



## Update: New burglary sentencing guidelines issued

### Lachlan Stewart reviews the new sentencing guidelines for domestic, non-domestic and aggravated burglary which came into force on 1<sup>st</sup> July 2022

1. Revised sentencing guidelines for domestic, non-domestic and aggravated burglary offences came into effect on 1<sup>st</sup> July 2022.
2. The revised guidelines follow the stepped format of more recent guidelines issued by the Sentencing Council (e.g. revised guidelines for assault and attempted murder 1<sup>st</sup> July 2021) and created new middle categories for both culpability and harm factors.
3. This article will highlight the key differences between the revised and old guidelines and considers what practical implications they may have.

#### *Domestic burglary*

4. The modification to culpability pursuant to the revised guidelines should ensure sentencing exercises are more tailored to the criminality of the facts of an offence.
5. 'Member of group or gang', which was previously in the factors indicating Higher Culpability, has been relegated to an aggravating factor within the revised guidelines. 'Equipped for burglary', which previously indicated Higher Culpability, now indicates Culpability B. Previously a 'straightforward' and 'basic' burglary would be Culpability if the offender was wearing a balaclava or gloves. Again, many 'basic' burglaries would be Higher Culpability solely on the basis that they were committed by a group. This change puts the focus on what the group actually did.

6. The introduction of a middle category for harm should make a difference to the nuance of the court's sentencing exercise.
7. Harm 1 in the revised guidelines is virtually the same as Greater Harm in the old guidelines. The middle category for Harm 2 is the Harm 1 factors but in moderate doses rather than significant and severe. In doing this the Sentencing Council have addressed a lacuna that existed within the old guidelines. Previously a burglary where there had been moderate value theft and damage to the property did not fit comfortably into the guidelines and should technically have been Greater Harm.
8. Similarly, a threat of violence to a victim, however minor and inchoate, would previously indicate Greater Harm. The revised guidelines now sensibly state that a threat of violence is Harm 2, with actual violence Harm 1. However, this will not result in more lenient sentences for all cases involving threats. If the threat of violence is particularly severe this will still be catered for by the impact on the victim being substantial.
9. One other common-sense alteration is that 'victim in home' has been changed to 'persons'.
10. All three guidelines have been updated to include hostility based on the characteristics or presumed characteristics of the victim as a statutory aggravating factor.
11. Interestingly, the more nuanced approach of the revised guidelines may not actually favour defendants. The starting point for a Harm 2 Culpability B offence is 1.5 years whereas a Category 2 offence on the previous guidelines was 1 year.

#### *Non-domestic burglary*

12. The points made above in respect of harm, equipped for burglary and member of group apply to this guideline.

13. The change in regard to culpability is the removal of 'premises or victim deliberately targeted'. The author would suggest that this is more fair to defendants. Inherent in many non-domestic burglaries is an element of the defendant having chosen a premise because they think there is something in it worth stealing. This often gave scope for judges to brand the burglary targeted despite the actual planning/premeditation of the offence being very 'basic'.
14. In terms of the aggravating factors the Sentencing Council have corrected a previous oddity of the old guidelines. This was that offence 'committed at night, where staff are present' was an aggravating factor, despite 'victim on premises' already being a factor indicating greater harm. This has now been removed along with any aggravating factor referring to the offence being committed at night. This may be because the public interest in preventing offenders entering premises at night is not as strong as preventing the same for peoples' homes.
15. Notably the starting point has also increased for the middle category. A Harm 2 Culpability B offence has a starting point of 6 months whereas a Category 2 offence on the old guidelines had a starting point of 18 weeks.

#### Aggravated burglary

16. Harm, in the same fashion as the other two offences, has become more nuanced.
17. Culpability also looks very different under the revised guideline. Equipped for burglary, weapon present on entry and member of a group or gang have all been removed entirely. Inherent in aggravated burglaries is the presence of weapons which previously would automatically make most offences Higher Culpability. Such a jeopardy is avoided by this revision.
18. However, there is now the following aggravating factor: 'for a s.9(1)(b) burglary offence, a weapon carried when entering the premises'. S.9(1)(b) Theft Act 1968 is the offence of entering as a trespasser and stealing, attempting to steal, inflicting or attempting to inflict grievous bodily harm on any person inside. This will effectively mean that the majority of offences will be aggravated.

19. At this point, it is worth citing the case of *R. v Michael O'Leary (1986) 82 Cr. App. R. 341*. This case, involving an offender arming himself with a kitchen knife in a property, is authority for the proposition that an offender does not have to have the weapon on entry for the offence of aggravated burglary to be made out. It follows that an offender on the *O'Leary* facts, would not be caught by this aggravating factor.
20. It appears inconsistent for 'equipped for burglary' to be removed as a factor indicating Higher Culpability whereas on the burglary and non-domestic burglary guidelines it indicates Culpability B.
21. Interestingly, the middle point on the revised guidelines, Harm 2 Culpability B is 6 years which is the same middle starting point as the old guidelines.



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Law is correct as at 13<sup>th</sup> July 2022

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