221.11a *Damage, Burglary with intent to cause*

Theft Act 1968 s 9(1)-(2)

Entering any building as a trespasser with intent to do unlawful damage to the building or anything therein.

R v Shepherd 2014 EWCA Crim 1800 D pleaded (full credit) to burglary with intent to do unlawful damage. D persisted in maintaining contact with V, with whom he had had a relationship. He called V up to 20 times a day and V described D as harassing her. On the day in question, D left V 11 voice messages which were increasingly rude, abusive and irate. Minutes following the final message, D broke into V's house and went through the property and damaged or disturbed all but two rooms. The damage was less than £500 but made V feel physically sick. She became extremely anxious and scared, leaving her unable to return to work but D surrendered himself to police the next day. D was 49 and had over 100 convictions. His last was in 2008, and he had three for burglary (non-dwelling), but he had impressive references. He was remorseful but said he had initially no intention of breaking in, only later becoming angry and doing so. The defence argued there was limited damage as opposed to disruption and disturbance of the items in the property. Held. D's submission is inconsistent with admitting to burglary with intent to cause damage and the Judge was entitled to put the offence within Category 1. Such offences require a significant immediate custodial sentence, however, D's previous convictions are balanced out by his mitigation. We start at 3 years. With plea, **2 years**, not 30 months.

221.15 *Distraction burglaries (entering by a trick and stealing)*

R v King 2014 EWCA Crim 971 D pleaded (25% credit) to burglary. V was aged 88 and lived on her own. She walked with a stick and was reliant on Meals on Wheels. She took a taxi to go and collect her pension which was £600 in cash. She took a taxi home and gave her address to the driver. D and an unidentified accomplice tricked the driver into disclosing the address. The accomplice spoke to another taxi driver in the queue, pretending to be V's granddaughter's boyfriend, and said he wanted to check that V had given the driver the correct address. They obtained V's address and made their way to her home. D knocked on the door and said that he had come to cut her hedges. He then distracted her by engaging her in conversation in the back garden, discussing the supposed hedge trimming. Meanwhile the accomplice sneaked into the house through the open front door. He stole £720 in cash, a cheque book and a pension folder. Once it was clear the burglary was complete, D said he must have confused which house needed gardening work and they left. V discovered she had been burgled and called the police. She was extremely distressed to the extent that she could not bring herself to make a Victim Impact Statement. D was identified by V in an identification procedure. D had a bad record consisting of 29 convictions for 55 offences. There were a large number of dishonesty offences including burglary (1986), deception and handling (1990), theft (1991), burglary and handling (1997), handling (2000), domestic burglary (2005), assault, criminal damage, theft and breach of the peace (2011) and shop theft (2012). Held. This case was certainly serious enough to justify a starting point above 6 years. D had already received a 4-year sentence for a similar offence. This was a particularly well-planned and executed burglary which in reality had not begun in V's home but in the town at the taxi rank. V was targeted. A substantial sum of cash was stolen. The impact of the offence on V was considerable. **5 years** was undoubtedly severe and at the top of the range but it was properly severe and cannot be said to be manifestly excessive.

221.17 *Dwelling, Occupied* *One offence*

R v Kirmse 2014 EWCA Crim 79 D pleaded to burglary and (late) to damaging property. At about 5am, he forced his way into a residential flat above a pub. The 22-year-old householder was disturbed by the noise and awoke. She went to the kitchen and was confronted by D. He was intoxicated. She asked him to leave and he began to do so. The police arrived and arrested him. The Judge held that D was equipped with an implement as a result of the damage caused to the kitchen window. The suggestion was that he picked up an implement nearby. It was said that it was not a Category 1 burglary. Held. It was clear that D used an implement in order to force open the kitchen window. It may well be that he became equipped to carry out the burglary at a very late stage, but equipped he was. There was also the high culpability that followed from the devastating effect on the victim. The case just came within Category 1. Bearing in mind that D equipped himself for the burglary at a late stage, it was not appropriate to move up from the starting point of 3 years. With 10% credit for the late plea, **2 years 8 months** not 3 years.

R v Shaban 2014 EWCA Crim 133 D pleaded to dwelling burglary. The house was occupied with a family of five who were asleep at the time. D gained entry through an insecure patio door. He stole property including a rucksack, wallet and credit cards, as well as keys to the house and vehicles. D was arrested the next day and some of the property was recovered. D was aged 38 at appeal and had 51 convictions for 109 offences. This was not a 'third strike' burglary however. There was a history of failing to comply with community orders and he also fell to be sentenced for a bail offence. Held. There was little mitigation save for the guilty plea. The Judge placed this into Category 2, and was entitled to sentence above that, because of D's record. **Starting at 3 years** would not have been excessive. With full credit, **2 years** not 3 was appropriate. 2 months consecutive for the bail offence was not excessive.

