use a knife the victim has every reason to believe the threat is real as there is societal concern that knife crime has become widespread. This is particularly true in street robberies. In *R v Monteiro and others*,<sup>6</sup> Lord Thomas of Cwmgiedd, CJ confirmed the guidance given by Sir Igor Judge (as he then was) in *R v Povey*<sup>7</sup> that made clear sentences passed in cases involving knives, particularly cases involving knives being carried in public places, must focus on reducing this type of crime.

The Council has taken the same approach to cases involving firearms or imitation firearms. The courts have treated these offences as particularly serious for some time; an approach which is maintained in the draft guideline. The use, rather than the threat of, any weapon to commit violence is also considered to constitute the most serious level of culpability within the draft guideline.

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<sup>6</sup> *R v Monteiro and others* [2014] EWCA Crim 747

<sup>7</sup> *R v Povey* [2008] EWCA Crim 1261

## Section two: Developing the guideline

### Assessing seriousness

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

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

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

#### STEP ONE

##### Determining the offence category

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

The draft guideline directs the court to consider the factors relating to the **culpability** of the offender in committing the offence and the **harm** that has been caused. In broad terms, culpability relates to the role the offender has played, the level of planning involved and the sophistication with which the offence was carried out but there are some variations. For example, defined roles and sophisticated offences are less common in street robbery than in commercial robberies and so role and planning are not primary factors in the street robbery guideline though they can be reflected at step two if present in an individual case.

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. The culpability levels are defined as '*high, medium and lesser*'.

There are variations to the approach taken to the assessment of harm within each draft guideline. In all the draft guidelines there are three levels of harm. In commercial robbery and robbery in a dwelling the court is directed to weigh the seriousness of the physical and/or psychological harm

caused to the victim as well as the value of the goods stolen to determine the overall level of harm. The assessment of harm within street robbery is based solely on the physical and/or psychological harm caused to the victim. This is due to the loss to the victim in these cases being much more likely to be a matter of chance. The Council does not suggest that value plays no part in the sentencing of these cases and have therefore included the value of the goods as an aggravating factor at step two.

## **STEP TWO**

### **Starting point and category range**

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

The ranges and starting points within each draft guideline have been proposed based on statistical data from the Crown Court Sentencing Survey and the Ministry of Justice's unpublished court proceedings database; analysis of approximately 200 first instance Crown Court transcripts; analysis of recent Court of Appeal Criminal Division judgments and the sentence levels in the Sentencing Guidelines Council guideline.

Once the court has determined the starting point and taken into account relevant aggravating and mitigating factors there are seven further steps to follow.

## **STEP THREE**

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

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

## **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.<sup>8</sup>

<sup>8</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Reduction\\_in\\_Sentence\\_for\\_a\\_Guilty\\_Plea\\_-Revised\\_2007.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Reduction_in_Sentence_for_a_Guilty_Plea_-Revised_2007.pdf)

**STEP FIVE**  
**Dangerousness**

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

**STEP SIX**  
**Totality principle**

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

**STEP SEVEN**  
**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders. Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**STEP EIGHT**  
**Reasons**

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

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

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

# Section three: Street robbery

(Draft guideline at page 47)

Street robbery refers to robberies committed in public places; it is intended to include robberies committed in taxis or on public transport as well as offences committed in places that are more commonly considered to be on ‘the street’. The current guideline does not make this clear but it is felt by the Council that this is the general understanding of the term ‘street robbery’. Street robbery is by far the most common type of robbery comprising 62 per cent of robbery offences recorded in 2013.<sup>9</sup> It tends to be more opportunistic than other types of robbery and can be considered by offenders to be an easy way of obtaining relatively high value goods, particularly with the increasing amounts of expensive technological equipment many of us regularly have in our possession in public.

## STEP ONE

The first step of the guideline is to consider the culpability level of the offender by the assessment of a series of factors.

### Culpability factors

#### Category A – High culpability

There are five factors that indicate the highest level of culpability; they relate to:

- the use of any weapon to commit violence;
- the production and threat of use of a bladed article, firearm or imitation firearm;
- the level of force used and;
- whether the offence was motivated by hostility or involved deliberate targeting on the basis of the victim’s vulnerability.

The possession of a bladed article or firearm or imitation firearm indicates a level of planning to commit an offence that puts the offender at the highest level of culpability. Possession of this type of weapon is considered by the Council to be extremely serious. The risk of a situation escalating and the gravity of an offence increasing is considerably higher when weapons are carried; this must be reflected in the level of culpability. The use of any weapon to commit violence and use of significant force whether with or without a weapon are also considered to be factors that put the offence at the highest level of culpability.

The Council has a strong focus on the impact an offence has on the victim which is taken into account in the assessment of harm but whether a victim was targeted due to inherent factors (for example, age or disability) is considered in the assessment of culpability as it may increase the overall seriousness of the offence.

<sup>9</sup> Location of robbery offence, where location indicated, Crown Court Sentencing Survey, 2013

**Category B – Medium culpability**

There are two factors in this category that relate to whether a weapon is part of the offence. The first is where a weapon of any sort (other than those listed in culpability A) is produced and used to threaten violence but this threat is not realised; the second is where the offender threatens to produce a bladed article, firearm, or imitation firearm. The Council is strongly of the view that threatening to use a weapon of this kind is more serious than threats involving other types of weapons that are not produced. Offences may also fall within this category when the court has had regard to all the factors of the case and after balancing them concluded they are neither at the highest nor the lowest category of culpability.

