



Sentencing Guidelines Council

Theft
and
Burglary (non-dwelling)

Consultation Guideline

Foreword

The Sentencing Guidelines Council was created in 2004 in order to frame guidelines to assist courts as they deal with criminal cases across the whole of England and Wales.

The Council receives advice from the Sentencing Advisory Panel which consults widely before tendering that advice. The Council then produces a draft guideline on which it seeks the views of a limited group as provided by the Criminal Justice Act 2003.

This guideline has been developed from two sets of advice tendered by the Panel. In the first, the Panel focused on theft from a shop, which forms the largest category of sentenced theft cases. The Panel's consultation on this topic was supplemented by independent research examining the factors that influence sentencing in such cases. The second advice addressed theft in breach of trust, theft from the person, theft in a dwelling, burglary in a building other than a dwelling, making off without payment and abstracting electricity.

As the vast majority of cases involving making off without payment and abstracting electricity are dealt with in a magistrates' court, draft guidelines for these offences have been incorporated into the revised version of the Magistrates' Court Sentencing Guidelines (MCSG) and formed part of that consultation. Guidelines for the other offences covered in this document will also be added to the revised MCSG by way of an update; versions of the guidelines consistent with the format of the MCSG are set out in Annex B.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The two advices from the Panel (and the consultation papers that preceded them) contain further background details and are published alongside this draft guideline. The report of the research into sentencing for theft from a shop was published in August 2006. All documents can be found at www.sentencing-guidelines.gov.uk or can be obtained from the Council's Secretariat at 4th Floor, 8-10 Great George Street, London SW1P 3AE.

Responses to the consultation should be received no later than Friday 23 May 2008.

When the consultation period is concluded, the Council will consider any responses received and then issue a definitive guideline to which every court is required to have regard in accordance with section 172 of the 2003 Act.

Chairman of the Council
March 2008

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THEFT AND BURGLARY (NON-DWELLING)

A. Statutory provisions

1. The forms of theft and burglary covered by this guideline are:

- theft in breach of trust;
- theft from the person;
- theft in a dwelling;
- theft from a shop;
- burglary in a building other than a dwelling.

2. In relation to theft, *section 1 of the Theft Act 1968* states:

(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.

3. Burglary in a building other than a dwelling (referred to in this guideline as burglary (non-dwelling)) is an offence under section 9 of the Theft Act 1968 which provides:

(1) A person is guilty of burglary if –

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm, and of doing unlawful damage to the building or anything therein.

The guideline for burglary (non-dwelling) relates solely to the situation in which an offender enters a building other than a dwelling as a trespasser with intent to steal or, having entered a building as a trespasser, actually goes on to steal.

4. Offences under sections 1 and 9 of the Theft Act are punishable either on summary conviction or on indictment. The maximum sentence in a magistrates' court is 6 months imprisonment. In the Crown Court, the maximum sentence is 7 years custody for theft and 10 years for burglary (non-dwelling).

B. Assessing Seriousness

5. The primary factor in considering sentence is the seriousness of the offence; that is determined by assessing the culpability of the offender and any harm which the offence caused, was intended to cause or might foreseeably have caused.¹ A community sentence can be imposed only if a court considers that the offence is serious enough to justify it,² and a custodial sentence can be imposed only if a court considers that a community order or a fine alone cannot be justified in view of the seriousness of the

¹ Criminal Justice Act 2003, s.143(1).

² *ibid.*, s.148(1).

offence.³ The Council has published a definitive guideline on seriousness that guides sentencers through the process of determining whether the respective sentencing thresholds have been crossed.⁴

(i) Culpability and harm

6. The culpability of the offender is the initial factor in determining offence seriousness. It is an essential element of the offences addressed in this guideline that the offender acted dishonestly. This requires that:⁵
- the conduct was dishonest according to ordinary standards of reasonable and honest people; and
 - the offender knew that the conduct was by those standards dishonest.

Accordingly, an offender convicted of these offences will have demonstrated a high level of culpability.

7. Even so, the precise level of culpability will vary according to factors such as the offender's motivation, whether the offence was planned or spontaneous and whether the offender was in a position of trust.⁶
8. The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.
9. When assessing the harm caused by theft and burglary (non-dwelling) offences, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.
10. In some theft and burglary (non-dwelling) cases, the harm that results from an offence may be greater than the harm intended by the offender. In others, the offender may have intended more harm than actually results. In these situations, harm should be judged in light of the offender's culpability.⁷

(ii) Aggravating and mitigating factors

11. The Council guideline *Overarching Principles: Seriousness* identifies a number of factors that might increase or mitigate the seriousness of an offence. For ease of reference, the factors are set out in Annex A.
12. The most common factors that are likely to aggravate an offence of theft or burglary (non-dwelling) are:

³ Criminal Justice Act 2003, s.152(2).

⁴ *Overarching Principles: Seriousness*, published December 2004; www.sentencing-guidelines.gov.uk.

⁵ *R v Ghosh* [1982] QB 1053.

⁶ *Overarching Principles: Seriousness*, para. 1.17, published December 2004; www.sentencing-guidelines.gov.uk.

⁷ *ibid*, para. 1.7.

Factors indicating higher culpability

- planning of an offence;
- offenders operating in groups or gangs; and
- deliberate targeting of vulnerable victims.

Factors indicating a more than usually serious degree of harm

- victim is particularly vulnerable;
- high level of gain from the offence; and
- high value (including sentimental value) of property to the victim or substantial consequential loss.

