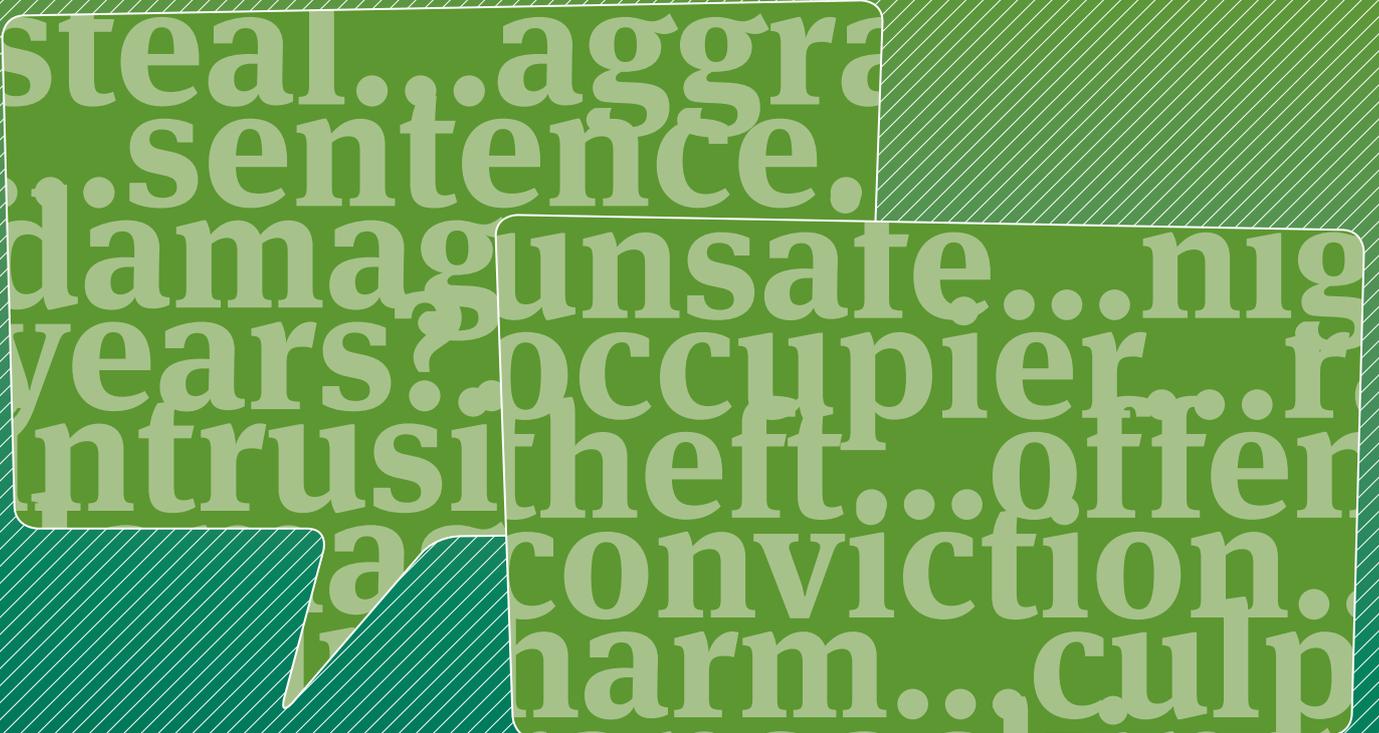


Burglary Guideline

Public Consultation



Burglary Offences Guideline

Public Consultation

Published on 12 May 2011
The consultation will end on 4 August 2011

A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

About this consultation

To:

This public consultation is primarily aimed at members of the public who have an interest in the criminal justice system and sentencing.

Duration:

From 12 May 2011 to 4 August 2011

Enquiries:

(including requests for the paper in an alternative format)

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Additional ways to feed in your views:

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

www.sentencingcouncil.org.uk

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

Response paper:

Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk

Freedom of Information:

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response.

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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.

Why Burglary?

The Council wants to promote consistent sentences for burglary across England and Wales. The current guidance relating to the sentencing of burglary is in different documents and formats and there are some gaps. Therefore, the Council has developed a draft guideline that brings the burglary offences into a single guideline with a single approach. This should support a consistent and proportionate approach to sentencing for burglary offences.

