



## **Prison Reform Trust response to Sentencing Council Burglary Offences Guideline Professional Consultation**

July 2011

*The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.*

### **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.**

Yes. The Prison Reform Trust welcomes as factors indicating lower culpability: "Offender exploited by others"; and "Mental disorder or learning disability, where linked to the commission of the offence". Our reports *Too Little Too Late*<sup>1</sup> and *Prisoners' Voices*<sup>2</sup> provide detailed evidence of the prevalence and nature of mental health problems, learning disabilities and learning difficulties in the criminal justice system. We also agree with the inclusion of "Offence committed on impulse with limited intrusion into property" as a lower culpability factor in relation to both domestic and non-domestic burglary.

The Prison Reform Trust strongly supports the Transition to Adulthood alliance's proposal that "Age/lack of maturity where linked to the commission of the offence" should be included as a factor indicating lower culpability, taken into account at Step 1 of the guideline. As we explained in our response to the recent consultation on the draft drug offences guidelines, we believe there is now a growing body of evidence revealing the impact of maturity on offending behaviour. While the Sentencing Council's decision to introduce maturity as a mitigating factor at Step 2 is very welcome, we hope it will be persuaded to go further in recognising the potential impact of maturity on the culpability

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<sup>1</sup> Edgar, K., and Rickford, D. (2009) *Too Little Too Late: An Independent Review of Unmet Mental Health Need in Prison*, London: Prison Reform Trust

<sup>2</sup> Talbot, J. (2008) *Prisoners' Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties*, London: Prison Reform Trust

of the offender. We appreciate that the Sentencing Council will want to avoid double counting, but believe that “age/lack of maturity where not linked to the commission of the offence” should be included as a factor reflecting personal mitigation, taken into account at Step2 of the guideline.

**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 Prison Reform Trust is concerned at the inclusion of “Established evidence of community impact” as an aggravating factor. We consider that this is likely to lead to sentences being increased for reasons of mere prevalence. This would represent a significant change from the current SGC guideline “Overarching Principles: Seriousness”<sup>3</sup> which states that sentences should not be increased because of prevalence unless there are “exceptional local circumstances”. We are particularly concerned that there is no such qualification or reference to the need for exceptional circumstances in the draft guideline. This could increase the severity of sentences in areas where there are a considerable number of burglary offences, contrary to the Sentencing Council’s stated intention of maintaining the level of sentencing at broadly its current level.

As outlined above and in our responses to the draft guidelines on assault and drug offences, the Prison Reform Trust welcomes the introduction of maturity as a mitigating factor at Step 2. We hope the final version of these guidelines will provide additional clarity on the practical assessment of maturity to ensure young adult offenders receive sentences that will be most effective in reducing the likelihood of their reoffending.

The Prison Reform Trust recommends inclusion of “Extreme financial pressure” as an additional mitigating factor. As our report *Time is Money*<sup>4</sup> makes clear, the financial pressures facing former offenders can be considerable, often through no fault of their own. Until, and unless, the bureaucratic nonsense of people leaving prison with a £47 discharge grant and a two week wait for any benefits payment is addressed then, regrettably, for some ex-prisoners acquisitive crime is seen as a matter of survival.

The Prison Reform Trust would also welcome consideration of “A traumatic or severely damaging previous prison experience” as an additional mitigating factor. This would be limited to cases where there is clear and substantiated evidence of such trauma or damage due to, for example, prolonged periods of segregation or intimidation or serious assault by other prisoners. In such cases, further imprisonment or a prolonged period in custody could constitute an intolerable form of ‘double punishment’.

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

The guideline should make reference to the availability of opportunities for victim - offender mediation. This would be a matter for the victim and offender to consider independently and entirely voluntarily. In many cases it has been shown to improve

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<sup>3</sup> Sentencing Guidelines Council (2004) Overarching Principles: Seriousness, London: Sentencing Guidelines Secretariat

<sup>4</sup> Edgar, K., and Bath, C. (2010) *Time is Money: Financial Responsibility after Prison*, London: Prison Reform Trust

victim satisfaction with the criminal justice process, quite apart from any potential impact it might have on re-offending.

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

The examples provided by the SAP of situations where a court might not impose the minimum sentence are helpful in providing clarity and thereby in maintaining public confidence, regardless of the fact that they are well understood by sentencers. They could be included with a statement that they are not prescriptive, but merely serve as examples of the type of situation where the court might exercise discretion.

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

The Prison Reform Trust supports the SAP recommendation that the domestic burglary guideline should set out guidance dealing with dependent offenders. It should explicitly state that even if an immediate custodial sentence would otherwise be warranted, in an attempt to break the cycle of addiction it may sometimes be appropriate to impose a community order with specific requirements. Again this would enhance public understanding and confidence.

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

Relating back to question 3, the Prison Reform Trust suggested an additional mitigating factor of “Extreme financial pressure”. Specific groups that experience financial hardship are asylum seekers who have no access to state benefits and, as already stated, former prisoners. Evidence of the particular difficulties faced by the latter group is contained in *Time is Money*.<sup>5</sup>

**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?**

Yes. The Prison Reform Trust agrees that community orders can be appropriate for certain category 2 offences and is appropriate in relation to many category 3 offences. This reinforces current sentencing practice and takes account of those cases characterised by lesser harm and / or lower culpability. For many offenders a community order can be both more demanding and more effective in dealing with factors relating to criminal behaviour, than a custodial sentence. The recent Ministry of Justice research comparing re-offending rates for matched offenders commencing court orders under probation supervision or discharged from short custodial sentences (under 12 months) supports this argument.<sup>6</sup>

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<sup>5</sup> Edgar, K., and Bath, C. (2010) *Time is Money*

<sup>6</sup> Table 1, Ministry of Justice (2011) 2011 Compendium of re-offending statistics and analysis, London: Ministry of Justice

When the Prison Reform Trust has discussed the category ranges for domestic burglary on various radio programmes, there has been general acceptance in relation to illustrative cases that this approach is sensible and in the public interest.

In particular, we welcome the starting point of a high level community order for offences in Category 3. The definitions of low harm and low culpability are descriptions of fairly low level offending, the seriousness of which does not require custodial sentences. If the guideline were to specify a custodial starting point for Category 3 offences, this could significantly increase the number of unproductive short custodial sentences in place of high level community orders which can manage and restrict the offender's risk of reoffending more effectively over significantly longer periods.

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

Yes. The changes reflect current sentencing practice.

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

Prison is an expensive, blunt instrument in reducing reoffending. It has a poor record for reducing reoffending – 49% of adults are reconvicted within one year of being released – for those serving sentences of less than 12 months this increases to 59%.<sup>7</sup> It is also worth noting that 58% of young people (18-20 year olds) released from custody in the first quarter of 2008 reoffended within a year.<sup>8</sup>

Finally, we understand that these guidelines are for adults and young adults and should not be used as a template for sentencing children since the legislative framework, needs and considerations when sentencing children are discrete and different.

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<sup>7</sup> Table A5, Ministry of Justice (2011) Adult re-convictions: results from the 2009 cohort, London: Ministry of Justice

<sup>8</sup> Hansard HC, 17 January 2011, c653W