13. In the guidelines that follow, the Council has identified aggravating factors in addition to those from the general list that may be of particular relevance to the individual offences. The Council has not identified any additional offence mitigating factors pertinent to the offences in this guideline.

(iii) Personal mitigation

14. The Council has identified the following matters of personal mitigation that might apply to the offences contained in this guideline.

(a) Return of stolen property

15. Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

(b) Impact on sentence of offender's dependency

16. Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.⁸

(c) Offender motivated by desperation or need

17. The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

⁸ See Council guideline *New Sentences: Criminal Justice Act 2003*, published December 2004, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.

C. Ancillary and other orders

(i) Restitution orders

18. Under section 148 of the Powers of Criminal Courts (Sentencing) Act 2000, a court may order that stolen goods be restored to the victim or that a sum not exceeding the value of the goods be paid to the victim from money taken out of the offender's possession at the time of apprehension. Further, on the application of the victim, the court may order that other goods representing the proceeds of disposal or realisation of the stolen goods be transferred to the victim. Where the stolen property cannot be traced or the offender is not in possession of sufficient money at the time of apprehension, a restitution order will not be available and a compensation order should be considered instead.
19. A restitution order should not normally impact on or influence the choice of sentence as the offender has no control over the making of the order.

(ii) Compensation orders

20. Under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, the court must consider making a compensation order in any case where an offence has resulted in personal injury, loss or damage. Compensation can either be a sentence in its own right or an ancillary order.
21. Compensation should benefit, not inflict further harm on, the victim. Any financial recompense from the offender may cause distress. A victim may or may not want compensation from the offender and assumptions should not be made either way. The victim's views are properly obtained through sensitive discussion by the police or witness care unit, when it can be explained that the offender's ability to pay will ultimately determine whether, and how much, compensation is ordered and whether the compensation will be paid in one lump sum or by instalments. If the victim does not want compensation, this should be made known to the court and respected.
22. In cases where it is difficult to ascertain the full amount of the loss suffered by the victim, consideration should be given to making a compensation order for an amount representing the agreed or likely loss. Where relevant information is not immediately available, it may be appropriate to grant an adjournment for it to be obtained.
23. When imposed as an ancillary order, a compensation order normally should not impact on or influence the choice of sentence. However, in cases where the court considers that it is appropriate to impose both a fine and compensation order and the offender has insufficient means to pay both, priority must be given to the compensation order.⁹
24. Where an offender has acted (as opposed to offered) to free assets in order to pay compensation, this is akin to making voluntary restitution and may be regarded as personal mitigation.

⁹ Powers of Criminal Courts (Sentencing) Act 2000, s.130(12). The court must also impose a surcharge of £15 in any case in which a fine is imposed. Where there are insufficient means, compensation will take priority over the surcharge but the surcharge will take priority over a fine.

(iii) Confiscation orders

25. Where there is evidence in a case before the Crown Court that the offender has benefited financially from his or her offending, the court must, in accordance with the Proceeds of Crime Act 2002, consider whether to make a confiscation order. A magistrates' court may commit the offender to the Crown Court for sentence with a view to such an order being made.¹⁰
26. If the court makes a confiscation order, it must take account of the order before it imposes a fine or a deprivation order.¹¹
27. Except as provided in paragraph 26 above, the court must not take account of the confiscation order in deciding the appropriate sentence.¹²
28. Where a court makes both a compensation order and a confiscation order and it believes that the offender does not have sufficient means to satisfy both orders, it must direct that the compensation is paid from the confiscated assets.¹³

(iv) Deprivation orders

29. Under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, a court may deprive an offender of property used or intended to be used to commit or facilitate the commission of an offence.
30. Where the property has an 'innocent use' but can also be used to commit or facilitate the commission of an offence, a deprivation order must be taken into account when considering whether the overall penalty is commensurate with the seriousness of the offence.¹⁴ However, where the property can be used only for the purpose of crime, a deprivation order should not be taken into account when determining the appropriate sentence.

¹⁰ Under s.97 of the Serious Organised Crime and Police Act 2005, the Secretary of State may permit magistrates' courts to make orders confiscating amounts up to £10,000 but this power has not yet been exercised.

¹¹ Proceeds of Crime Act 2002, ss.13(2) and (3).

¹² *ibid.*, s.13(4).

¹³ *ibid.*, ss.13(5) and (6).

¹⁴ *R v Buddo* (1982) 4 Cr App R(S) 268, *R v Joyce and others* (1989) 11 Cr App R (S) 253, *R v Priestley* [1996] 2 Cr App R (S) 144.

D. Sentencing ranges and starting points

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a first time offender who has been convicted after a trial. Within the guidelines, a first time offender is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guidelines describe a number of types of activity which would fall within the broad definition of the offence. These are set out in a column headed 'type/nature of activity'.
3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a starting point from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the type or nature of offence activity) to reach a provisional sentence.
4. The sentencing range is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the **provisional sentence** has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. Again, this reduction may take the sentence below the **range** provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.¹⁵

¹⁵ Criminal Justice Act 2003, s.174(2)(a).

The Decision Making Process

The process set out below is intended to show that the sentencing approach for the offences of theft and burglary (non-dwelling) is fluid and requires the structured exercise of discretion.

1. Identify the appropriate starting point

Identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed.

2. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

3. Consider mitigating factors and personal mitigation

There may be offence or offender mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

4. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council Guideline *Reduction in Sentence for a Guilty Plea* (revised July 2007).

5. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

6. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

7. Reasons

When a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so.

Theft in breach of trust

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. In general terms, the seriousness of the offence will increase in line with the level of trust breached:
 - at the lower end of the scale are thefts by employees who are not in a position of trust over and above that inherent in the employment relationship;
 - at the higher end are thefts by employees who have been specifically entrusted with the care of the property or funds stolen, sometimes on behalf of the general public.

The extent to which the nature and degree of trust placed in an offender should be regarded as increasing the seriousness of the offence will depend on a careful assessment of the circumstances of each individual case, not just the occupation of the offender.

3. Theft by offenders in whom a high degree of trust has been placed should generally attract higher sentences than thefts of similar amounts by offenders in whom a lower degree of trust has been placed.
4. When assessing the seriousness of an offence, the courts must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex A). Identified below are additional aggravating factors likely to be particularly relevant to this type of theft:

(i) Long course of offending

Offending carried out over a period of months or years represents a sustained and deliberate course of conduct and should be regarded as increasing an offender's culpability. Offending over an extended period may also result in greater harm to the victim in terms of financial loss and/or distress.

(ii) Suspicion deliberately thrown on others

Where an offender has taken positive steps to incriminate another, either at the time of committing the offence or subsequently, this should be regarded as an aggravating factor.

5. The Council has identified the following matters of personal mitigation which may be relevant in addition to those set out on page 5 above:

(i) Excessive responsibility and/or inadequate training

The fact that an offender was given excessive responsibility and/or inadequate training and support may be regarded as personal mitigation.

(ii) Cessation of offending

The fact that an offender voluntarily ceased offending before being discovered does not reduce the seriousness of the offence. However, if the claim to have stopped offending

is genuine, it may constitute personal mitigation, particularly if it is evidence of remorse.¹⁶

(iii) Reporting an undiscovered offence

Where an offender brings the offending to the attention of his or her employer or the authorities, this may be treated as personal mitigation.¹⁷

6. In many cases of theft in breach of trust, termination of an offender’s employment will be a natural consequence of committing the offence. Other than in the most exceptional of circumstances, loss of employment and any consequential hardship should not constitute personal mitigation.
7. Where a court is satisfied that a custodial sentence of less than 12 months is appropriate for an offence of theft in breach of trust, consideration should be given to whether that sentence can be suspended in accordance with the criteria in the Council guideline *New Sentences: Criminal Justice Act 2003*.¹⁸ A suspended sentence order may be particularly appropriate where this would allow for reparation to be made either to the victim or to the community at large.

Theft in breach of trust

Theft Act 1968 (section 1)

Maximum penalty: **7 years imprisonment**

Type/nature of activity	Starting point	Sentencing range
Theft of £125,000 or more or Theft of £20,000 or more in breach of a high degree of trust	3 years custody	2 - 6 years custody
Theft of £20,000 or more but less than £125,000 or Theft of £2,000 or more but less than £20,000 in breach of a high degree of trust	2 years custody	12 months - 3 years custody
Theft of £2,000 or more but less than £20,000 or Theft of less than £2,000 in breach of a high degree of trust	18 weeks custody	Community Order (HIGH) - 12 months custody
Theft of less than £2,000	Community Order (MEDIUM)	Fine (Band B) - 26 weeks custody

Additional aggravating factors:

1. Long course of offending
2. Suspicion deliberately thrown on others

¹⁶ Council guideline *Overarching Principles: Seriousness*, para. 1.27, published December 2004, www.sentencing-guidelines.gov.uk.

¹⁷ *ibid.*, para.1.29.

¹⁸ See pages 20-25.

Theft from the person

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. Theft from the person may encompass conduct such as 'pick-pocketing', where the victim is unaware that the property is being stolen, as well as the snatching of handbags, wallets, jewellery and mobile telephones from the victim's possession or from the vicinity of the victim. The offence constitutes an invasion of the victim's privacy and may cause the victim to experience distress, fear and inconvenience either during or after the event. While in some cases the conduct may be similar, **this guideline does not apply where the offender has been convicted of robbery; sentencers should instead refer to the Council guideline on robbery (see also para 6(ii) below).**
3. For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. Young or elderly persons and tourists may fall into this category. The exploitation of vulnerable victims indicates a high level of culpability and will influence the category of seriousness into which the offence falls.
4. The guideline is based on the assumption that most thefts from the person do not involve property of high monetary value or of high value to the victim. Where the stolen property is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond the range into which the offence otherwise would fall. For the purposes of this form of theft, 'high monetary value' is defined as more than £2,000.
5. A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).
6. When assessing the seriousness of an offence, the courts must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex A). Identified below are additional aggravating factors likely to be particularly relevant to this type of theft:

(i) Confrontation with the victim

Where the offence involves intimidation and/or a face-to-face confrontation between the offender and victim, this should be regarded as an aggravating factor. Where the victim is a 'vulnerable victim' (as defined in para. 3 above), the use of intimidation will influence the category of seriousness into which the offence falls.

(ii) Use of force, or threat of force

Where the offender uses or threatens to use force to commit the theft, the conduct may constitute the more serious offence of robbery.¹⁹ However, there may be some cases

¹⁹ Theft Act 1968, s. 8(1).

involving force which are charged as theft from the person. In such cases, an offender can be sentenced only for the offence of which he or she is convicted and the court is bound by the maximum penalty for that offence. At the same time, the court must have regard to all the circumstances of the case when determining the appropriate sentence. Where the victim is a 'vulnerable victim' (as defined in para. 3 opposite), the use or threat of force will influence the category of seriousness into which the offence falls. In other cases, it may be an aggravating factor.