The Council recognises that burglary is a serious offence that can have a significant impact on victims. It also recognises that the public is concerned about burglary. The number of burglaries has fallen significantly in recent years. The risk of being burgled is relatively low – about 2% of households are likely to be victims of burglary in the next year. However, it is still a crime that people worry about – 15% of the public thought they were very or fairly likely to be a victim of burglary in the next year.¹

What is the Council consulting about?

The Council has produced this public consultation paper in order to seek the views of

members of the public who have an interest in sentencing for burglary.

Through this public consultation paper the Council is seeking views on:

- the principle factors that make a burglary more or less serious;
- the additional factors of a burglary that should influence the sentence;
- the sentences that should be given for burglary; and,
- anything else that you think should be considered.

A summary of the consultation questions can be found at Annex A and an explanation of the terms used in this paper is at Annex B.

What else is happening as part of the consultation process?

Alongside this public consultation paper the Council has produced a range of more detailed documents, including the full draft guideline. These documents can be found on the Sentencing Council's website:

www.sentencingcouncil.org.uk

This is a 12 week public consultation. Once the consultation exercise is over and the guideline revised, a final guideline will be published and used by all adult courts.

¹ p.114 - 115 Home Office (2010) Crime in England and Wales 2009/10: Findings from the British Crime Survey and police recorded Crime BCS.

Section one: Burglary offences

Burglary occurs when an offender enters a building or part of a building without the permission of the owner and either:

- intends to steal something, inflict a serious injury or damage the building; or,
- actually steals something, inflicts a serious injury or damages the building.

There are three types of burglary recognised in law and covered by the draft guideline. These are:

Domestic burglary

This type of burglary occurs when an offender enters, without permission, a building which people live in. This generally refers to houses or flats. It also includes boats and vehicles in which people live, such as caravans, and can include domestic outhouses or garages if they are linked to a house.

Non-domestic burglary

This type of burglary occurs when an offender enters, without permission, a building which is not lived in. This includes everything from garden sheds, to shops and offices, and large warehouses.

Aggravated burglary

Aggravated burglary occurs when an offender enters, without permission, any type of building (domestic or non-domestic) and has either taken a weapon or picked one up at the scene. The weapon could be a firearm or imitation firearm, an explosive or any other tool or instrument with which the offender intended to cause harm.

Section two: Assessing seriousness

The Council recognises that burglary is a serious offence, but also that each individual burglary is different. The draft burglary guideline aims to help the court decide how serious a particular burglary is (in the context of other burglary offences), and what the sentence for that burglary should be.

The guideline sets out a step-by-step decision making process for the court to use when sentencing. This means that all courts are following a consistent approach to sentencing across England and Wales.

The first two steps that the court follows when deciding the sentence are about assessing the seriousness of an individual burglary. These two steps are described below.

STEP ONE

Principle factors in assessing seriousness

The first step that the court will take is to consider the principle factors of the burglary. The guideline directs the court to consider the factors relating to the **harm** that has been caused by the burglary and the **culpability** of the offender in committing the burglary. Harm can be defined as the damage, injury or loss that the offence causes to the victim or to society at large. Culpability can be defined as how blameworthy the offender is, for example whether he or she intended to cause the harm.

The draft burglary guideline lists the principle factors relevant to a burglary, in relation to harm and culpability. These are the factors that the Council thinks are the most important in deciding the seriousness of the burglary. The

Council is seeking views on whether you agree with the factors that are being proposed.

The lists of factors used in this section to illustrate step one and two are for domestic burglary. Domestic burglary has been used because it is the highest volume of the three burglary offences sentenced by the courts and because it is the offence that was thought to be of greatest interest to the public. Many of the factors proposed are the same across all three burglary offences. However, the lists have been tailored for each offence. This means that the lists for non-domestic burglary and aggravated burglary have additional elements specific to those offences. If you want to look at the factors in all the guidelines please go to:

www.sentencingcouncil.org.uk

Harm factors

The Council recognises that burglary is not just about property being stolen. Burglary can often have a significant impact on victims. It involves the invasion of someone's home or business, and can leave some victims significantly traumatised. For instance, some victims of burglary feel very unsafe in their homes for some time after the crime has been committed. Burglary can also involve the loss of items which may not have a high financial value but do have great sentimental or personal value, for example cherished family photos or identity documents such as passports.

