

THE MAGISTRATES' ASSOCIATION
SENTENCING POLICY & PRACTICE COMMITTEE
YOUTH COURTS COMMITTEE

RESPONSE

Burglary in a Dwelling

Section One – The Offence

We are concerned to read that 16% of offenders were given a caution (paragraph 22). Given the serious nature of burglary in a dwelling, we do not believe that a caution should be given for this offence. 16 % is very high and the figure for youth offenders of 29% receiving a caution is astounding.

Section Two – Current Sentencing Practice

No Comment

Section Three – Seriousness of the Offence

Q1

Do you agree that, in principle, all those involved in an offence of burglary in a dwelling are of equal culpability or do you consider that there are circumstances in which an offender might be shown to have played a subordinate role? If there are subordinate roles, what impact if any, should they have on sentence?

We agree in principle that all those involved in an offence of burglary in a dwelling are of equal culpability. The only exception would be that given in paragraph 61 where the offender was exploited by others due to their vulnerability.

Some offenders, particularly youths and people with learning difficulties, are especially influenced by peer pressure and are easily led or bullied by others. In such cases, these offenders are likely to be less culpable and their sentence should be reduced in these circumstances. This is covered in paragraph 61. The sentences given should include appropriate programmes to boost self image, confidence etc.

Q2

Do you agree that these are the features most commonly found in relation to burglary in a dwelling and likely to affect the assessment of the seriousness of an offence? Are there any other features that you consider relevant?

On the whole we agree.

With regard to the point raised in paragraph 73, we consider that even if the property taken was of very low monetary or sentimental value, the victim's sense of violation may be no less. This mitigating factor could therefore carry relatively little weight.

Paragraph 63 which gives the base level of harm is confusing. Is the base level ‘minimal loss and minimal or no damage’? Does it include ‘some distress to victims’ as mentioned in the first sentence? The Panel should produce a definitive statement of the base level of harm.

‘Repeat victimisation’ should clearly be a factor in its own right (rather than including it within trauma to the victim beyond the normal level) as it is clear that suffering repeated burglaries will increase the emotional harm done.

We have some difficulty with ‘trauma to the victim beyond the normal level’. It is like the argument around sentencing for careless or dangerous driving: do you sentence based on the carelessness of the driving or the damage/injury that resulted? Similarly is it just to sentence more heavily because someone was traumatised beyond the normal level? All burglars should be aware that the offence will cause a degree of trauma and the base level of harm should include this. We are not sure that trauma beyond this level should be a factor in sentencing.

We agree that ‘financial impact’ should be included alongside ‘high economic value’ as for someone on low income the impact of a relatively low value burglary can be greater than that experienced by a wealthier person who has been the victim of a much higher value burglary. ‘Financial impact’ should also, therefore, be included in the factor indicating a lesser degree of harm eg ‘if nothing, or only property of very low economic or sentimental value or of low financial impact, is taken, that obviously reduces the gravity of the offence’.

Q3

Do you agree that the Panel should give guidance in relation to sentencing an offender convicted of a second offence of burglary in a dwelling? If so, what increase in sentence do you consider to be appropriate?

We think it would be helpful for the Panel to give guidance in relation to sentencing an offender convicted of a second offence of burglary and we think that, in principle, the starting points given in paragraph 74 sound sensible. However given that the data suggests that less than half of third-time burglars receive the minimum three year sentence (see paragraph 37), we believe there will be a danger of sentences for second offences not being proportionate to third time offences. More research needs to be done into why more than half of sentences for third time offences are below the minimum sentence before suggesting guidelines for second time offences.

Q4

Do you agree with the circumstances in which the Court suggested it might be unjust to impose the presumptive minimum sentence? Are there any other situations in which it might be unjust to impose the minimum sentence?

Yes. If one or more of the offences were clearly opportunistic.

Q5

Do you agree that the factors identified above constitute offender mitigation? Are there any other factors relating to the offender that you consider particularly relevant to this offence?

We agree with the factors identified although we only agree with paragraph 83 (that an offenders dependency may influence the type of sentence given) subject to the proviso given that these sentences should be made in the Crown Court so that breaches can be dealt with there. Our guidelines would have to be very clear on this matter. Even then there may be public complaint that drug addicts get a lighter sentence than non addicts convicted of the same crime.

Previous good character (paragraph 78) is no longer amongst the list of general mitigating factors contained within the Magistrates Courts' Sentencing Guidelines. A person of previous good character may possibly succumb to sudden temptation and commit an offence of shoplifting; this cannot be so in a case of burglary, where a dishonest intent and some sort of planning must have taken place.

The age of the offender is a relevant factor.

Q6

Do you agree with the Panel's proposed starting points and ranges for a first-time adult offender? If not, why not?

Our concern is that the proposals appear to reduce the starting points and sentencing ranges for some cases dealt with at a summary level. Current MCSG guidelines give a starting point of Community Order (medium) with a range of Community Order (low) to 12 weeks custody for 'unforced entry and low value theft with no aggravating features'. However our current guidelines give a starting point of 12 weeks custody with a range of High Level Community order to Crown Court for 'forced entry, goods stolen not high value. No aggravating features'. Both these cases would constitute a level 3 in the new guideline (assuming that a forced entry would in most cases be classed as minimal loss or damage) which would mean the maximum penalty for a forced entry burglary with no aggravating features would fall from Crown Court sentencing to 12 weeks custody. If a bench wanted to impose more than 12 weeks custody one of the 'factors indicating raised culpability' ought to be present. As far as we can see there is no justification for this change in the document.

Q7

Do you agree with the Panel's approach to the sentencing of youths convicted of burglary in a dwelling?

Yes.

Question 8

Is there any reason to believe that the Panel's proposals will impact disproportionately on some offenders by reason of their gender, age, disability, race or ethnic background?

We are not aware of any reasons.

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[See consultation](#)