(iii) High level of inconvenience caused to victim

The theft of some items, such as house keys and credit cards, may cause a particularly high level of distress and inconvenience to victims and this should be regarded as an aggravating factor. Tourists are vulnerable as a target for thefts from the person (see para.3 opposite) and may experience greater distress and inconvenience than others in arranging the replacement of documents, cash and cards. Such factors should be taken into account as increasing the seriousness of the offence.

6. Previous authorities have expressed concern about the prevalence of theft against the person and the associated need for deterrence, particularly in relation to pick-pocketing.²⁰ The Council guideline *Overarching Principles: Seriousness* signals a need for caution when considering issues of local prevalence. Further, national prevalence should not be used by sentencers to justify including a deterrent element in sentences as this is already taken into account in Council guidelines.

Theft from the person

Theft Act 1968 (section 1)

Maximum penalty: **7 years imprisonment**

Type/nature of activity	Starting point	Sentencing range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in para.4 opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate.		
Theft involving intimidation or the use or threat of force (falling short of robbery) against a vulnerable victim (as defined in para. 3 opposite)	18 months custody	12 months - 3 years custody
Theft from a vulnerable victim (as defined in para. 3 opposite)	18 weeks custody	Community Order (HIGH) - 12 months custody
Theft from the person not involving vulnerable victim	Community Order (MEDIUM)	Fine (Band B) - 18 weeks custody

Additional aggravating factors:

1. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range]
2. Intimidation or face-to-face confrontation with victim [except where this raises the offence into a higher sentencing range]
3. High level of inconvenience caused to victim, e.g. replacing house keys, credit cards etc.

²⁰ *R v Spencer and Carby* (1995) 16 Cr App R (S) 482 (CA).

Theft in a dwelling

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. The category of theft in a dwelling covers the situation where a theft is committed by an offender who is present in a dwelling with the authority of the owner or occupier. Examples include thefts by lodgers or visitors to the victim's residence, such as friends, relatives or salespeople. Such offences involve a violation of the privacy of the victim's home and constitute an abuse of the victim's trust. Where an offender enters a dwelling as a trespasser in order to commit theft, his or her conduct will generally constitute the more serious offence of burglary; **this guideline does not apply where the offender has been convicted of burglary.**²¹
3. For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. The exploitation of a vulnerable victim indicates a high level of culpability and will influence the category of seriousness into which the offence falls.
4. The guideline is based on the assumption that most thefts in a dwelling do not involve property of high monetary value or of high value to the victim. Where the property stolen is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond than the range into which the offence otherwise would fall. For the purpose of this form of theft, property worth more than £2,000 should generally be regarded as being of 'high monetary value', although this will depend on an assessment of all the circumstances of the particular case.
5. A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).
6. When assessing the seriousness of an offence, the courts must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex A). Identified below are additional aggravating factors likely to be particularly relevant to this type of theft:

(i) Confrontation with the victim

Where there is intimidation and/or a face-to-face confrontation between the offender and victim, this should be regarded as an aggravating factor. Where the victim is a 'vulnerable victim' (as defined in para. 3 above), the use of intimidation will influence the category of seriousness into which the offence falls.

(ii) Use of force, or threat of force

Generally, where theft in a dwelling is accompanied by force or the threat of force, it will constitute the more serious offence of robbery. However, there may be some

²¹ The Court of Appeal issued guidance for sentencing burglary in a dwelling in *R v McInerney and Keating* [2003] 2 Cr App R (S) 39 summarised in the Sentencing Guidelines Council Guideline Judgments Case Compendium (section (H) Theft Act offences/Fraud) available at www.sentencing-guidelines.gov.uk.

cases involving force which are charged as theft in a dwelling, perhaps where the force was used after the theft had taken place. In such cases, an offender can be sentenced only for the offence of which he or she is convicted and the court is bound by the maximum penalty for that offence. At the same time, the court must have regard to all the circumstances of the case when determining the appropriate sentence. Where the victim is a 'vulnerable victim' (as defined in para. 3 opposite), the use or threat of force will influence the category of seriousness into which the offence falls. In other cases, it may be an aggravating factor.

(iii) Use of deception

Where an offender has deceived or tricked the victim in order to gain entry, for example by falsely claiming to be a meter reader, this should be regarded as an aggravating factor. Where the victim is a 'vulnerable victim' (as defined in para. 3 opposite), the use of deception will influence the category of seriousness into which the offence falls.

(iv) Taking steps to prevent the victim reporting the crime or seeking help

Where an offender takes steps to prevent the victim from reporting the offence or seeking help, such as by damaging a telephone, this should be regarded as increasing offence seriousness.