Listed below are the principle features of **harm** that the Council believes make a domestic burglary more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender than where they are not present.

Factors indicating greater harm

Theft of/damage to property causing a significant degree of loss (economic, sentimental or personal value) to the victim

Soiling, ransacking or vandalism of property

Occupier at home (or returns home) while offender present

Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft

Violence used or threatened against victim

Sometimes the burglary may not involve any of the factors indicating greater harm set out above and there may be limited evidence of harm. Whilst any conviction for an offence of burglary will be treated seriously by the court, listed below are the principle factors that it is proposed could make a domestic burglary less serious.

Factors indicating lesser harm

Nothing stolen or only property of very low value (economic, sentimental or personal) to the victim

Limited damage or disturbance to property

Culpability factors

When considering how serious the burglary is the court will also look at the offender's culpability, that is how blameworthy the offender is for what he or she has done.

Research shows that in most cases of burglary the offender will choose a building to break into because it looks like a straightforward target. For instance, it might be unoccupied, or have an open window. However, the Council believes that where there is any evidence that an offender deliberately **targeted** an individual, the burglary is more serious. For example, the offender might be hostile to the victim's race, religion, sexual orientation, disability, age, sex or gender identity. Alternatively, the victim might have been recently burgled or particularly vulnerable, for example because they are elderly. Whatever the reason for the targeting, the Council believes that it increases the seriousness of the burglary. Therefore the Council is proposing a number of factors to deal with the issue of targeting in the guideline.

The Council also considers that the more **planning** that has gone into a burglary, the higher the culpability of the offender. This is because it shows that the offender knew what they were doing, and that it wasn't done on the spur of the moment. Therefore, carrying special tools or using an escape vehicle are included in the list of factors. A significant degree of planning and organisation is also included as there is a small number of offenders whose working methods involve a great deal of advanced planning and preparation.

Listed below are the principle features of **culpability** that the Council believes make a domestic burglary more serious. Where one or more of these factors are present they are likely to result in a more serious sentence for the offender.

Factors indicating higher culpability

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Victim deliberately targeted

A significant degree of planning or organisation

Knife or other weapon carried (where not charged separately)

Equipped for burglary (e.g. implements carried and/or use of vehicle)

Member of a group or gang

Sometimes the offender may be less culpable (blameworthy) for what has happened. He or she may have been exploited by others or they may have committed the offence completely impulsively, for example reaching into an open window to grab an item on a shelf. Whilst any burglary involves an element of culpability, because the offender has consciously gone without permission into a home or other building, the features below are those that the Council believe make a domestic burglary less serious.

Factors indicating lower culpability

Offence committed on impulse, with limited intrusion into property

Offender exploited by others

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

Q1

Do you agree with the harm and culpability factors proposed at step one for domestic burglary? If not, please specify which you would add or remove and why.

Determining the category

It is by looking at the principle factors relating to harm and culpability that are set out above that the court will identify which one of the three categories in the guideline the burglary should be placed in. It is the identification of this category that informs the court's decision about what sentence should be passed. The categories are:

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability; or Lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

For example:

An offender enters a house using a screwdriver. The home owner is in bed asleep and does not wake up during the burglary. The offender steals two laptops and some jewellery. On his way in he smashes a vase of great sentimental value to the owner. He is caught by the police as he is loading up his car (the laptops and jewellery are returned as they are recovered by the police) .

Factors indicating greater harm

- The home is occupied
- An item of great sentimental value to the owner is broken