**Category C – Lesser culpability**

The factors in this category are likely to apply in group offending where the offender has become involved in the offence rather than has instigated it or where the offence is committed on the spur of the moment.

**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of particular vulnerability (due to factors including but not limited to age, mental or physical disability)</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

Q1

Do you agree with the proposed approach to the assessment of culpability?

Q3

Are there additional factors that should be included at step one?

Q2

Is it appropriate to distinguish between cases involving a bladed article or firearm or imitation firearm from those involving other types of weapon?

Q4

Should any of the factors be considered at step two?

### Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. There are two elements to robbery: the acquisition of property and the threat of or use of violence immediately before or during the theft. While robbery is an offence that is committed for gain, the Council's proposal is that the effect the use or threat of use of force has on the victim should be the sole measure of harm at step one to set the starting point; the value of the items stolen will then be reflected in step two to adjust the sentence from the starting point.

A great deal of consideration was given to this issue. It is thought that in other types of robbery the offender is far more likely to be targeting particular goods or sums of money than in street robbery. In street robbery offences the offender may have seen goods and decided on the spur of the moment to steal them or will be hopeful that the victim has an expensive phone or large amounts of cash but typically there is far less planning and targeting of specific items of value than when commercial premises or dwellings are the location of a robbery.

Detailed analysis of a sample of sentencing transcripts suggests that the courts currently put greater emphasis on the harm caused to the victim than on the value of the goods stolen. The Council felt that inclusion of reference to the value of the goods at step one as an indicator of the level of harm would be likely to distort sentences by placing too much emphasis on value when it is currently not a primary factor considered by the court. Instead, value is considered as a factor which increases the seriousness of the offence at step two. The model that the Council has included within this consultation has three levels of harm. Harm category 1 is the highest level where serious psychological and/or physical harm has been caused to the victim; harm category 2 is where some psychological and/or physical harm has been caused to the victim **above** the level of harm inherent in the offence of robbery. Harm category 3 is the lowest level where 'ordinary' cases are likely to fall.



## Preferred model

### Harm Model A

#### Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence of robbery</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

**Where the goods stolen are of more than low value, whether economic, sentimental or personal, this is considered as an aggravating factor at step two.**

It is recognised that the value of goods is a factor that the courts may take into account when sentencing robbery offences. The current guideline, issued by the Sentencing Guidelines Council, makes reference to the value of goods as an aggravating factor. This approach has been maintained in the draft guideline but the Council is also seeking views on an alternative model (Harm B below) where the value of the goods is considered in conjunction with the physical or emotional harm caused to the victim at step one.

Q5

Do you agree with the proposed approach to the assessment of harm in this preferred model (Harm Model A)?

Q6

Are the levels of harm simple to interpret?

## Alternatively

### Harm Model B

#### Harm

The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Very high value of goods (whether economic, sentimental or personal)</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence of robbery</li> <li>• High or medium value of goods (whether economic, sentimental or personal)</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

Q7

Should the value of the goods as expressed in categories 1 and 2 in Harm Model B carry the same amount of weight as the physical and/or psychological harm caused? If not, how should they be weighted?

Q8

Does Harm Model B reflect the primary factors that should be taken into account?

## STEP TWO

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

Offence committed whilst on bail

#### *Other aggravating factors:*

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

High value of goods (whether economic, sentimental or personal) [not applicable to Harm Model B]

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Sophisticated organised nature of offence/significant planning

A leading role where offending is part of a group activity

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

Failure to respond to warnings about behaviour

Timing of the offence

Location of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

*'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, 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 self explanatory. They are not subject to consultation.

- *Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution*
- *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*
- *Failure to respond to warnings about behaviour*
- *Commission of offence whilst under the influence of alcohol or drugs*

The factor *'Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability'* is considered to be separate to where the victim has been deliberately targeted which is considered as part of the assessment of culpability. The offender may give no thought to who their victim is but the fact that they are particularly vulnerable is likely to increase the harmful impact on that victim; where it does, the sentence can increase the sentence from the starting point to reflect this.

*'Involvement of others through coercion, intimidation or exploitation'*, *'Sophisticated organised nature of offence/significant planning'* and *'A leading role where offending is part of a group activity'* all increase the seriousness of the offence as indicators of the offender being pivotal in the commission of the offence.

The timing and the location of the offence may make the offence more serious. These factors do not specify the timing or the location as they are offence specific. For example, a victim of a daytime robbery in a park may feel unable to use the facilities in the future or an offence committed at the end of the school day may impact on a school aged victim's independence to travel home; equally an offence committed at night on a high street may leave the victim frightened to go out unaccompanied at night.

*'Attempt to conceal identity (for example, wearing a balaclava or hood)'* may make the offence more distressing for the victim as well as indicating planning by the offender.

Q9

**Do you agree with the aggravating factors? Please state which, if any, should be removed or added.**

Q10

**Should any of the factors be considered at step one?**

**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

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. All of the factors included within the draft guideline are commonplace within definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

**Q11****Are there any mitigating factors that should be added?****Sentence levels**

The starting points and ranges have been based on statistical data from the Court Proceedings database and the Crown Court Sentencing Survey; analysis of first instance transcripts; analysis of Court of Appeal judgments and reference to the ranges within the SGC guideline.