Theft in a dwelling

Theft Act 1968 (section 1)

Maximum penalty: **7 years imprisonment**

Type/nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in para. 4 opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft from a vulnerable victim (as defined in para. 3 opposite) involving intimidation or the use or threat of force (falling short of robbery) or the use of deception	18 months custody	12 months - 3 years custody
Theft from a vulnerable victim (as defined in para. 3 opposite)	18 weeks custody	Community Order (HIGH) - 12 months custody
Theft in a dwelling not involving vulnerable victim	Community Order (MEDIUM)	Fine (Band B) - 18 weeks custody

Additional aggravating factors:

1. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range]
2. Use of deception [except where this raises the offence into a higher sentencing range]
3. Intimidation or face-to-face confrontation with victim [except where this raises the offence into a higher sentencing range]
4. Offender takes steps to prevent the victim from reporting the crime or seeking help

Theft from a shop

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. The circumstances of this offence can vary significantly. At the least serious end of the scale are thefts involving low value goods, no (or little) planning and no violence or damage; a non-custodial sentence will usually be appropriate for a first time offender. At the higher end of the spectrum are thefts involving organised gangs or groups or the threat or use of force and a custodial starting point will usually be appropriate.
3. When assessing the level of harm, the circumstances of the retailer are a proper consideration; a greater level of harm may be caused where the theft is against a small retailer.
4. Retailers may suffer additional loss as a result of this type of offending such as the cost of preventative security measures, higher insurance premiums and time spent by staff dealing with the prosecution of offenders. However, the seriousness of an individual case must be judged on its own dimension of harm and culpability and the sentence on an individual offender should not be increased to reflect the harm caused to retailers in general by the totality of this type of offending.
5. In accordance with section 143(2) of the Criminal Justice Act 2003, any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of 'persistent' or 'seriously persistent' offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence.
6. When assessing the seriousness of an offence, the courts must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex A).
7. The Council guideline on Seriousness identifies high value as an aggravating factor in property offences. In cases of theft from a shop, theft of high value goods may be associated with other aggravating factors such as the degree of planning, professionalism and/or operating in a group, and care will need to be taken to avoid double counting. Deliberately targeting high value goods will always make an offence more serious.
8. Additional aggravating factors particularly relevant to this type of theft include:
 - (i) *Involving a child*
Where a child accompanies an offender during the offence, it will be an aggravating factor if the child is involved in, or is likely to be aware of, the theft or could be influenced or distressed by it. However, the mere presence of a child does not make the offence more serious.

(ii) Offender subject to a banning order

The fact that an offender is subject to a banning order that includes the store in which the offence is committed is an aggravating factor. Breach of any type of order (for example a civil banning order or a shop imposed ban) will aggravate to the same degree. However, where an offender is being sentenced also for breach, care must be taken to ensure that there is no double counting.

(iii) Intimidation, threat or use of force and additional damage to property

Generally, where theft from a shop is accompanied by force or the threat of force, it will be appropriate to charge the offender with the more serious offence of robbery. However, there may be some cases involving force which are charged as theft from a shop. In such cases, an offender can be sentenced only for the offence of which he or she is convicted and the court is bound by the maximum penalty for that offence. At the same time, the court must have regard to all the circumstances of the case when determining the appropriate sentence. This may result in sentencers concluding that the offending was aggravated by the use or threat of force and that a more severe sentence is warranted.

Any additional damage to property (for example caused when an offender is tackled or detained) also aggravates the seriousness of the offence.

Theft from a shop

Theft Act 1968 (section 1)

Maximum penalty: **7 years imprisonment**

Type/nature of activity	Starting point	Sentencing range
Organised gang/group and Intimidation or the use or threat of force (short of robbery)	12 months custody	36 weeks - 4 years custody
Significant intimidation or threats or Use of force resulting in slight injury or Very high level of planning or Significant related damage	6 weeks custody	Community order (HIGH) - 36 weeks custody
Low level intimidation or threats or Some planning e.g. a session of stealing on the same day or going equipped or Some related damage	Community Order (LOW)	Fine (band B) - Community Order (MEDIUM)
Little or no planning or sophistication and Goods stolen of low value	Fine (band B)	Conditional discharge - Community Order (LOW)

Additional aggravating factors:

1. Professional offending
2. Child accompanying offender is involved in or aware of theft
3. Offender is subject to a banning order that includes the store targeted
4. Victim particularly vulnerable (e.g. small independent shop)
5. Offender targeted high value goods

Burglary in a building other than a dwelling

Factors to take into consideration

1. The following starting points and sentencing ranges are for a first time offender aged 18 or over who pleaded not guilty. They should be applied as set out on pages 8-9 above.
2. Section 9 of the Theft Act 1968 provides that the offence of burglary can be committed in a number of ways. This guideline is concerned solely with burglary committed in a building other than a dwelling and is limited to situations in which an offender enters a building as a trespasser with intent to steal or, having entered a building as a trespasser, actually goes on to steal.
3. The seriousness of individual instances of this offence can vary significantly. At the lower end are cases of opportunistic offending by a single offender where there was no forced entry, no damage caused and nothing stolen. Towards the other end of the spectrum are cases involving significant planning and professionalism, multiple offenders going equipped with implements to facilitate the commission of the offence, targeting of particular premises and the theft of property or cash of a significant value. The guideline indicates that, in these circumstances, a sentence in excess of 7 years imprisonment may be appropriate.
4. When assessing the seriousness of an offence, the courts must always have regard to the full list of aggravating and mitigating factors in the Council guideline *Overarching Principles: Seriousness* (reproduced in Annex A). The following factors from the general list may be particularly relevant, alongside those set out on page 5 above:
 - o deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence;
 - o abuse of a position of trust.
5. Identified below are additional aggravating factors which may be relevant to this offence:

(i) Targeting premises

Some offenders deliberately target premises because high value, often easily disposable, property is likely to be found there. This is an aggravating factor as it indicates a degree of professionalism and organisation in the offending, as well as an intention to derive a high level of gain.