Factors indicating higher culpability

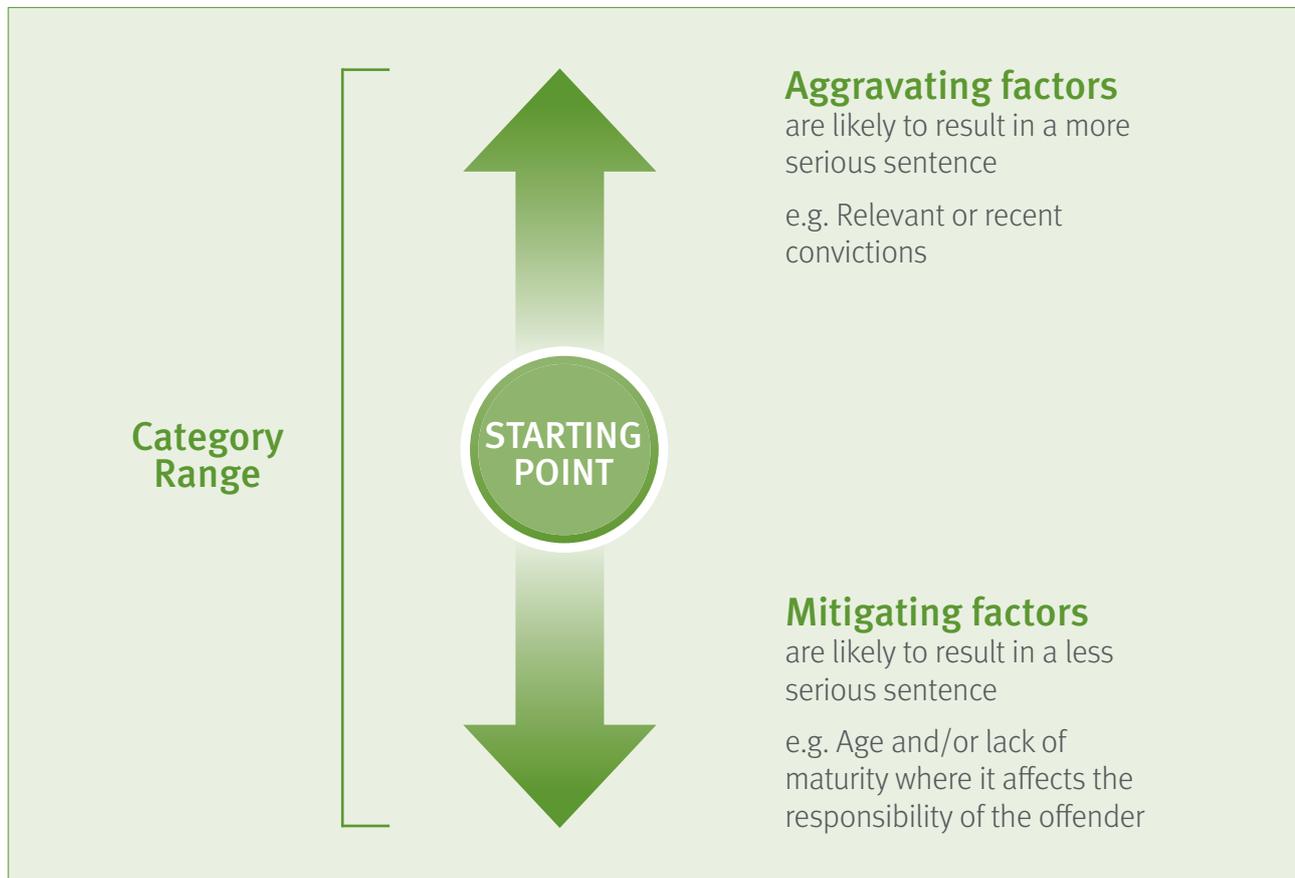
- The offender is equipped for burglary having taken with him a screwdriver and used a car

With this information, the court can determine the category that this offence falls into. The presence of greater harm and higher culpability factors mean that this offence would be assessed as a Category 1 offence. This now allows the judge to move on to the second step of the process.

STEP TWO**Additional factors of a burglary that influence the sentence**

The guideline sets out a range of sentences for each category with a starting point (see Section Three). Having identified the appropriate category, the court then identifies whether there are additional factors which might make the offence more or less serious within the category. This leads them to decide whether the sentence should be higher or lower than the starting point set out in the guideline. The factors that might increase the sentence at this stage are referred to as aggravating factors. The factors that might decrease the sentence at this stage are referred to as mitigating factors.

These aggravating and mitigating factors relate to the wider circumstances of the burglary such as if the offence was committed at night or if a child was present in the house when the burglary took place. They also include factors relating to the offender and his or her background such as his or her previous convictions. The lists at this step are not intended to be exhaustive and any other factors present should be taken into account by the court. In some cases, having considered these factors, the court might decide to move outside the identified category range.