It is, however, important to note that the ranges are not directly comparable with those in the SGC guideline as the approach to assessing the seriousness of the offence is very different.

**STEP TWO****Starting point and category range**

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

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody
	<b>Category range</b> 7 – 12 years' custody	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 18 months' – 5 years' custody
Category 2	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 18 months' – 3 years 6 months' custody
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 18 months' – 3 years 6 months' custody	<b>Category range</b> High level community order – 2 years' custody

Scenarios illustrating how the guideline is to be used and the resulting sentence ranges are at page 33. Views are sought on whether the sentence ranges are proportionate.

**Q12**

**Do you have any general comments on the sentence ranges and starting points?**

# Section four: Commercial robbery

(Draft guideline at page 53)

The SGC guideline is applicable to ‘robberies of small businesses’ and ‘less sophisticated commercial robberies’. The proposed guideline will be applicable to all robberies where goods that are the property of a commercial organisation (rather than to an individual) are the target of the robbery. The Council recognises that this guideline will be used to sentence a wide range of offending from an unsophisticated robbery of a small convenience store to a highly sophisticated robbery of a luxury jewellers or a security depot.

There is considerable overlap in the draft guideline with both the street robbery and robbery in dwelling guidelines. There are further factors in step one that reflect the role played by the offender and the level of planning and the value of the goods stolen. These factors are included as it is considered they are far more relevant to the seriousness of this type of robbery than to street robbery.

## STEP ONE

The first step of the guideline is to consider the culpability of the offender.

### Culpability factors

#### Category A – High culpability

There are eight factors that indicate the highest level of culpability; five of these are identical to those within the draft street robbery guideline and are discussed at page 13.

*‘Sophisticated organised nature of offence/significant planning’* and *‘A leading role where offending is part of a group activity’* are included within this guideline as commercial robberies are more commonly group enterprises where offenders have clearly defined roles. *‘Abuse of position’* may be relevant in circumstances such as where an employee has used their knowledge or access to goods to commit the offence or facilitate others doing so.

#### Category B – Medium culpability

*‘A significant role where offending is part of a group activity’* is the only factor indicating medium culpability that is not included within the draft street robbery guideline. As discussed above, it is intended to allow the court to differentiate between the roles played in group activity.

#### Category C – Lesser culpability

These factors are identical to those in the draft street robbery guideline and are discussed at page 14.

**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Sophisticated organised nature of offence/significant planning</li> <li>• A leading role where offending is part of a group activity</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)</li> <li>• Abuse of position</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• A significant role where offending is part of a group activity</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

**Q13**

Do you agree with the proposed approach to the assessment of culpability?

**Q15**

Are there additional factors that should be included at step one?

**Q14**

Is it appropriate to distinguish between the roles of offenders involved in group offending?

**Q16**

Should any of the factors be considered at step two?

### Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. It is proposed that the harm should be assessed by weighing up the impact of the offence on the victim, the effect on the commercial organisation and the value of the goods or sums stolen. The rationale for including value here where it is not included in the draft street robbery guideline is that the goods or sums are far more likely to be deliberately targeted in this type of offending.

<b>Harm</b>	
The level of <b>harm</b> is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Serious detrimental effect on business</li> <li>• Very high value goods or sums</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence</li> <li>• Some detrimental effect on business</li> <li>• High or medium value goods or sums</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

**Q17** Do you agree with the proposed approach to the assessment of culpability?

**Q19** Are there any additional harm factors that should be added?

**Q18** Should the value of the goods be considered at step two?



**STEP TWO**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

**Factors increasing seriousness*****Statutory aggravating factors:***

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

Offence committed whilst on bail

***Other aggravating factors:***

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Prolonged nature of attack

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

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Targeting of large sums of money or valuable goods

Commission of offence whilst under the influence of alcohol or drugs

The factors are identical to those within the draft street robbery guideline other than where factors relating to the role of the offender and planning are included at step two of that guideline as they are considered at step one within commercial robbery.

Q20

Do you agree with the additional aggravating factors for this offence? Please state which, if any, should be removed or added.

Q21

Should any of the factors be considered at step one? If so, why?

#### 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

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. All of the factors included within the draft guideline are commonplace within definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

Q22

Are there any mitigating factors that should be added?

### Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings database and the Crown Court Sentencing Survey; analysis of first instance transcripts; analysis of Court of Appeal judgments and reference to the ranges within the SGC guideline. The range is deliberately broad to encompass the wide range of commercial robberies it will apply to. The Council was mindful of a number of sentences in excess of 20 years' custody that have been upheld in proposing these ranges. Analysis of these cases did not reveal any single commercial robbery offences that involved sentences in excess of 19 years; longer sentences were passed only for multiple offences but the Council's guideline applies to a single offence whether that be for a conspiracy to commit several offences or a single actual robbery.

The following narrative has been included to provide guidance for cases that do not fall within the guideline:

*'Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.'*

*'Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.'*

**STEP TWO****Starting point and category range**

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

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.

Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 16 years' custody	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 12 – 20 years' custody	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 4 – 8 years' custody
Category 2	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody
Category 3	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody

Q23

Do you have any general comments on the sentence ranges and starting points?