Community premises, including schools, clubrooms, places of worship and doctors' surgeries, may be particular targets. Burglaries of such premises may result in a higher than usual degree of harm in terms of, for example, the inconvenience caused by the theft of the property and this should be regarded as an aggravating factor.

Premises which have been burgled on a prior occasion are also sometimes targeted, often on the assumption that security is weak or that goods stolen in the earlier burglary will have been replaced. This indicates planning, organisation and professionalism and, therefore, should be regarded as increasing the offender's culpability. Repeat victimisation may also increase the harm caused by the offence in terms of distress, inconvenience and expense to the victim.

(ii) Possession of a weapon

In cases where it is not clear whether the offender was in possession of a weapon at the time of entry into the building (which may fulfil the requirements for a more serious charge of aggravated burglary), an additional charge of possession of an offensive weapon may be before the court. If however, an offender found with a weapon is charged solely with burglary, possession of that weapon may be regarded as an aggravating factor, subject to the overriding principle that an offender can be sentenced only for the offence of which he or she has been convicted.

Burglary in a building other than a dwelling

Theft Act 1968 (section 9)

Maximum penalty: **10 years imprisonment**

Type/nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the goods are of particularly high value, or there is evidence of a professional burglary and/or significant planning, a sentence of more than 7 years custody may be appropriate		
Burglary involving goods valued at £20,000 or more	2 years custody	12 months - 7 years custody
Burglary involving goods valued at £2,000 or more but less than £20,000	18 weeks custody	Community Order (HIGH) - 12 months custody
Burglary involving goods valued at less than £2,000	Community Order (MEDIUM)	Fine (Band B) - 26 weeks custody

Additional aggravating factors:

1. Targeting premises containing property of high value
2. Targeting vulnerable community premises
3. Targeting premises which have been burgled on prior occasion(s)
4. Possession of a weapon (where this is not charged separately)

Aggravating and mitigating factors identified in the Council guideline *Overarching Principles: Seriousness*

**THE FACTORS BELOW APPLY TO A WIDE RANGE OF OFFENCES.
NOT ALL WILL BE RELEVANT TO OFFENCES OF THEFT AND BURGLARY IN
A BUILDING OTHER THAN A DWELLING**

Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was 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 based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

Guidelines for inclusion in the revised Magistrates' Court Sentencing Guidelines:

Theft in breach of trust	Theft Act 1968, s. 1
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)

A. IDENTIFY THE APPROPRIATE STARTING POINT

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Theft of less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Theft of £2,000 or more but less than £20,000 OR Theft of less than £2,000 in breach of a high degree of trust	18 weeks custody	High level community order to Crown Court
Theft of £20,000 or more OR Theft of £2,000 or more in breach of a high degree of trust	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)

B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS

(OTHER THAN THOSE WITHIN EXAMPLES ABOVE)

Common aggravating and mitigating factors are identified in Annex B. The following may be particularly relevant:

<u>Factors indicating higher culpability</u> 1. Long course of offending 2. Suspicion deliberately thrown on others	
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FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION

Common factors are identified in Annex B. See also note (e) opposite.

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION

Refer to paragraphs xx for guidance on available ancillary orders

DECIDE SENTENCE

GIVE REASONS

Notes:

(a) In general terms, the seriousness of this form of theft will increase in line with the level of trust breached:

- at the lower end of the scale are thefts by employees who are not in a position of trust over and above that inherent in the employment relationship;
- at the higher end are thefts by employees who have been specifically entrusted with the care of the property or funds stolen, sometimes on behalf of the general public.

The extent to which the nature and degree of trust placed in an offender should be regarded as increasing the seriousness of the offence will depend on a careful assessment of the circumstances of the individual case, not just the occupation of the offender.

(b) Thefts by offenders in whom a high degree of trust has been placed should generally attract higher sentences than thefts of similar amounts by offenders in whom a lower degree of trust has been placed.

(c) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.

(d) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.

(e) The Council has identified the following matters of personal mitigation which may be relevant to this offence:

(i) Offender motivated by desperation or need

The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

(ii) Voluntary return of stolen property

Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

(iii) Excessive responsibility and/or inadequate training

The fact that an offender was given excessive responsibility and/or inadequate training and support may be regarded as personal mitigation.

(iv) Voluntary cessation of offending

The fact that an offender voluntarily ceased offending before being discovered does not reduce the seriousness of the offence. However, if the claim to have stopped offending is genuine, it may constitute personal mitigation, particularly if it is evidence of remorse.²²

(v) Reporting an undiscovered offence

Where an offender brings the offending to the attention of his or her employer or the authorities, this may be treated as personal mitigation.²³

(vi) Impact on sentence of offender's dependency

Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.²⁴

(f) In many cases of theft in breach of trust, termination of an offender's employment will be a natural consequence of committing the offence. Other than in the most exceptional of circumstances, loss of employment and any consequential hardship should not constitute personal mitigation.

(g) Where a court is satisfied that a custodial sentence of less than 12 months is appropriate for an offence of theft in breach of trust, consideration should be given to whether that sentence can be suspended in accordance with the criteria in the Council guideline *New Sentences: Criminal Justice Act 2003*. A suspended sentence may be particularly appropriate where this would allow for reparation to be made either to the victim or to the community at large.

²² Council guideline *Overarching Principles: Seriousness*, para.1.27, published December 2004, www.sentencing-guidelines.gov.uk.

²³ *ibid.*, para. 1.29.

²⁴ See Council guideline *New Sentences: Criminal Justice Act 2003*, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.