221.18 ***Dwelling, Occupied More than one offence***

R v Capel 2013 EWCA Crim 2805 D pleaded (full credit) to two burglaries. During the early hours D entered a house in which the owners slept. He disturbed their dogs and the occupiers went downstairs to find entry had been gained via an open window. The wife saw D leaving with an expensive laptop. That same morning a nearby property was ransacked, with three laptops, several phones, £50 in cash and an Armani watch taken. D had a quite appalling record, particularly for domestic burglary, and had received custodial sentences. Held. It was not possible to identify a factual element indicating higher culpability. The Judge was entitled to go outside both the starting point and range for a Category 2 burglary so as to give effect to section 111. We start at 5 years not 6, so with plea, **3 years 4 months** not 4½.

R v Parsonage 2014 EWCA Crim 306 D pleaded to burglary (count 1 and 3 early, count 2 late).V1 and his family returned home to find their property had been broken into. A dog flap had been removed in order to gain entry. Property to the value of £4,400 had been stolen, a small amount of which had been recovered. (This was count 3, Category 1.) V1 recalled that some 9 months earlier some items of jewellery had gone missing whilst they had employed D as an 'odd-job' man. Those items were worth £4,500 including items of sentimental value. D had not been permitted to go into the upstairs room where the jewellery was kept. (This was count 2, Category 2.) At the same time, D had been doing work at a property around the corner, owned by V2. The burglary of those victims came to light after D was arrested in respect of V1's property. (This was count 1, Category 2) D was aged 26 when sentenced and had seven convictions for eight offences. A previous PSR (theft of a motor vehicle) did not speak well of him. There was a history of poor compliance with community orders and the commission of offences whilst on bail. Held. This is a man of relatively young years. But it is plainly clear that the Judge was entitled to take the view that the sentences should be and property were consecutive. Although counts 2 and 3 were burglaries of the same victims, D treated them as distinct by originally pleading not guilty to count 2, and they occurred on different occasions, each netting D a substantial haul. The 5 years given by the Judge does not take account of totality. **4 years** was appropriate, so 12 months on count 1, 6 months (not 18) on count 2 and 30 months on count 3, all consecutive.

221.21a ***Museums***

R v Stanton 2013 EWCA Crim 1456, 2014 1 Cr App R (S) 56 (p 351) D and W pleaded to conspiracy to burgle. They visited the Oriental Museum at Durham University and their screwdriver was confiscated. They were seen on CCTV going straight to a display cabinet containing Chinese artefacts valued between £1m and over £2m. Six days later they returned at night in two cars and removed bricks from the wall. They entered the museum and smashed a cabinet. A figurine and jade bowl were removed and hidden on wasteland near the museum. They then left in one of the cars. Two days later, D and two others picked up the other car. The following day, W was seen in the area looking agitated and was unable to locate the pieces. The items were retrieved undamaged several days later. D was aged 33 and had 19 previous court appearances including five non-dwelling burglaries as a juvenile. W had convictions for four non-dwelling burglaries as a juvenile. In 2011 they burgled an amusement arcade and stole £10,500 in cash. They were given suspended sentences which were current when the instant offence was committed. D had recently breached the terms of the suspended sentence (activated in full). The Judge said that he sentenced at the top end of the bracket because of a) the immense consternation of the dedicated museum staff, b) the concerns that benefactors might be worried about donating in the future, c) the planning, d) the tenacious and audacious execution, e) the item's huge cultural importance in China, f) both their previous convictions and g) both were on suspended sentences. He also said the recovery of the items was no thanks to them. Held. The recovery of the stolen property was a relevant factor in reduction of sentence. We start at 8 years not 9, so with 10% plea credit, **7 years** not 8 with W's suspended sentence activated in full, making 9 years.

Note: If you factor in the Judge's reasons and a) the danger of the items being lost or damaged because of the reckless methods used, b) the items were irreplaceable, c) the inevitable danger to the items when the cabinet was smashed and d) the high value of the items, the Judge's approach does not seem open to criticism. Because of the outrage felt when national treasures are threatened and the bond between museums and their staff and the community, museums should perhaps be treated in the Theft Act 1968 s 9(3)(a) and in the guidelines as being in dwelling burglary category rather than the other/non-commercial category. Ed.

221.27 ***Victim over 65 One offence***

R v Fawcett and Another 2014 EWCA Crim 1174 D1 and D2 pleaded to burglary. They had targeted the rural home of a couple in their 70s from which they ran a catering business. The couple were known to D1 as their son had visited him in prison. D1 and D2 entered the property while no one was in. They stole a laptop and a safe containing cash from the Christmas period and other items totalling between £7,000 and £10,000. Some of the items were of sentimental value. D1 aged 32 had a long history of offending, including repeated shoplifting for which he had only recently been released from custody. D2 was aged 35 and had convictions for dishonesty. Held. This was a very mean offence committed at the home of the parents of a man who had only ever been kind to D1. While this was undoubtedly a Category 1 offence, there was insufficient evidence of the offence being professional owing to D1 and D2 leaving by taxi, which was booked in D2's first name and destined for their own address. With full credit, **3 years 4 months** not 4.

