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Committee	Sentencing Committee
Response to	Burglary Offences Guideline
Issued by	Sentencing Council
Link to consultation	http://sentencingcouncil.judiciary.gov.uk/docs/Burglary_offences_guideline - professional consultation.pdf

Q1 Do you agree that there should be three offence categories?

Yes.

Q2 Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

We agree with the factors and also believe that the impact on victims both in terms of relative financial loss and psychological impact will be high in the case of the elderly, disabled and other vulnerable victims. We are not sure if it will be clear enough to sentencers that “*trauma beyond the normal level*” and “*victim deliberately targeted*” are intended to be factors of higher harm and culpability applicable in the case of vulnerable victims, particularly the elderly.

“*Victim deliberately targeted*” is included as a factor of higher culpability for domestic burglary. For aggravated burglary and non-domestic burglary, the deliberate targeting of a premises is included. For domestic burglary, the factor of higher culpability should be “*victim or property deliberately targeted*” because organized criminal gangs are targeting properties with expensive cars parked in the driveway and burgling those properties just to find the keys to drive the cars away, often stealing cars to order. The value of property stolen from the house is just a bunch of keys. The value of the vehicle can be £30,000 and more.

The prior disabling of a domestic burglar alarm would also be covered by the deliberate targeting of the property, as would other factors such as an isolated rural property where the occupier is going to feel more than usually vulnerable to burglary without being targeted personally.

We understand that “*limited damage or disturbance to property*” is intended to give magistrates more discretion than under the current guidelines to decide which offences are suitable to be sentenced in the magistrates’ courts on the basis of lesser harm.

We would give more weight to the loss of irreplaceable goods of sentimental value even if they were not necessarily of high monetary value.

Q3. Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

It is assumed that the aggravating factor “*steps taken to prevent the victim reporting the incident....*” would include the prior disabling of the burglar alarm if that is not to be a step one factor as suggested above.

Q4. Are there any further ways in which you think victims can and/or should be considered?

It is clear that if sentencers do not consider vulnerable victims at Step One they will wish to do so at Step Two, even if it is not a specific aggravating factor and as the list is not exhaustive they can do this, for example by making vulnerable (usually elderly and living alone) victims of distraction burglaries an aggravating factor.

Has the victim felt it necessary to use Victim Support or medical assistance to help deal with the trauma?

The issue of civil recovery should be taken into account here, as if the victim has commenced civil proceedings to recover losses, then the offender ought not to be doubly punished in the criminal court by restitution, compensation or confiscation orders.

We welcome restitution orders although it is unlikely in practice to be something that is dealt with in a magistrates’ court. What if the goods were of high value and insured – the court might have to make the order in favour of the Insurer who has paid out a claim rather than the individual who has sustained the loss. In particular, we support the proposal that a vehicle used in the commission of the crime should be vulnerable to seizure. There should be a power for the seized vehicle to be sold and the proceeds used to mitigate the loss of either the insurer or the victim.

We believe victim statements should have a high priority and where there is one it should be taken into consideration. It should be the norm, not the exception, that a victim statement is provided for those sentencing. The presence of a victim statement should be referenced in the guideline, reminding magistrates to ask if there is one and using it in their sentencing. Magistrates should determine the appropriate sentence for the offence and then take into consideration the victim impact assessment at the end.

Q5. Do you agree with the proposed approach to previous convictions?

Yes. As the re-offending statistics show, burglary and shoplifting as acquisitive crimes tend to be a lifestyle choice, the object being personal financial gain. The number and frequency of previous relevant recent convictions are very important in determining the level of upward adjustment.

It would be helpful to have a definition of ‘qualifying’ for the term “qualifying third domestic burglary”, as with the MCSGs on page 35 under ‘Allocation’.

When considering previous offences of burglary committed by a young offender, the timescale of the previous offences should be taken into account eg if previous offences were committed within the last 12 months by a defendant aged 17, that would be more aggravating than offences committed at age 13/14 for example.

Q6. What further guidance might be usefully included in relation to the sentencing of dependent offenders?

None is required. If a defendant shows remorse by practical action of restitution, that is a mitigating feature. Similarly, if a defendant shows that they are seriously addressing their dependency and have some evidence to back it up, that is also mitigation and well understood by sentencers. Vague assurances are not accepted. A report from Probation would be required.

Even if a custodial sentence is inevitable, it can be suspended if the court wishes to allow OSAP, ATR or some other programme requirement.

The court needs to know with certainty that a specified requirement, for example alcohol dependency treatment, is actually available in its area – we are aware that in some areas alcohol dependency treatment is not available.

Q7. Are there any equality or diversity matters that the Council should specifically consider (please provide evidence where possible)?

No.

Q8. Do you agree with the proposed offence range, category ranges and starting points for aggravated burglary.

Yes.

Q9. Do you agree with the proposed offence range, category ranges and starting points for domestic burglary?

As domestic burglary is always a serious invasion of privacy and almost like a personal assault, the minimum sentence should be medium level community order as opposed to low level community order, even if there is limited value taken and minimal damage. In category 3, it cannot be conceived where a low level community order would be appropriate.

Magistrates believe that they commit over 90% of domestic burglaries to the Crown Court for trial or sentence. Even if they anticipate that the Crown Court may impose in such a case a community order, this should be imposed by the Crown Court as it can impose higher penalties in the event that the order is breached and magistrates currently have no power to commit to the Crown Court for resentence on breach.

A large minority nevertheless, thought that the proposed ranges and start points were sensible and do not differ in their effect from those in clarification to current guidelines published following R v Saw and Others [2009].

Q10. Do you agree with the proposed offence range, category ranges and starting points for non-domestic burglary?

The majority of members agreed with the proposed ranges and starting points for non-domestic burglary. It is an improvement that the starting points are no longer dependant on a financial loss. We assume that the reduction in the top of the sentencing range of category 3 is because of current sentencing practice.

A large minority felt that as improving public confidence in the justice system is of paramount importance, reducing the guideline ranges could be seen as a retrograde

step. Category 2 would be better with a range - high level community order to two years custody; and Category 3 should remain at Band B fine to 26 weeks custody.

A minority view felt that the range for category 1 should remain as present ie maximum 7 years, not 4 years as proposed. There is a real concern that by reducing the maximum to 4 years, the likely effect will be that the actual sentence imposed will be considerably less.

This minority view felt also that a band B fine would not reflect the seriousness of even a Category 3 offence. This would be £100 for an offender on benefits (£70 if a guilty plea). This level of sentence would damage public confidence in the criminal justice system.

Q11. Are there any further comments you wish to make?

No.