# Section five: Robbery in a dwelling

(Draft guideline at page 59)

This guideline has been drafted with close reference to the Sentencing Council Aggravated Burglary Definitive Guideline,<sup>10</sup> specifically the guidance that relates to burglary in a dwelling.

## STEP ONE

The first step of the guideline is to consider the culpability of the offender.

### Culpability factors

#### Category A – High culpability

There are seven factors that indicate the highest level of culpability; these are identical to those within the draft commercial robbery guideline and are discussed at page 21. '*Sophisticated organised nature of offence/significant planning*' is included within the draft commercial robbery guideline but not within this guideline as it is a less common feature of this type of offending.

#### Category B – Medium culpability

These factors are identical to those within the draft commercial robbery guideline and are discussed at page 21.

#### Category C – Lesser culpability

These factors are identical to those in the draft street robbery guideline and are discussed at page 14.

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<sup>10</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Burglary\\_Definitive\\_Guideline\\_web\\_final.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_Definitive_Guideline_web_final.pdf)

**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• A leading role where offending is part of a group activity</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)</li> <li>• Abuse of position</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• A significant role where offending is part of a group activity</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

Q24

Do you agree with the proposed approach to the assessment of culpability?

Q26

Should any of the factors be considered at step two?

Q25

Are there additional factors that should be included at step one?

### Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused by the offence. It is proposed that the harm should be assessed by weighing up the impact of the offence on the victim, the value of the goods stolen and any additional damage caused to the dwelling. This approach mirrors that taken in the Aggravated Burglary Definitive Guideline and reflects that, as with the commercial robbery draft, the value of the goods is more likely to be determinative in this type of offence.

<b>Harm</b>	
The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Very high value of goods (whether economic, sentimental or personal)</li> <li>• Soiling, ransacking or vandalism of property</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence</li> <li>• High or medium value of goods (whether economic, sentimental or personal)</li> <li>• Damage caused to dwelling</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

**Q27** Do you agree with the proposed approach to the assessment of harm?

**Q29** Are there any additional harm factors that should be added?

**Q28** Should the value of the goods be considered at step two?

**STEP TWO**

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point. The court should then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

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

**Factors increasing seriousness*****Statutory aggravating factors:***

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

Offence committed whilst on bail

***Other aggravating factors:***

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Sophisticated organised nature of offence/significant planning

Prolonged nature of attack

Child at home (or returns home) when offence committed

Victim compelled to leave their home (in particular victims of domestic violence)

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

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

There are two factors that are proposed to be included only within this guideline. ‘*Child at home (or returns home) when offence committed*’ and ‘*Victim compelled to leave their home (in particular victims of domestic violence)*’ are both taken from the Definitive Burglary guideline and are considered to be equally relevant to robbery in a dwelling. It is felt by the Council that if the robbery has an impact on a child or other family member that was not home when the offence was committed this will be taken into account at the assessment of harm.

Q30

**Do you agree with the aggravating factors? Please state which, if any, should be removed or added.**

Q31

**Should any of the factors be considered at step one?**

#### 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

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. All of the factors included within the draft guideline are commonplace within definitive guidelines and are not subject to consultation. Sentencers are experienced in applying these criteria and attaching the appropriate weight (if any) to them.

Q32

**Are there any mitigating factors that should be added?**

### Sentence levels

The starting points and ranges have been based on statistical data from the Court Proceedings database and the Crown Court Sentencing Survey; analysis of first instance transcripts; analysis of Court of Appeal judgments and reference to the ranges within the Aggravated Burglary Guideline. The following narrative has been added to give guidance where cases may fall outside the guideline:

*Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.*

*In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.*



**STEP TWO****Starting point and category range**

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

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 5 – 10 years' custody	<b>Category range</b> 4 – 8 years' custody
Category 2	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 10 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 6 years' custody
Category 3	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> 1 – 3 years' custody

Q33

**Do you have any general comments on the sentence ranges and starting points?**

## Section six: Case studies

In this section, six scenarios have been provided that are based on real cases. During the development of many of the Sentencing Council's guidelines qualitative research exercises are carried out with members of the judiciary to test how draft guidelines would be applied to scenarios similar to those below. These exercises are of great assistance to the Council in gathering evidence of how sentencers interpret guidelines. In those exercises and with the scenarios below there is considerably less information that would be available in court; please focus on the facts before you rather than those that are not available.

This section has been included in order to widen the audience of people we are able to seek input from. It is recognised that these exercises can be time consuming so the Council would encourage consultees to respond only to as many of these scenarios as is possible and to be assured any input at all will be very much appreciated.

**See page 34.**

Please answer the questions below using the proposed guidelines at Annex C.

### Case 1

The offence took place at 10am on a Sunday in October. The victim, a male aged 19, was walking along a residential street using his smart phone. The offender, who was drunk, approached him and tried to take the phone from him. The victim resisted and the offender shoved him and made off with the phone. The victim gave chase and the offender was caught and detained. The victim suffered minor injuries.

The offender entered an early guilty plea to robbery. He is 36 years old with a long record of mainly shop theft offences, but also two convictions for dwelling house burglary. He was subject to a community order with a drug rehabilitation requirement imposed for the most recent dwelling house burglary at the time of the robbery. He had been making good progress on that order until a few weeks before the robbery, when he committed two shop thefts for which he was on bail at the time of the robbery.