Theft from the person

Theft Act 1968, s. 1

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)

A. IDENTIFY THE APPROPRIATE STARTING POINT

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in note (e) opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft from the person not involving vulnerable victim	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim (as defined in note (c) opposite)	18 weeks custody	High level community order to Crown Court
Theft involving the use or threat of force (falling short of robbery) against a vulnerable victim (as defined in note (c) opposite)	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)

B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE)

Common aggravating and mitigating factors are identified in Annex B. The following may be particularly relevant:

Factors indicating greater degree of harm

1. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range]
2. Intimidation or face-to-face confrontation with victim where this raises the offence into a higher sentencing range]
3. High level of inconvenience caused to victim, e.g. replacing house keys, credit cards etc

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION

Common factors are identified in Annex B. See also note (g) opposite.

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION

Refer to paragraphs xx for guidance on available ancillary orders

DECIDE SENTENCE

GIVE REASONS

Notes:

(a) Theft from the person may encompass conduct such as 'pick-pocketing', where the victim is unaware that the property is being stolen, as well as the snatching of handbags, wallets, jewellery and mobile telephones from the victim's possession or from the vicinity of the victim. The offence constitutes an invasion of the victim's privacy and may cause the victim to experience distress, fear and inconvenience either during or after the event. While in some cases the conduct may be similar, **this guideline does not apply where the offender has been convicted of robbery; sentencers should instead refer to the Council guideline on robbery.**

(b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.

(c) For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. Young or elderly persons and tourists may fall into this category. The exploitation of vulnerable victims indicates a high level of culpability and will influence the category of seriousness into which the offence falls.

(d) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.

(e) The guideline is based on the assumption that most thefts from the person do not involve property of high monetary value or of high value to the victim. Where the stolen property is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond the range into which the offence otherwise would fall. For the purposes of this form of theft, 'high monetary value' is defined as more than £2,000.

(f) A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).

(g) The Council has identified the following matters of personal mitigation which may be relevant to this offence:

(i) Offender motivated by desperation or need

The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

(ii) Voluntary return of stolen property

Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

(iii) Impact on sentence of offender's dependency

Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.²⁵

(f) Previous authorities have expressed concern about the prevalence of theft against the person and the associated need for deterrence, particularly in relation to pick-pocketing. The Council guideline *Overarching Principles: Seriousness* signals a need for caution when considering issues of local prevalence. Further, national prevalence should not be used by sentencers to justify including a deterrent element in sentences as this is already taken into account in Council guidelines.

²⁵ See Council guideline *New Sentences: Criminal Justice Act 2003*, published December 2004, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.

Theft in a dwelling	Theft Act 1968, s. 1
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)		
A. IDENTIFY THE APPROPRIATE STARTING POINT		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Where the effect on the victim is particularly severe, the stolen property is of high value (as defined in note (e) opposite), or substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft in a dwelling not involving vulnerable victim	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim (as defined in note (c) opposite)	18 weeks custody	High level community order to Crown Court
Theft from a vulnerable victim (as defined in note (c) opposite) involving intimidation or the use or threat of force (falling short of robbery) or the use of deception	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)	
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE)	
Common aggravating and mitigating factors are identified in Annex B. The following may be particularly relevant:	
<u>Factors indicating greater degree of harm</u> 1. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offence into a higher sentencing range] 2. Use of deception [except where this raises the offence into a higher sentencing range] 3. Intimidation or face-to-face confrontation with victim where this raises the offence into a higher sentencing range] 4. Offender takes steps to prevent the victim from reporting the crime or seeking help	

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in Annex B. See also note (g) opposite.

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION
Refer to paragraphs xx for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Notes:

(a) The category of theft in a dwelling covers the situation where a theft is committed by an offender who is present in a dwelling with the authority of the owner or occupier. Examples include thefts by lodgers or visitors to the victim's residence, such as friends, relatives or salespeople. Such offences involve a violation of the privacy of the victim's home and constitute an abuse of the victim's trust. Where an offender enters a dwelling as a trespasser in order to commit theft, his or her conduct will generally constitute the more serious offence of burglary; **this guideline does not apply where the offender has been convicted of burglary – see page x for guidance.**

(b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.

(c) For the purpose of this guideline, a 'vulnerable victim' is a person targeted by the offender because it is anticipated that he or she is unlikely or unable to resist the theft. Exploitation of vulnerable victims indicates a high level of culpability and will influence the category of seriousness into which the offence falls.

(d) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.

(e) The guideline is based on the assumption that most thefts in a dwelling do not involve property of high monetary value or of high value to the victim. Where the property stolen is of high monetary value or of high value (including sentimental value) to the victim, the appropriate sentence may be beyond than the range into which the offence otherwise would fall. For the purpose of this form of theft, property worth more than £2,000 should generally be regarded as being of 'high monetary value', although this will depend on an assessment of all the circumstances of the particular case.

(f) A sentence beyond the range into which the offence otherwise would fall may also be appropriate where the effect on the victim is particularly severe or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).

(g) The Council has identified the following matters of personal mitigation which may be relevant to this offence:

(i) Offender motivated by desperation or need

The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

(ii) Voluntary return of stolen property

Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

(iii) Impact on sentence of offender's dependency

Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.²⁶

²⁶ See Council guideline *New Sentences: Criminal Justice Act 2003*, published December 2004, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.

