



JUDICIARY OF  
ENGLAND AND WALES

# **NATIONAL BENCH CHAIRMEN'S FORUM**

**A Response to the Sentencing Council Burglary  
Offences Guideline Professional Consultation.**

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#### **The National Bench Chairmen's Forum**

The National Bench Chairmen's Forum is made up of an elected representative from each of seven Regional Forums in England and Wales to which all Bench Chairmen have access and where they can discuss issues of mutual concern, share good practice and develop networks. The National Bench Chairmen's Forum provides a framework to support the 239 Chairs of Magistrates Benches in England and Wales and a voice at national level so that their views can be effectively taken into account.

Representatives of the National Bench Chairmen's Forum participate in regular liaison meetings with the Senior Presiding Judge, Chief Executive of HMCS, the Justices Clerks Society and the Magistrates Association, and other key members of the judiciary and administration. The National Bench Chairmen's Forum is consulted by governmental departments and other bodies in respect of issues that affect the business of magistrate's court.

#### **The National Bench Chairmen's Forum Response to the Consultation Paper.**

##### **Introduction**

The National Bench Chairmen's Forum has worked closely with the Sentencing Council to review the proposed burglary offences guidelines. All individual Bench Chairmen have been contacted and encouraged to consult with their colleagues and provide a response on behalf of individual Benches. The National Bench Chairmen's Forum has recommended that those responses should be communicated to the Sentencing Council separately. This process will ensure that the Magistracy is engaged in the consultation exercise and the views of individual magistrates will be communicated to the Sentencing Council.

This response will encompass a consolidation of the responses received by the National Bench Chairmen's Forum from its executive.

##### **Responses to the Consultation Questions.**

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

Yes. The National Bench Chairmen's Forum agrees that there should be three offence categories. It is our opinion that any further extension of the categories would over complicate the guidelines.

**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?**

The National Bench Chairmen's Forum is in general agreement with the harm and culpability factors proposed in step one and welcomes the increased focus on victims within the guidelines.

The following additional suggestions are made. Within the factors indicating greater harm reference should be made to particularly vulnerable victims such as the elderly. If not to be included at step 1 we recommend that it should be included at step 2 as a factor increasing seriousness. Under the draft guidelines we note that there has been no reference made to particularly vulnerable victims save for cases involving domestic violence or where children are present. In our opinion this is a significant omission. Similarly, it is our opinion that the targeting of isolated rural properties should also be included in the guidelines in recognition of the vulnerability of the victims of these offences.

Culpability being lowered by mental disorder or learning disability has some merit. However, it should be shown by specialist written evidence that the accused has such a disability/disorder. We are however concerned about the cost in terms of delay and expense that would be associated with this requirement.

**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.**

The National Bench Chairmen's Forum is in general agreement with the aggravating factors proposed at step two. However, if reference to vulnerable victims such as the elderly or isolated rural properties is not to be included at step one, we recommend that this should be included at step 2. (See response to question 2). It has also been suggested that the use of a mask or disguise should be included as an aggravating feature, particularly if it is being worn with the clear intention to intimidate or alarm occupants.

Concern has been raised in relation to the presence of 'serious medical condition requiring urgent, intensive or long term treatment' as a mitigating factor in the proposed guideline. The fact that an offender has such a medical condition does not justify a less serious assessment of the burglary. We can understand the inclusion of this mitigating factor with reference to the drug offence guidelines, but we fail to recognise the relevance with reference to this offence.

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

The National Bench Chairmen's Forum acknowledges the comment made on page 14 of the consultation document relating to the decision not to include reference to victim impact statements in the guidelines. However, the National Bench Chairmen's Forum has received representations from bench chairmen that reference should be made to victim impact statements within the guidelines in the form of an aide memoire.

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

Yes. The National Bench Chairmen's Forum agrees with the proposed approach to previous convictions.

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

The National Bench Chairmen's Forum is of the opinion that no further guidance is required in relation to the sentencing of dependent offenders. These guidelines relate to burglary and the issue of dependency covers a very wide range of offences.

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

None have been raised.

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

Yes. The National Bench Chairmen's Forum agrees with the proposed offence range, category ranges and starting points for aggravated burglary.

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

In general the National Bench Chairmen's Forum agrees with the proposed offence range, category range and starting points for domestic burglary.

However, the Forum has received concerns from benches in relation to the Category One starting point and range. The offence carries a maximum sentence of 14 years. A starting point of three years for a Category 1 offence is insufficient and the range of 2 – 6 years should be extended to enable greater sentences to be imposed. If a case involved an elderly, single person, at night, subjected to threats, having money and personal sentimental items stolen and the house ransacked by a 'professional' burglar, going equipped, with a string of previous similar offences, perhaps on bail, issuing threats not to report the matter to the police; would a sentence of 6 years, reduced to 4 years with a guilty plea be adequate? It is acknowledged that the sentencer has the power to sentence outside the range. However, we recommend that the top of the range should be extended to accommodate such circumstances. This would be proportionate given the maximum power to sentence for up to 14 years imprisonment.

Representations have also been made by many benches that the starting point for all domestic burglary should be a custodial sentence and should not be lower than a high-level community order in category three. This proposal is necessary to ensure public confidence in sentencing.

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

Yes. The National Bench Chairmen's Forum agrees with the proposed offence range, category ranges and starting points for non-domestic burglary.

In addition a suggestion is made in relation to offences that concern burglary of a shed or garage associated with a domestic residence. If such cases are to remain classified as non- domestic burglaries then the fact that the premises were part of a domestic building should be included in either step one as a factor that indicates greater harm or alternatively, in step two as a factor indicating greater seriousness.

**Q11) Are there any further comments you wish to make?**

No.