

Theft Offences

Definitive Guideline

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Effective from 1 February 2016

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 1 February 2016, regardless of the date of the offence.

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

“Every court –

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

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

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)–(4) 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. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 35.

General Theft

Theft Act 1968 (section 1)

Including:

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of a pedal bicycle

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

Triable either way

Maximum: 7 years' custody

Offence range: Discharge – 6 years' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Breach of a high degree of trust or responsibility

Sophisticated nature of offence/significant planning

Theft involving intimidation or the use or threat of force

Deliberately targeting victim on basis of vulnerability

B – Medium culpability

A significant role where offending is part of a group activity

Some degree of planning involved

Breach of some degree of trust or responsibility

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

C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

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.

HARM

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of significant additional harm may include **but are not limited to:**

Items stolen were of substantial value to the loser – regardless of monetary worth

High level of inconvenience caused to the victim or others

Consequential financial harm to victim or others

Emotional distress

Fear/loss of confidence caused by the crime

Risk of or actual injury to persons or damage to property

Impact of theft on a business

Damage to heritage assets

Disruption caused to infrastructure

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

Category 1	Very high value goods stolen (above £100,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£10,000 to £100,000) and no significant additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£500 to £10,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £500) and Little or no significant additional harm to the victim or others

See page 6.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Adjustment should be made for any significant additional harm factors where very high value goods are stolen.	Starting point 3 years 6 months' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 years 6 months' – 6 years' custody	Category range 1 – 3 years 6 months' custody	Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 1 – 3 years 6 months' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Band C fine
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 36 weeks' custody	Category range Band B fine – Low level community order
Category 4	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 36 weeks' custody	Category range Band C fine – Medium level community order	Category range Discharge – Band C fine

The table above refers to single offences. Where there are multiple offences, consecutive sentences may be appropriate: please refer to the *Offences Taken Into Consideration and Totality* guideline. Where multiple offences are committed in circumstances which justify consecutive sentences, and the total amount stolen is in excess of £1 million, then an aggregate sentence in excess of 7 years may be appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors

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

Offence committed whilst on bail

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

Other aggravating factors

Stealing goods to order

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

Offender motivated by intention to cause harm or out of revenge

Offence committed over sustained period of time

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

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

Prevalence – see below

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 condition 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

Inappropriate degree of trust or responsibility

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

(except for an offence of low-value shoplifting which is treated as a summary only offence in accordance with section 22A of the Magistrates' Courts Act 1980 where the maximum is 6 months' custody).

Offence range: Discharge – 3 years' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Significant use or threat of force

Offender subject to a banning order from the relevant store

Child accompanying offender is actively used to **facilitate** the offence (not merely present when offence is committed)

B – Medium culpability

A significant role where offending is part of a group activity

Some degree of planning involved

Limited use or threat of force

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

C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

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

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.

HARM

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim – examples of significant additional harm may include **but are not limited to**:

Emotional distress
Damage to property
Effect on business
A greater impact on the victim due to the size or type of their business
A particularly vulnerable victim

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

Category 1	High value goods stolen (above £1,000) or Medium value with significant additional harm to the victim
Category 2	Medium value goods stolen (£200 to £1,000) and no significant additional harm or Low value with significant additional harm to the victim
Category 3	Low value goods stolen (up to £200) and Little or no significant additional harm to the victim

See page 12.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where high value goods are stolen.	Starting point 26 weeks' custody	Starting point Medium level community order	Starting point Band C fine
	Category range 12 weeks' – 3 years' custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Category 2	Starting point 12 weeks' custody	Starting point Low level community order	Starting point Band B fine
	Category range High level community order – 26 weeks' custody	Category range Band C fine – Medium level community order	Category range Band A fine – Band C fine
Category 3	Starting point High level community order	Starting point Band C fine	Starting point Band A fine
	Category range Low level community order – 12 weeks' custody	Category range Band B fine – Low level community order	Category range Discharge – Band B fine

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

Previous diversionary work with an offender does not preclude the court from considering this type of sentencing option again if appropriate.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

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

Relevant recent convictions **may** justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence otherwise warrants a lesser sentence. Any custodial sentence must be kept to the necessary minimum

Offence committed whilst on bail

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

Other aggravating factors

Stealing goods to order

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

Attempts to conceal/dispose of evidence

Offender motivated by intention to cause harm or out of revenge

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

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

Prevalence – see below

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 condition requiring urgent, intensive or long-term treatment

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

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

Sole or primary carer for dependent relatives

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

Offender experiencing **exceptional** financial hardship

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Handling stolen goods

Theft Act 1968 (section 22)

Triable either way

Maximum: 14 years' custody

Offence range: Discharge – 8 years' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Abuse of position of power or trust or responsibility

Professional and sophisticated offence

Advance knowledge of the primary offence

Possession of very recently stolen goods from a domestic burglary or robbery

B – Medium culpability

A significant role where offending is part of a group activity

Offender acquires goods for resale

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

C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

Goods acquired for offender's personal use

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.