Q34

Which guideline would you use to sentence this case?

Q39

On the facts as given in the scenario, what would be your starting point for the robbery offence?

Q35

What level of culpability applies to this offender? Please give reasons.

Q40

Taking into account any known aggravating or mitigating factors what would be your final sentence for the **robbery offence only**? (Before and after guilty plea discount)

Q36

What level of harm applies? Please give reasons.

Q41

Do you have any views on this final sentence that you have come to?

Q37

What difference, if any, would it make if the phone had not been recovered?

Q42

How easy did you find the guideline to use in sentencing this scenario?

Q38

What difference, if any, would it make if the victim had been shoved to the ground and suffered a broken wrist?

Please answer the questions below using the proposed guidelines at Annex C.

### Case 2

The offender, H aged 25, was on bail for an offence of ABH. At 6am he picked up a taxi and asked the driver to take him to a shop where he could buy cigarettes. He bought the cigarettes and then continued the journey in the taxi. At the end of the journey he was charged £10, but instead of paying the fare he pulled a knife, grabbed the taxi driver around the neck, pushed the knife under his chin, and demanded money. The driver instinctively put his hand up and suffered a cut to his thumb and his finger. The injury was not serious but was painful. H then head butted the driver three times, causing a swelling to the nose, pain, but no permanent injury. H took £70 in cash and the PDA (a device used for guiding the driver to his next job) and searched the taxi before leaving. He was subsequently identified through the phone he used to book the taxi and CCTV from the shop, which was confirmed by the victim picking him out at an identity parade.

H pleaded guilty to robbery at an early stage. He has no previous convictions and the pre-sentence report gave details of a 'very sad background'. He also pleaded guilty to the ABH.

Q43

Which guideline would you use to sentence this case?

Q44

What level of culpability applies to this offender? Please give reasons.

Q45

What level of harm applies? Please give reasons.

Q46

On the facts as given in the scenario, what would be your starting point for the robbery offence?

Q47

Taking into account any known aggravating or mitigating factors what would be your final sentence for the **robbery offence only**? (Before and after guilty plea discount)

Q48

Do you have any views on this final sentence that you have come to?

Q49

How easy did you find the guideline to use in sentencing this scenario?

Please answer the questions below using the proposed guidelines at Annex C.

### Case 3

T, aged 19, was convicted after a trial of robbery. The victim, J aged 16, was sitting on the back seat on the top deck of a bus; he was on his way to sit his maths GCSE exam. The offender, T, boarded the bus wearing a hood and sat opposite J. T was drunk. J suffers from cerebral palsy; he has a speech impediment and impaired mobility. J immediately felt threatened by the way T looked at him. After other passengers had got off the bus, T pulled a penknife and put it to J's stomach and told him to hand over his mobile phone. J gave T his i-pod and T put it in his pocket and continued to ask for J's phone. T tried to put his hand in J's pocket and found his phone, but J grabbed T's hands and T gave up. T told J not to shout for help and then got off the bus a minute later.

In a victim personal statement J reported that he was terrified throughout the incident and felt completely helpless. He was unable to sit his exam that day and this had delayed his going to college. He no longer felt confident on buses or on the streets of the area where the incident happened. He had attended court to give evidence which he found very stressful. The incident had completely changed his life and he was in fear that something similar would happen to him. This also had an effect on his family, who were constantly worried about him.

T has six prior convictions, for ten prior offences including a robbery when he was aged 15 involving the taking of a ball and a mobile phone from a 13-year-old; and a theft from the person where he snatched a mobile phone from a 14-year-old victim. In mitigation it was accepted that T came from a difficult (but not entirely unsupportive) family background and that he had problems with drink and drugs.

Q50

Which guideline would you use to sentence this case?

Q55

On the facts as given in the scenario, what would be your starting point for the robbery offence?

Q51

What level of culpability applies to this offender? Please give reasons.

Q56

Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery?

Q52

What level of harm applies? Please give reasons.

Q57

Do you have any views on this final sentence that you have come to?

Q53

What difference, if any, would it make if T had not produced the knife but had said 'give me your phone or I'll shank you'?

Q58

How easy did you find the guideline to use in sentencing this scenario?

Q54

What difference, if any, would it make if the victim did not have a disability?

Please answer the questions below using the proposed guidelines at Annex C.

#### Case 4

P, aged 22, went into a corner shop with another at 11am and asked to buy cigarettes. The shopkeeper asked P to remove the hood he was wearing so that he could see if he was old enough to buy cigarettes. P went to the end of the counter and attempted get through the access door which was locked. The shopkeeper came towards him and threatened to beat him if he tried to get behind the counter. P leant over, undid the bolt and went behind the counter. The shopkeeper pushed P to prevent him coming further and P punched him once in the face, grabbed him round the neck and punched him twice more in the face.

P stole cigarettes and an i-phone from behind the counter and then left with his companion, shouting threats to the shopkeeper. The incident lasted less than five minutes. The shopkeeper sought medical attention and suffered from blurry vision but there was no lasting injury.

P pleaded guilty to robbery at the first hearing. P has previous convictions but none for offences of violence. A pre-sentence report noted that P was aware that he had problems controlling his temper. In mitigation it was said of P that the offence was committed after he had argued with his girlfriend and that he was suffering from grief after the death of his cousin.

