210.10 *Domestic*

R v Bradley 2014 EWCA Crim 488 D pleaded to arson. She lived alone and was no longer on good terms with her neighbour, K, with whom D had been in a relationship some 8 years previously. There had been a history of disputes about a fence which divided their gardens. The fence belonged to D and she thought it was being damaged by K. D spent part of the day breaking pieces off the damaged fence and burning them in an incinerator. Abuse was exchanged between D and K about the fence. The next day, D continued to burn pieces of the fence in the incinerator. She had hitherto used her hands to break off the wood, but then began to use a lighter to set fire to some material which could be used to loosen a particular piece of fence which had proved obdurate. The piece of fence caught fire and spread from three panels of the fence to a wicker screen which had been erected by M. It damaged his fence, decking and a hot tub, in addition to the guttering and the doors on his house. His windows and brickwork were charred and scorched. The damage was about £12,000. Both D and K called the fire brigade and D attempted to extinguish the fire. When the fire brigade arrived, D was observed to be laughing and referring to K's lack of insurance. She appeared to be in drink. She accepted setting the fire but said the way it spread was an accident. She accepted that she didn't like K and did like burning things. D had three convictions for a public order offence in 2009 and a subsequent offence of excess alcohol and assaulting a constable. A psychiatric report noted a relatively mild history of mental illness. It suggested that alcohol might have played more of a part in the offence than D had admitted. A PSR noted that D said she found the burning 'therapeutic' after becoming stressed at her failure to get her daughter back from the father who had taunted her. Held. The harm was significant and K was uninsured, but it was not at the most serious level where this type of offence is committed. This was not deliberate setting of a fire.[1] The culpability was the reckless setting fire to part of the fence. The recklessness is in what she did when setting the fire. Her reaction afterwards, although to be deplored, did not add significantly to the culpability, and set against [that] was her apparent shock at what had happened as a result of her crime. There was considerable mitigation including the removal of her child and the stress of standing trial arson with intent to endanger life. The correct starting point should have been in the order of 21 months. With credit for the plea, **14 months** not 21.

Note: Although there was some damage to a house, the start of the fire and the major damage was outside the house so the case is not listed as a dwelling fire. Ed.

210.14 *Domestic premises etc. with no occupants*

R v Newman 2014 EWCA Crim 1116 D was convicted of reckless arson. A housing association sent her 27 letters regarding anti-social behaviour, the state of the property and her failure to allow access to the premises. Proceedings to evict her started. About 10 minutes after she took her children to school, a neighbour, N, saw smoke coming from her letter box. D returned to the property with her children. N let them into D's home and D's son opened the back door to let the dog out. D rang the fire brigade who came and extinguished the fire. D's son said D usually left him in bed while she took the other children to school, but on this occasion she woke him up. D had taken her laptop, the only item of any real value in the property, on the school run. The seat of the fire was a chair in the living room and the fire service found the most likely cause was a deliberate ignition of a mixture of paper and textiles with a naked flame. D had no relevant convictions. She suffered from substance abuse and drug dependency. The Judge said the fire was lit out of frustration. He accepted that D was not dangerous or a pyromaniac and

1 Presumably the court meant that the setting of the fire was deliberate, but causing the damage was not deliberate. Ed.

had to an extent turned her life around from someone who took drugs on a daily basis to someone who appreciated that if she continued that way she would lose her children forever. Held. It was a terraced house which was empty at the time. It cost £17,000 to repair. Taking account of the personal mitigation, notably that the property was D's own home, it was borne out of frustration not revenge, that the inevitable custodial sentence would have a serious effect on her children, the delay and that she had 'turned her life around', 4½ years was manifestly excessive. **3½ years** substituted.

210.16 ***Domestic premises with occupants Danger to occupants***

See also: *R v Smith* 2014 EWCA Crim 846 (Plea (full credit) to reckless arson. Mother and defendant argued. Repeatedly clicking a cigarette lighter. Set her curtain on fire to frighten her mother after their argument. Mother and young brother fled the property. Extensive fire and smoke damage. Three previous convictions but none for arson. Emotionally unstable personality disorder. Had engaged with mental health services. Exceptional case. **20 months suspended**, not 20 months.)