HARM

Harm is assessed by reference to the **financial value** (to the loser) of the handled goods **and any significant additional harm** associated with the underlying offence on the victim or others – examples of additional harm may include **but are not limited to:**

Property stolen from a domestic burglary or a robbery (unless this has already been taken into account in assessing culpability)

Items stolen were of substantial value to the loser, regardless of monetary worth

Metal theft causing disruption to infrastructure

Damage to heritage assets

Category 1	Very high value goods stolen (above £100,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£10,000 to £100,000) and no significant additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£1,000 to £10,000) and no significant additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £1,000) and Little or no significant additional harm to the victim or others

See page 18.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £100,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where very high value stolen goods are handled	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 8 years' custody	Category range 1 year 6 months' – 4 years' custody	Category range 26 weeks' – 1 year 6 months' custody
Category 2	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 1 year 6 months' – 4 years' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Low level community order – 26 weeks' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Band C fine
	Category range 26 weeks' – 2 years' custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Category 4	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Band C fine – High level community order	Category range Discharge – Band C fine

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

See page 19.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors

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

Offence committed whilst on bail

Other aggravating factors

Seriousness of the underlying offence, for example, armed robbery

Deliberate destruction, disposal or defacing of stolen property

Damage to a third party

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

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

Good character and/or exemplary conduct

Serious medical condition 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

See page 20.

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Going equipped for theft or burglary

Theft Act 1968 (section 25)

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 18 months' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant steps taken to conceal identity and/or avoid detection
- Sophisticated nature of offence/significant planning
- Offender equipped for robbery or domestic burglary

B – Medium culpability

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

C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence
- Little or no planning

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.

HARM

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

Greater harm

- Possession of item(s) which have the potential to facilitate an offence affecting a large number of victims
- Possession of item(s) which have the potential to facilitate an offence involving high value items

Lesser harm

- All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	Starting point 1 year's custody	Starting point 18 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range High level community order – 36 weeks' custody	Category range Low level community order – High level community order
Lesser	Starting point 26 weeks' custody	Starting point High level community order	Starting point Band C fine
	Category range 12 weeks' – 36 weeks' custody	Category range Medium level community order – 12 weeks' custody	Category range Discharge – Medium level community order

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

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness*Statutory aggravating factors*

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

Offence committed whilst on bail

Other aggravating factors

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

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

Good character and/or exemplary conduct

Serious medical condition 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, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Abstracting electricity

Theft Act 1968 (section 13)

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 1 year's custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Abuse of position of power or trust or responsibility

Commission of offence in association with or to further other criminal activity

B – Medium culpability

A significant role where offending is part of a group activity

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

C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Limited awareness or understanding of offence

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.

HARM

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

Greater harm

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

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

Lesser harm

All other cases

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band C fine
	Category range High level community order – 1 year's custody	Category range Low level community order – 12 weeks' custody	Category range Band B fine – Low level community order
Lesser	Starting point High level community order	Starting point Low level community order	Starting point Band A fine
	Category range Medium level community order – 12 weeks' custody	Category range Band C fine – Medium level community order	Category range Discharge – Band C fine

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

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

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

Electricity abstracted from another person's property

Attempts to conceal/dispose of evidence

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Blame wrongly placed on others

Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

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

Good character and/or exemplary conduct

Serious medical condition 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, such as assistance to the prosecution**

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 36 weeks' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

CULPABILITY demonstrated by one or more of the following:**A – High culpability**

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Sophisticated nature of offence/significant planning

Offence involving intimidation or the use or threat of force

Deliberately targeting victim on basis of vulnerability

B – Medium culpability

A significant role where offending is part of a group activity

Some degree of planning involved

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

C – Lesser culpability

Performed limited function under direction

Involved through coercion, intimidation or exploitation

Little or no planning

Limited awareness or understanding of offence

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.

See page 31.

HARM

Harm is assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim – examples of additional harm may include **but are not limited to**:

A high level of inconvenience caused to the victim

Emotional distress

Fear/loss of confidence caused by the crime

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

Category 1

Goods or services obtained above £200 **or**

Goods/services up to £200 with significant additional harm to the victim

Category 2

Goods or services obtained up to £200 **and**

Little or no significant additional harm to the victim

See page 32.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200.	Starting point 12 weeks' custody	Starting point Low level community order	Starting point Band B fine
	Category range High level community order – 36 weeks' custody	Category range Band C fine – High level community order	Category range Band A fine – Low level community order
Category 2	Starting point Medium level community order	Starting point Band C fine	Starting point Band A fine
	Category range Low level community order – 12 weeks' custody	Category range Band B fine – Low level community order	Category range Discharge – Band B fine

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

See page 33.

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

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

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse, particularly where evidenced by voluntary reparation to the victim
Offence committed whilst on bail	Good character and/or exemplary conduct
Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity	Serious medical condition requiring urgent, intensive or long-term treatment
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution	Mental disorder or learning disability
Attempts to conceal/dispose of evidence	Sole or primary carer for dependent relatives
Failure to comply with current court orders	Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
Offence committed on licence	
Offences taken into consideration	
Established evidence of community/wider impact	

See page 34.

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

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

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

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

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

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

STEP SEVEN**Reasons**

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

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

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

Annex

Fine bands and community orders

FINE BANDS

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

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

COMMUNITY ORDERS

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

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

LOW	MEDIUM	HIGH
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80–150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2–3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours unpaid work • Curfew requirement up to 16 hours per day for 4–12 months • Exclusion order lasting in the region of 12 months

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