What this means:

Category Range

STARTING POINT

Aggravating factors

are likely to result in a more serious sentence

e.g. Relevant or recent convictions

Mitigating factors

are likely to result in a less serious sentence

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

The table below sets out the **aggravating** factors being proposed for domestic burglary at step two.

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 include:

Child at home (or returns home) when offence committed

Offence committed at night

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution

In domestic violence cases, victim forced to leave their home

Established evidence of community impact

Commission of offence whilst under the influence of alcohol or drugs

Failure to comply with current court orders

Offence committed whilst on licence

Offences Taken Into Consideration (TICs)

The table below sets out the **mitigating** factors being proposed for domestic burglary at step two.

Factors reducing seriousness or reflecting personal mitigation

Offender has made voluntary reparation to the victim

Subordinate role in a group or gang

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

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

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

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

Lapse of time since the offence where this is not the fault of the offender

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

Sole or primary carer for dependent relatives

Q2

Do you agree with the aggravating and mitigating factors proposed at step two for domestic burglary? If not, please specify which you would add or remove and why.

For example

(continuing the case that was described on page 9)

Having assessed the case to be at category 1 (greater harm and higher culpability) the court would then look at the additional factors of this particular case. They are

- The offender has one previous conviction for breaking into a house (nothing was stolen) three years ago, when he was 17
- The offence was at night
- The offender is 20

In determining the final sentence within category 1 the court will take into account his previous conviction and the offence being at night as factors indicating greater seriousness, as well as his relatively young age and potential lack of maturity as a factor reflecting personal mitigation.

Further steps in the process of deciding the sentence

Having come up with a provisional sentence through the two steps described above the court will then consider the following additional steps:

STEP THREE**Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution**

By law, an offender may receive a discounted sentence as a result of assistance given (or offered to be given) to the prosecutor or investigator of an offence.²

STEP FOUR**Reduction for guilty pleas**

The court needs to take account of any potential reduction for a guilty plea in accordance with the law and the guilty plea guideline.³

STEP FIVE**Dangerousness**

Burglary offences are serious offences for which the court must apply certain criteria set out in law. If the court decides that the offender is a danger to the public⁴ it has a power to award an indeterminate sentence. This means that the offender must serve a minimum term of imprisonment before they can be considered for release. The court will use the guideline to help it to fix this minimum term.

STEP SIX**Totality principle**

Many offenders are sentenced for a number of offences at the same time. When a court is sentencing an offender for more than one offence, it then needs to consider whether the total sentence is just and proportionate. This is known as the ‘totality’ principle.

STEP SEVEN**Compensation and ancillary orders**

The court should consider whether it would be appropriate to impose an order in addition to the sentence imposed, such as a compensation order where the court would order the offender to make financial restitution to the victim. These supplementary orders are known as ‘ancillary’ orders, and are aimed at redressing the harm caused by an offender or at preventing future re-offending or repeat victimisation.

STEP EIGHT**Reasons**

At this step of the process, the court should give reasons for the sentence being passed, and explain its effect.⁵

STEP NINE**Consideration for remand time**

Courts should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

2 s. 73 and 74 Serious Organised Crime and Police Act 2005.

3 s. 144 Criminal Justice Act 2003.

4 Chapter 5 *ibid.*

5 s. 174 *ibid.*

Section three: Sentences for burglary

The Council seeks to promote a consistent approach to sentencing. The Council has reviewed the data on current sentencing for burglary and believes that the way burglary is currently sentenced is appropriate.

Therefore the Council is proposing to maintain the current level of sentencing for all three burglary offences and through the guideline reinforce a consistent approach to the sentencing of these serious offences. It should be noted that the offence ranges for each of the offences allow movement between the top of the offence range (the top of category 1) and the maximum set out in the law for cases that are exceptionally serious.

Domestic burglary

The Council proposes that an offender convicted of domestic burglary should normally receive a custodial sentence. The starting point proposed for domestic burglaries that fall into categories 1 and 2, which is where the majority of domestic burglaries will fall, is therefore a custodial sentence.