210.17 ***Non-domestic premises***

R v Whale 2014 EWCA Crim 789 D pleaded (at the PCMH) to reckless arson. D had a very serious alcohol addiction. At about 2.50am, he set fire to a wooden veranda of a restaurant. The restaurant was closed at the time but was immediately adjacent to a bar and nightclub containing between 100 and 150 people. There was a smoke machine in the club and it was hard to persuade people there was a genuine fire. The fire was spotted by a passing HGV driver who stopped and immediately alerted the manager of the bar. The fire had by then taken hold. D was seen by a taxi driver soon after the fire was set behaving in a strange manner. The taxi driver saw the fire and asked D if he had set it. D replied "I'm English and it is very, very cold." There were a number of compressed gas cylinders nearby which were beginning to activate as the fire heated. The premises needed to be completely rebuilt at an estimated cost of £436,000. CCTV showed that after setting the fire, D remained for some time to see that it was still burning. An hour or so before the fire, D attended a local police station and used a phone to report that he had been assaulted. He requested the help of the police and ambulance service. He suggested he should be put in prison and threatened to blow up the hospital. D was aged 54 and had a long list of previous convictions (anti-social offending of one kind or another), but none as serious as the instant offence. They were mostly for dishonesty and public order offences. There was a psychiatric report which noted that D had been drinking for 30 years, would spend £30 per day on alcohol and £10 per day on heroin or cocaine. The alcohol caused confabulation and problems with his memory. It was not clear whether D had any memory of setting the fire. A doctor considered that unless D addressed his alcoholism, there remained a risk of further arsons and it impossible to say when it would be safe for him to return to the community. Held. D deliberately targeted these premises and must have been aware of the risk to the building next door. Very many lives were endangered and extensive damage was caused. Despite D's troubled mental state…it did not reduce his culpability to any substantial degree, not least because it was his continued and voluntary consumption of alcohol which was causing his problems. There was no suggestion from the reports that D's mental responsibility was impaired by his alcoholism in a way which would justify any significant reduction in the sentence. **7½ years** after trial would have been perfectly justified, albeit at the top of the range. **Extended sentence** of **5 years' custody** with a 5-year extended licence upheld.

221.28 ***Victim over 65 More than one offence***

R v Summerfields 2014 EWCA Crim 1114 D pleaded to dwelling burglary (×2). V, aged 83, lived alone at an isolated address. D and three others, one of whom was D, forced their way into the house and demanded money, jewellery and gold. Three of the men were wearing balaclavas. They took V around the house and she was forced to hand over £80 in cash. Antiques and other items were taken, worth £10,000. All items were subsequently recovered. The police arrived and the men fled. D's DNA was found on a

white glove near the property and cell site data showed he was in the vicinity of the property at the time of the offence. One month later, whilst under police surveillance, D and C were seen travelling in a two-car convoy to an unoccupied house which they entered. The car had false plates. The property was not occupied because the owner was receiving treatment in a hospice. One of the vehicles had been seen in the vicinity of the property on a number of earlier occasions. The vehicles drove away from the address and the police stopped one. D was found in the boot and property stolen during the burglary together with gloves, a hat and trolley jack were also found in the car. The other car was found the next day burnt out. The estimated total value of the burglary was a safe and contents to the value of £150,000 and items valued at £12,000 remained unrecovered. D, aged 58 at appeal, had 34 convictions for 75 offences between 1969 and 2013. Twelve of the 13 burglary convictions were of dwellings. In a 34-year period, D had been sent to prison 18 times. The minimum sentence applied. Held. In relation to the first offence, there were a significant number of aggravating features which taken together would justify a finding that the starting point fell outside the normal sentencing range in the guidelines. However, starting at 12 years was too high. Starting at 9 years was appropriate. With full credit, 6 years not 8. The second burglary clearly also fell into category 1. The starting point should have been 5 years. With full credit, 3½ years. It was not wrong in principle to impose consecutive sentences. For totality, the 3½ years would be reduced to 2½. In total, **8½ years**, not 9½ years.

221.56 *Persistent burglars*

R v Kadiri 2014 EWCA Crim 1106 D pleaded (at the first opportunity) to commercial burglary. D was seen in an office building by a cleaner who became suspicious and called the police. D had left by the time the police arrived. Two iPads and a laptop computer worth £2,500 had been stolen. D was identified by CCTV. D was aged 36 at appeal with a 'truly appalling' record. Since the age of 16, he had been convicted on 54 occasions of 109 offences. Those included drug offences and one rape (7 years, 2003). Non-dwelling burglaries greatly predominated over the previous 20 years. In June 2011 he received 33 months for five non-dwelling burglaries. He was on licence when the instant offence was committed. The Judge considered that the offence was pre-planned. He gave 20% credit as he considered the case overwhelming. Held. The Judge properly remarked that D was a career commercial burglar. The starting point [of just short of 50 months] could not be said to be arguably wrong, but case not overwhelming so with full credit. **2 years 8 months**, not 3 years 3 months.