Theft from a shop	Theft Act 1968, s.1(1)
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)		
A. IDENTIFY THE APPROPRIATE STARTING POINT		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Little or no planning or sophistication and Goods stolen of low value	Band B fine	Conditional discharge to low level community order
Low level intimidation or threats or Some planning e.g. a session of stealing on the same day or going equipped or Some related damage	Low level community order	Band B fine to medium level community order
Significant intimidation or threats or Use of force resulting in slight injury or Very high level of planning or Significant related damage	6 weeks custody	High level community order to Crown Court
Organised gang/group and Intimidation or the use or threat of force (short of robbery)	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)	
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE)	
Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:	
<u>Factors indicating higher culpability</u> 1. Professional offending 2. Child accompanying offender is involved or aware of theft 3. Offender is subject to a banning order that includes the store targeted <u>Factors indicating greater degree of harm</u> 1. Victim particularly vulnerable (e.g. small independent shop) 2. Offender targeted high value goods	

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in the pullout card. See also note (h) opposite.

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION
Refer to pages xx for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Notes:

(a) The circumstances of this offence can vary significantly. At the least serious end of the scale are thefts involving low value goods, no (or little) planning and no violence or damage; a non-custodial sentence will usually be appropriate for a first time offender. At the higher end of the spectrum are thefts involving organised gangs or groups or the threat or use of force and a custodial starting point will usually be appropriate.

(b) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.

(c) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.

(d) In particular, when assessing the level of harm, the circumstances of the retailer are a proper consideration; a greater level of harm may be caused where the theft is against a small retailer.

(e) Retailers may suffer additional loss as a result of this type of offending such as the cost of preventative security measures, higher insurance premiums and time spent by staff dealing with the prosecution of offenders. However, the seriousness of an individual case must be judged on its own dimension of harm and culpability and the sentence on an individual offender should not be increased to reflect the harm caused to retailers in general by the totality of this type of offending.

(f) In accordance with section 143(2) of the Criminal Justice Act 2003, any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of 'persistent' or 'seriously persistent' offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence.

(g) The list of aggravating and mitigating factors on the pull out card (taken from the Sentencing Guidelines Council guideline *Overarching Principles: Seriousness*) identifies high value as an aggravating factor in property offences. In cases of theft from a shop, theft of high value goods may be associated with other aggravating factors such as the degree of planning, professionalism and/or operating in a group, and care will need to be taken to avoid double counting. Deliberately targeting high value goods will always make an offence more serious.

(h) The Council has identified the following matters of personal mitigation which may be relevant to this offence:

(i) Offender motivated by desperation or need

The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

(ii) Voluntary return of stolen property

Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

(iii) Impact on sentence of offender's dependency

Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.²⁷

²⁷ See Council guideline *New Sentences: Criminal Justice Act 2003*, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.

Burglary in a building other than a dwelling

Theft Act 1968, s. 9

Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)**A. IDENTIFY THE APPROPRIATE STARTING POINT****Starting points based on first time offender pleading not guilty**

Examples of nature of activity	Starting point	Range
Burglary involving goods valued at less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Burglary involving goods valued at £2,000 or more but less than £20,000	18 weeks custody	High level community order to Crown Court
Burglary involving goods valued at £20,000 or more	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)**B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE)**

Common aggravating and mitigating factors are identified in Annex B. The following may be particularly relevant:

Factors indicating higher culpability

1. Targeting premises containing property of high value
2. Targeting vulnerable community premises
3. Targeting premises which have been burgled on prior occasion(s)
4. Possession of a weapon (where this is not charged separately)

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION

Common factors are identified in Annex B. See also note (e) opposite.

CONSIDER A REDUCTION FOR A GUILTY PLEA**CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION**

Refer to paragraphs xx for guidance on available ancillary orders

DECIDE SENTENCE**GIVE REASONS**

Notes:

(a) Section 9 of the Theft Act 1968 provides that the offence of burglary can be committed in a number of ways. This guideline is concerned solely with burglary committed in a building other than a dwelling and is limited to situations in which an offender enters a building as a trespasser with intent to steal or, having entered a building as a trespasser, actually goes on to steal.

(b) The seriousness of individual instances of this offence can vary significantly. At the lower end are cases of opportunistic offending by a single offender where there was no forced entry, no damage caused and nothing stolen. Towards the other end of the spectrum are cases involving significant planning and professionalism, multiple offenders going equipped with implements to facilitate the commission of the offence, targeting of particular premises and the theft of property or cash of a significant value.

(c) The starting points and sentencing ranges in this guideline are based on the assumption that the offender was motivated by greed or a desire to live beyond his or her means. To avoid double counting, such a motivation should not be treated as a factor that increases culpability.

(d) When assessing the harm caused by this offence, the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim, and any harm in the form of public alarm or erosion of public confidence.

(e) The Council has identified the following matters of personal mitigation which may be relevant to this offence:

(i) Offender motivated by desperation or need

The fact that an offence has been committed in desperation or need arising from particular hardship may count as personal mitigation in exceptional circumstances.

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Whether and the degree to which the return of stolen property constitutes a matter of personal mitigation will depend on an assessment of the circumstances and, in particular, the voluntariness and timeliness of the return.

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²⁸ See Council guideline *New Sentences: Criminal Justice Act 2003*, www.sentencing-guidelines.gov.uk. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to imposing a drug rehabilitation requirement, in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982 summarised in the Sentencing Guidelines Council *Guideline Judgments Case Compendium* (section (A) Generic Sentencing Principles) available at: www.sentencing-guidelines.gov.uk.