However, whilst the Council proposes that domestic burglary should normally result in a custodial sentence it recognises that this will not always be the case. In a minority of cases a community sentence will be appropriate. This is particularly where a community sentence is believed to have the greatest potential to

both punish the offender and stop the offender committing more crime.

In developing its proposals the Council has reviewed the relevant research on public views on the sentencing of domestic burglars. The research demonstrates that the public are looking for sentence ranges which allow the court some flexibility to reflect in their sentence the relevant aggravating and mitigating factors and make an appropriate decision about whether the offender should receive a custodial or community sentence. Whilst some of the public are of the view that any domestic burglary generally merits imprisonment, this is not the view that everyone holds.⁶ Research also demonstrates that victims of burglary are not seeking more severe sentences than the general public as a whole.⁷

The Council recognises that many people will have strong views about the appropriate sentences for domestic burglary. Therefore it is particularly keen to hear through this consultation views about the starting points and ranges that it is proposing.

⁶ Based on a scenario of a burglary that would fall into category 2 of this guideline 56% of the public believed all or almost all offenders should be imprisoned with 20% indicating that none or only some offenders should receive a custodial sentence. p.51 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing.

⁷ p. 4 Russell N. and Morgan R. (2001) Sentencing of domestic burglary. 2001 and p49 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing.

The Council is proposing the following category ranges and starting points for domestic burglary. The category ranges and starting points reflect current sentencing practice.

Offence Category	Starting Point	Category Range
Applicable to all offenders		
Category 1	3 years' custody	2 – 6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High level community order	Low level community order – 26 weeks' custody

For example

(continuing the case that was described on pages 9 and 11)
 The burglary fits into category 1 because it has factors of greater harm and higher culpability. Therefore the starting point is 3 years' custody. The category range is 2-6 years' custody.

The court will weigh up the additional factors considered at step two and will award a sentence within the category 1 range.

Q3 Do you agree with the proposed sentences (category ranges and starting points) for domestic burglary?

Non-domestic burglary

Non-domestic burglary is regarded by the law as less serious than a domestic burglary because the burglary is not of a home and therefore the law sets a lower statutory maximum for the offence. However, non-domestic burglary can cause significant harm to victims and where this is the case, should rightly result in custodial sentences where there is raised harm and culpability.

The Council is proposing the following category ranges and starting points for non-domestic burglary. The category ranges and starting points reflect current sentencing practice and are proportionate to the sentences for domestic burglary.

Offence Category	Starting Point	Category Range
Applicable to all offenders		
Category 1	2 years' custody	1 – 4 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

Q4 Do you agree with the proposed sentences (category ranges and starting points) for non-domestic burglary?

Aggravated burglary

Aggravated burglary is a very serious offence: not only has a burglary been committed but the offender has either carried a weapon or picked one up at the scene. The Council's proposal is therefore that the offence range should be custodial for all the categories and, where the offence is particularly serious, the custodial term should be significant.

The Council is proposing the following category ranges and starting points for aggravated burglary. The category ranges and starting points reflect current sentencing practice and are proportionate to the sentences for domestic and non-domestic burglary.

Offence Category	Starting Point	Category Range
Applicable to all offenders		
Category 1	10 years' custody	9 – 13 years' custody
Category 2	6 years' custody	4 – 9 years' custody
Category 3	2 years' custody	1 – 4 years' custody

Q5

Do you agree with the proposed sentences (category ranges and starting points) for aggravated burglary?

Section four: Other issues

Previous convictions

The law states that previous convictions are an aggravating factor. Research shows people generally believe that after the seriousness of the crime the offender's previous record is the most important factor in determining the sentence.⁸ The importance of previous convictions for offenders who commit burglary has also been emphasised in previous court judgments, particularly where the previous convictions suggest that the offender might be 'a career burglar' – in other words has committed numerous similar crimes.

As set out in Section Two of this paper, the offender's previous convictions are an aggravating factor at step two of the draft burglary guideline for all the offences. The inclusion of previous convictions in step two matches the approach the Council is taking to the guidelines it has already developed. In addition to this factor, and specifically because previous convictions are of particular concern for burglary, the Council is proposing to add a comment to the guideline to highlight that 'in particular, relevant recent convictions are likely to result in an upward adjustment' from the starting point.