Q59

Which guideline would you use to sentence this case?

Q63

Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery? (Before and after guilty plea discount)

Q60

What level of culpability applies to this offender? Please give reasons.

Q64

Do you have any views on this final sentence that you have come to?

Q61

What level of harm applies? Please give reasons.

Q65

How easy did you find the guideline to use in sentencing this scenario?

Q62

On the facts as given in the scenario, what would be your starting point for the robbery offence?

Please answer the questions below using the proposed guidelines at Annex C.

#### Case 5

The offenders duped their way in to the victim's home. One offender hit the victim to the back of the head with a dog chain, another pushed him to the floor and the third pointed an air pistol at his head. The air pistol was fired at his legs and they abused him verbally and demanded money. One of the offenders then armed himself with a knife and cut the victim's legs and prodded him with the knife. The offenders continued to make threats and demand money. The victim was terrified and thought he was going to be killed. There were two other people in the house (a man and a woman). The man jumped from a first floor window to escape and suffered two fractured ankles with long term consequences. The offenders made off in a waiting car with a wallet containing £200 and two mobile phones. After the robbery the victim, an epileptic, was too fearful to remain in his home and reported an increase in the frequency of seizures.

All three offenders were aged between 20 and 25 and pleaded guilty to robbery at the first opportunity. They all expressed remorse and had made progress in custody on remand. All had previous convictions but none of a similar nature.

Q66

Which guideline would you use to sentence this case?

Q67

What level of culpability applies to the offenders? (Assume that they are sentenced on the basis that they are equally culpable). Please give reasons.

Q68

What level of harm applies? Please give reasons.

Q69

On the facts as given in the scenario, what would be your starting point for the robbery offence?

Q70

Taking into account any known aggravating or mitigating factors (and assuming that there were no separate charges for weapons offences) what would be your final sentence for the robbery? (Before and after guilty plea discount)

Q71

Do you have any views on this final sentence that you have come to?

Q72

How easy did you find the guideline to use in sentencing this scenario?

Please answer the questions below using the proposed guidelines at Annex C.

### Case 6

The victim, a retired woman who lived alone was watching television at 10.45pm when she became aware of a man in the room in front of her. He was dressed all in black with only his eyes and the top of his head showing and he had a hammer in his hand. He said, “I want the number of the cards. Give me the number or I’ll burn your house down”. She gave him the PIN to her bank card. He said, “Don’t call the police or I’ll be back” and she sat there in fear. After he left she went to her bedroom and found her cards were missing as well as £20 in cash. She did not call the police and did not cancel her card; which was subsequently used a number of times at ATMs. It was only after the police spoke to her four days later about another reported incident in her neighbourhood that she told them what had happened.

The offender was identified from CCTV at ATMs and arrested. He pleaded guilty to robbery at an early stage.

The offender aged 24, had eleven convictions for twenty offences over the previous 10 years. These were mainly theft offences and included possession of a bladed article, but he had no convictions for violence. At the time of the offence he was without a permanent home and was drinking heavily and abusing drugs. At the time of sentence he had been on remand for four months and had made good progress in prison. He was remorseful for his actions.

**Q73** Which guideline would you use to sentence this case?

**Q77** Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery? (Before and after guilty plea discount)

**Q74** What level of culpability applies? Please give reasons.

**Q78** Do you have any views on this final sentence that you have come to?

**Q75** What level of harm applies? Please give reasons.

**Q79** How easy did you find the guideline to use in sentencing this scenario?

**Q76** On the facts as given in the scenario, what would be your starting point for the robbery offence?



# Annex A:

## Summary of consultation questions

### Section three: Street robbery

- Q1 Do you agree with the proposed approach to the assessment of culpability?
- Q2 Is it appropriate to distinguish between cases involving a bladed article or firearm or imitation firearm from those involving other types of weapon?
- Q3 Are there additional factors that should be included at step one?
- Q4 Should any of the factors be considered at step two?
- Q5 Do you agree with the proposed approach to the assessment of harm in this preferred model (Harm Model A)?
- Q6 Are the levels of harm simple to interpret?
- Q7 Should the value of the goods as expressed in categories 1 and 2 in Harm Model B carry the same amount of weight as the physical and/or psychological harm caused? If not, how should they be weighted?
- Q8 Does Harm Model B reflect the primary factors that should be taken into account?
- Q9 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.
- Q10 Should any of the factors be considered at step one?
- Q11 Are there any mitigating factors that should be added?
- Q12 Do you have any general comments on the sentence ranges and starting points?

### Section four: Commercial robbery

- Q13 Do you agree with the proposed approach to the assessment of culpability?

- Q14 Is it appropriate to distinguish between the roles of offenders involved in group offending?
- Q15 Are there additional factors that should be included at step one?
- Q16 Should any of the factors be considered at step two?
- Q17 Do you agree with the proposed approach to the assessment of culpability?
- Q18 Should the value of the goods be considered at step two?
- Q19 Are there any additional harm factors that should be added?
- Q20 Do you agree with the additional aggravating factors for this offence? Please state which, if any, should be removed or added.
- Q21 Should any of the factors be considered at step one? If so, why?
- Q22 Are there any mitigating factors that should be added?
- Q23 Do you have any general comments on the sentence ranges and starting points?