221.36 ***Persistent burglar More than one offence***

R v Appiah 2014 EWCA Crim 472 D pleaded to four burglaries. Two were committed on a day in October 2011. Shortly after his release from prison, he smashed his way into two flats within the same building. He made untidy searches and took foreign currency to the value of £200 and a pair of cufflinks worth £100 with sentimental value from one flat. From the other flat he took an engagement ring worth £34,000, other jewellery and a games console together worth about £3,000. The engagement ring was

recovered. D left his fingerprints at the scene. In March 2012, he received 28 days' imprisonment for fraud. In May 2012, he received 51 weeks for going equipped for theft. He was not arrested until March 2013 for those offences and pleaded on the day of trial. On a day in July 2013 with another, he broke into two flats in a building and made untidy searches. D or his accomplice had placed a kitchen knife near the front door. The occupier returned and challenged D and his accomplice. They ran, discarding the stolen property. D pleaded earlier in relation to the 2013 offences. D, aged 37 at appeal, had a bad record for dishonesty offences and dwelling burglary in particular. He had eight burglary/attempted burglary convictions. He committed the offences largely to fund a drug habit. He had spent a considerable proportion of his life in prison. The Judge passed 7 ½ years (so starting at around 9 years). Held. The first two offences (which without reference to D's previous were Category 2 offences) were to be placed into Category 1. The 2013 offences were also to be placed into Category 1 as greater harm (the victim returned to the property) and higher culpability (D and his accomplice formed a group) were present. Individually, a starting point of 3 years with a range of 2 to 6 years was appropriate. The minimum sentence applied to each offence. It was understandable why the Judge felt such a substantial term was needed but even for a repeat offender with as bad a record as D, the sentence was too high. The appropriate starting point for the first two offences was 4 years, and for the second two offences, 4 ½ years. Giving credit of 10% and 25% respectively, the result would be about 7 years. From that, a reduction for totality was appropriate. That reduction could not be substantial and justice would be done by a sentence of 6½ years.

221.44 ***Minimum 3 years' custody*** ***Unjust***

See also: *R v Taylor* 2014 EWCA Crim 1611 (Plea (20% credit) to a third dwelling burglary. D handed himself in. He was 19, had a substantial record including two burglaries (2007, and 2010). Held. Three year minimum was unjust. D was aged 13 when first burglary was committed over six years' ago and received a supervision order. **2 years' detention**, not 876 days.)

221.47 ***Minimum 3 years custody*** ***Plea of guilty***

R v Kemp 2014 EWCA Crim 200 D pleaded to possession with intent to supply class A drugs at his adjourned PCMH. He qualified for a 7-year minimum sentence and the Judge gave him 6 years 3 months which was just over 10% plea credit. Held D had pleaded reasonably early and before the trial date was fixed. Had there been no minimum sentence he would have been entitled to 25%. He was entitled to just under the statutory maximum 20% which makes 5 years 9 months.

221.60 ***Shops etc.***

R v Scott 2013 EWCA Crim 2651 D pleaded to burglary. D and others wearing helmets used a hammer to smash the glass door of a John Lewis store in Oxford Street. They smashed display cases containing high-value watches. Property valued at £78,000 was taken, with damage estimated to be between £8,000 and £10,000. D was aged 29 and had ten convictions for 14 offences, including three for burglary or attempted burglary. A medical report indicated he had moderate learning difficulties and was more suggestible than average. Held. This was a very serious professional burglary justifying a substantial sentence. The Judge was entitled to go above the range suggested in the guidelines due to the aggravating factors. **4½ years** upheld.

R v Grieves and Others 2014 EWCA Crim 540 G, R and F pleaded to burglary (25% credit). At about 12.30am, G and F disabled the alarm and security camera at a bookmakers. The shutters in front of the premises were disabled so that they could not be opened. One and a half hours later, G and F returned to the premises with R. Two of them gained entry by forcing open the rear fire door. R acted as a lookout. They had cutting tools and gloves. They sprayed two bottles of bleach at the windows in an attempt to

conceal scientific evidence. An attempt was made to break into the gaming machines and the safe was pulled from its mounting. The premises were 'wrecked'. The police attended and all three ran from the premises but were arrested. G had five burglary convictions but none since 2002. He suffered from panic attacks and had been looking after three children. F, aged 27 at the time, had two court appearances but nothing of this type. R had a very long record with 49 convictions for 137 offences including numerous convictions for burglary. There were none between 2006 and 2011. Held. This was a highly professional, determined, criminal venture with all the hallmarks of expertise gained from previous ventures. There was a significant degree of planning. The premises were targeted by a gang. There was major disturbance of the property and it was a burglary for high stakes. A starting point of 4 years was correct. Marking the fact that F had never previously been convicted of burglary or been to custody, **2 years** not 3. For R and G, **3 years** was not manifestly excessive.

221.42 ***Minimum 3 years' custody*** ***Judicial guidance***

See also: *R v McKay* 2012 EWCA Crim 1900 (D was convicted of domestic burglary. The minimum sentence applied. It was a Category 1 offence. The Judge thought that he had to add the 3-year minimum to the 3-year starting point in the guidelines, and imposed 6 years. Held. That was wrong in principle. The Judge should not have added them together.)