In addition, there is a requirement in law that where an adult offender is convicted of a third qualifying domestic burglary (i.e. the offender

has previously been convicted of two other such burglaries committed on separate consecutive occasions after 30 November 1999) the court should generally pass a sentence of 3 years unless there are exceptional circumstances that would make this unjust.⁹ Therefore, the draft domestic and aggravated burglary guidelines highlight the law relating to the minimum sentence.

Q6

Do you agree with the proposed approach to previous convictions?

Victims

When preparing guidelines, the Council must have regard to the impact of sentencing decisions on victims. In this guideline the Council has tried to fully recognise the impact of burglary on victims in the factors included in step one and step two.

Furthermore, the Council has chosen to include factors relating to victims of domestic violence including where domestic violence victims are forced to leave their homes. Whilst burglary is not commonly associated with domestic violence¹⁰ it can occur (as when an offender breaks into the home of a former partner), and the Council felt this should be recognised.

8 p5 ICPR and GfK NOP (2009) Public Attitudes to the Principles of Sentencing

9 s. 111 of the Powers of the Criminal Courts (Sentencing) Act 2000

10 p.2 Home Office (2003) Domestic violence offenders: characteristics and offender related needs

As well as looking at the impact of individual offences on victims the Council realises that burglary may have a particular impact on communities. It proposes to reflect this issue by including in step two of the decision making process ‘established evidence of community impact’ as a factor increasing the seriousness of an offence. This means that, if it can be shown that the offence has had a negative impact on a particular community (for example by a community impact statement), this would be considered as increasing the seriousness of that particular offence, which may result in an increased sentence for the offender.

The Council would welcome views on whether it can do more in relation to the impact on victims, in particular from victims themselves and from organisations representing victims.

Q7

Are there any further ways in which you think victims can and/or should be considered?

Equality and diversity

Alongside this consultation document and draft guideline the Council has published an initial equality impact assessment. The assessment aims to identify any impact that its proposals might have on particular groups of people (for example, ethnic minorities). The Council has also contacted a number of organisations with an interest in this area. No equality matters have been identified to date that have raised

concerns in relation to the development of the draft burglary guideline. However the Council would be keen to hear through the consultation of any matters that should be considered.

Q8

Are there any other ways in which equality and diversity should be considered as part of the proposals?

Q9

Are there any other points that you would like to make?

Annex A: Summary of consultation questions

- Q1 Do you agree with the harm and culpability factors proposed at step one for domestic burglary? If not, please specify which you would add or remove and why.
- Q2 Do you agree with the aggravating and mitigating factors proposed at step two for domestic burglary? If not, please specify which you would add or remove and why.
- Q3 Do you agree with the proposed sentences (category ranges and starting points) for domestic burglary?
- Q4 Do you agree with the proposed sentences (category ranges and starting points) for non-domestic burglary?
- Q5 Do you agree with the proposed sentences (category ranges and starting points) for aggravated burglary?
- Q6 Do you agree with the proposed approach to previous convictions?
- Q7 Are there any further ways in which you think victims can and/or should be considered?
- Q8 Are there any other ways in which equality and diversity should be considered as part of the proposals?
- Q9 Are there any other points that you would like to make?

Annex B:

Explanation of terms

Aggravating factor

A feature of the offence which indicates an increased seriousness.

Category range

Within the offence range, the range of sentences proposed that may be appropriate for a court to impose on an offender in a case which falls within the category.

Culpability

This means the extent to which an offender is to blame for committing an offence.

Harm

This means the damage, injury or loss that the offence causes to the victim or to society at large.

Mitigating factor

A feature which indicates a decreased seriousness.

Offence category

The different categories of case which illustrate varying degrees of seriousness within one type of offence.

Offence range

The range of sentences proposed that may be appropriate for a court to impose on an offender convicted of that offence.

Seriousness

The seriousness of an offence is determined by the two overarching elements of harm and culpability.

Starting point

The position within category ranges from which the court starts to calculate the provisional sentence. It is proposed that they apply to all offenders, in all cases.

Statutory

As set out in law: statutory factors are those which the court must take into account; statutory maximum penalties are those which cannot be exceeded.