**Section five: Robbery in a dwelling**

- Q24 Do you agree with the proposed approach to the assessment of culpability?
- Q25 Are there additional factors that should be included at step one?
- Q26 Should any of the factors be considered at step two?
- Q27 Do you agree with the proposed approach to the assessment of harm?
- Q28 Should the value of the goods be considered at step two?
- Q29 Are there any additional harm factors that should be added?
- Q30 Do you agree with the aggravating factors? Please state which, if any, should be removed or added.

- Q31 Should any of the factors be considered at step one?
- Q32 Are there any mitigating factors that should be added?
- Q33 Do you have any general comments on the sentence ranges and starting points?

#### Section six: Case study 1

- Q34 Which guideline would you use to sentence this case?
- Q35 What level of culpability applies to this offender? Please give reasons.
- Q36 What level of harm applies? Please give reasons.
- Q37 What difference, if any, would it make if the phone had not been recovered?
- Q38 What difference, if any, would it make if the victim had been shoved to the ground and suffered a broken wrist?
- Q39 On the facts as given in the scenario, what would be your starting point for the robbery offence?
- Q40 Taking into account any known aggravating or mitigating factors what would be your final sentence for the **robbery offence only**? (Before and after guilty plea discount)
- Q41 Do you have any views on this final sentence that you have come to?
- Q42 How easy did you find the guideline to use in sentencing this scenario?

#### Section six: Case study 2

- Q43 Which guideline would you use to sentence this case?
- Q44 What level of culpability applies to this offender? Please give reasons.
- Q45 What level of harm applies? Please give reasons.
- Q46 On the facts as given in the scenario, what would be your starting point for the robbery offence?

- Q47 Taking into account any known aggravating or mitigating factors what would be your final sentence for the **robbery offence only**? (Before and after guilty plea discount)
- Q48 Do you have any views on this final sentence that you have come to?
- Q49 How easy did you find the guideline to use in sentencing this scenario?

**Section six: Case study 3**

- Q50 Which guideline would you use to sentence this case?
- Q51 What level of culpability applies to this offender? Please give reasons.
- Q52 What level of harm applies? Please give reasons.
- Q53 What difference, if any, would it make if T had not produced the knife but had said 'give me your phone or I'll shank you'?
- Q54 What difference, if any, would it make if the victim did not have a disability?
- Q55 On the facts as given in the scenario, what would be your starting point for the robbery offence?
- Q56 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery?
- Q57 Do you have any views on this final sentence that you have come to?
- Q58 How easy did you find the guideline to use in sentencing this scenario?

**Section six: Case study 4**

- Q59 Which guideline would you use to sentence this case?
- Q60 What level of culpability applies to this offender? Please give reasons.
- Q61 What level of harm applies? Please give reasons.
- Q62 On the facts as given in the scenario, what would be your starting point for the robbery offence?

- Q63 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery? (Before and after guilty plea discount)
- Q64 Do you have any views on this final sentence that you have come to?
- Q65 How easy did you find the guideline to use in sentencing this scenario?

### Section six: Case study 5

- Q66 Which guideline would you use to sentence this case?
- Q67 What level of culpability applies to the offenders? (Assume that they are sentenced on the basis that they are equally culpable). Please give reasons.
- Q68 What level of harm applies? Please give reasons.
- Q69 On the facts as given in the scenario, what would be your starting point for the robbery offence?
- Q70 Taking into account any known aggravating or mitigating factors (and assuming that there were no separate charges for weapons offences) what would be your final sentence for the robbery? (Before and after guilty plea discount)
- Q71 Do you have any views on this final sentence that you have come to?
- Q72 How easy did you find the guideline to use in sentencing this scenario?

### Section six: Case study 6

- Q73 Which guideline would you use to sentence this case?
- Q74 What level of culpability applies? Please give reasons.
- Q75 What level of harm applies? Please give reasons.
- Q76 On the facts as given in the scenario, what would be your starting point for the robbery offence?
- Q77 Taking into account any known aggravating or mitigating factors what would be your final sentence for the robbery? (Before and after guilty plea discount)
- Q78 Do you have any views on this final sentence that you have come to?
- Q79 How easy did you find the guideline to use in sentencing this scenario?

# 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;<sup>11</sup>
- the Council must publish a resource assessment in respect of the guidelines;<sup>12</sup> and,
- the Council must monitor the operation and effect of its sentencing guidelines.<sup>13</sup>

Under the previous bodies (the Sentencing Guidelines Council and the Sentencing Advisory Panel), courts had to ‘*have regard to any guidelines which are relevant to the offender’s case*’<sup>14</sup> and give reasons if a sentence fell outside of the range.<sup>15</sup> 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.

<sup>11</sup> s.120 Coroners and Justice Act 2009

<sup>12</sup> s.127(2) *ibid*

<sup>13</sup> s.128(1) *ibid*

<sup>14</sup> s.172(1) Criminal Justice Act 2003

<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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.

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<sup>16</sup> s.120(11) Coroners and Justice Act 2009

<sup>17</sup> s.127(3) *ibid*

# Annex C: Draft guideline

## Robbery – street robbery Theft Act 1968 (section 8(1))

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

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**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: Community order – 12 years' custody**

**This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.**

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths.

Check [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) for amendments to guidance for youth offenders.



**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of particular vulnerability (due to factors including but not limited to age, mental or physical disability)</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence of robbery</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

**Where the goods stolen are of more than low value, whether economic, sentimental or personal, this is considered as an aggravating factor at step two.**

## STEP TWO

### Starting point and category range

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

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody
	<b>Category range</b> 7 – 12 years' custody	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 18 months' – 5 years' custody
Category 2	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years 6 months' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 18 months' – 3 years 6 months' custody
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 18 months' – 3 years 6 months' custody	<b>Category range</b> High level community order – 2 years' custody

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 are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**Factors increasing seriousness*****Statutory aggravating factors:***

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

Offence committed whilst on bail

***Other aggravating factors:***

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

High value of goods (whether economic, sentimental or personal)

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Sophisticated organised nature of offence/significant planning

A leading role where offending is part of a group activity

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

Failure to respond to warnings about behaviour

Timing of the offence

Location of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

**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

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 for assistance to the prosecution**

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

**STEP FOUR****Reduction for guilty pleas**

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**STEP EIGHT****Reasons**

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

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

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

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# Robbery – commercial (including banks, shops, businesses) Theft Act 1968 (section 8(1))

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

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**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: Community order – 20 years' custody**

**This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.**

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths.

Check [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) for amendments to guidance for youth offenders.

**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Sophisticated organised nature of offence/significant planning</li> <li>• A leading role where offending is part of a group activity</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)</li> <li>• Abuse of position</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• A significant role where offending is part of a group activity</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

**Harm**

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Serious detrimental effect on business</li> <li>• Very high value goods or sums</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence</li> <li>• Some detrimental effect on business</li> <li>• High or medium value goods or sums</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

## STEP TWO

### Starting point and category range

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

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.

Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 16 years' custody	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 12 – 20 years' custody	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 4 – 8 years' custody
Category 2	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody
Category 3	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 3 years' custody

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 are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.



**Factors increasing seriousness*****Statutory aggravating factors:***

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

Offence committed whilst on bail

***Other aggravating factors:***

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Prolonged nature of attack

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

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Targeting of large sums of money or valuable goods

Commission of offence whilst under the influence of alcohol or drugs

**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

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 for assistance to the prosecution**

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

**STEP FOUR****Reduction for guilty pleas**

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**STEP EIGHT****Reasons**

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

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

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

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# Robbery – dwelling

## Theft Act 1968 (section 8(1))

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

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**Triable only on indictment**  
**Maximum: Life imprisonment**

**Offence range: 1 year's custody – 13 years' custody**

**This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.**

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths.

Check [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) for amendments to guidance for youth offenders.

**STEP ONE****Determining the offence category**

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

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• A leading role where offending is part of a group activity</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> <li>• Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)</li> <li>• Abuse of position</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• Production and use of a weapon to threaten violence</li> <li>• Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)</li> <li>• A significant role where offending is part of a group activity</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

**Harm**

The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Very high value of goods (whether economic, sentimental or personal)</li> <li>• Soiling, ransacking or vandalism of property</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence</li> <li>• High or medium value of goods (whether economic, sentimental or personal)</li> <li>• Damage caused to dwelling</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

## STEP TWO

### Starting point and category range

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

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 11 years' custody	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody
	<b>Category range</b> 9 – 13 years' custody	<b>Category range</b> 5 – 10 years' custody	<b>Category range</b> 4 – 8 years' custody
Category 2	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody
	<b>Category range</b> 5 – 10 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 6 years' custody
Category 3	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> 1 – 3 years' custody

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 are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**Factors increasing seriousness*****Statutory aggravating factors:***

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

Offence committed whilst on bail

***Other aggravating factors:***

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

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Sophisticated organised nature of offence/significant planning

Prolonged nature of attack

Child at home (or returns home) when offence committed

Victim compelled to leave their home (in particular victims of domestic violence)

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

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

**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

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 for assistance to the prosecution**

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

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

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**STEP EIGHT****Reasons**

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

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

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



# Annex D

## Community orders

### COMMUNITY ORDERS

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

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

Where a court makes a community order it must include at least one requirement imposed for the purpose of punishment and/or impose a fine in addition to the community order.<sup>18</sup>

Low	Medium	High
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work;</li> <li>• curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks);</li> <li>• exclusion requirement, without electronic monitoring, for a few months;</li> <li>• prohibited activity requirement;</li> <li>• attendance centre requirement (where available).</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• appropriate treatment programme;</li> <li>• greater number of hours of unpaid work (for example, 80–150 hours);</li> <li>• an activity requirement in the middle range (20–30 days);</li> <li>• curfew requirement within the middle range (for example, up to 12 hours for 2–3 months);</li> <li>• exclusion requirement, lasting in the region of 6 months;</li> <li>• prohibited activity requirement.</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• appropriate treatment programme;</li> <li>• 150–300 hours unpaid work;</li> <li>• activity requirement up to the maximum of 60 days;</li> <li>• curfew requirement up to 12 hours per day for 4–6 months;</li> <li>• exclusion order lasting in the region of 12 months.</li> </ul>

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

<sup>18</sup> Criminal Justice Act 2003, s.177(2A) as added by the Crime and Courts Act 2013 Sch. 16(1) Para.2 (applies to offences committed on or after 11 December 2013)

