

ADVICE TO THE SENTENCING GUIDELINES COUNCIL

Sentencing for Offences of Theft and Dishonesty



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FOREWORD BY THE CHAIRMAN

This advice from the Sentencing Advisory Panel to the Sentencing Guidelines Council proposes guidelines on sentencing adult offenders for offences of theft and dishonesty: theft in breach of trust, theft from the person, theft in a dwelling, burglary in a building other than a dwelling, making off without payment and abstracting electricity.

This is the second advice to the Sentencing Guidelines Council on sentencing for offences of theft and dishonesty; the first covered theft from a shop. In addition, the Panel previously submitted advice to the Court of Appeal on domestic burglary and handling stolen goods.

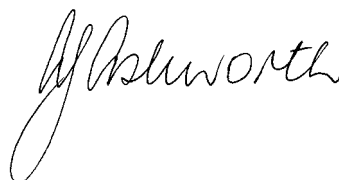
The first part of this advice discusses issues of general application to all of the offences covered, including the assessment of offence seriousness, common aggravating and mitigating factors and the availability of ancillary orders. In relation to ancillary orders, the Panel has made provisional recommendations on the extent to which an ancillary order should be taken into account when assessing whether the overall sentence is commensurate with the seriousness of the offence in the context of theft and dishonesty offences.

The Panel has consulted on principles of general application to ancillary orders in its consultation paper on sentencing for fraud offences; it is intended that further recommendations will be made when the Panel submits its advice on such offences. However, two recommendations are made which propose changes in the current approach to the use of compensation orders (see paragraph 24) and disqualification from driving (see paragraph 33).

In relation to compensation orders, courts are often faced with situations where it is not possible to be precise about the cost of damage to property or for the parties to reach agreement. The current law suggests that the approach should be for the court to award an amount that is the *minimum* loss sustained but the Panel considers that it is reasonable for the court to be able to make an award based on the *likely* loss; this is not dissimilar to the approach in relation to compensation for personal injury, where it is rarely possible to be precise about the cost arising from the injury.

In relation to the general power to disqualify an offender from driving, case law requires there to be a link between the offence and the driving of a motor vehicle. This is not something that is required by statute and, in the light of responses received to its consultation and the experience of sentencers, the Panel considers that this is a useful sanction in a wider range of circumstances.

The second part of the advice addresses each offence in turn, identifying pertinent aggravating and mitigating factors, and sets out the Panel's proposals for sentencing guidelines.



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Chairman of the Sentencing Advisory Panel

SENTENCING FOR OFFENCES OF THEFT AND DISHONESTY

THE PANEL'S ADVICE TO THE SENTENCING GUIDELINES COUNCIL

INTRODUCTION

1. Following a request from the Sentencing Guidelines Council, the Sentencing Advisory Panel has produced advice on sentencing for offences of theft and dishonesty. This is the second advice on sentencing for such offences; the first covered sentencing for theft from a shop.
2. The forms of theft and dishonesty covered by this advice are:
 - a) theft in breach of trust;
 - b) theft from the person;
 - c) theft in a dwelling;
 - d) burglary in a building other than a dwelling;
 - e) making off without payment; and
 - f) abstracting electricity.
3. The statutory definitions of these offences and their maximum penalties are set out in Annex A. Theft in breach of trust, theft from the person and theft in a dwelling are all prosecuted as the offence of theft and are subject to the same maximum penalty. In practice, however, these forms of the offence raise distinct issues at sentencing and the Panel, therefore, has produced separate proposals for each offence.
4. The Panel is grateful to the 21 organisations and individuals who responded to its consultation paper; details of those who responded are appended at Annex F. The Panel has given careful consideration to all the views expressed.
5. Part 1 of this advice discusses the seriousness of theft and dishonesty offences, identifies pertinent aggravating and mitigating factors and discusses relevant ancillary orders. Part 2 addresses the specific forms of theft and dishonesty listed in paragraph 2 above and sets out the Panel's sentencing proposals.
6. As the legislative provisions relating to the sentencing of young offenders are very different from those for adult offenders, with a different range of sentencing options for young offenders and a greater emphasis on rehabilitation, the Panel decided to consult separately at a later date on general principles relating to the sentencing of youths. Therefore, this advice is restricted to the sentencing of adult offenders.

PART 1 – SENTENCING FRAMEWORK

7. The first consideration in sentencing is the seriousness of the offence. When assessing offence seriousness, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.¹

Culpability

8. The Council guideline *Overarching Principles: Seriousness* identifies four levels of culpability for sentencing purposes: intending to cause harm, being reckless as to whether harm is caused, having knowledge of the risks of harm and negligence.² The guideline makes no specific reference to dishonesty, which is an essential element of the offences discussed in this advice. Dishonesty involves a disregard for the rights of the owner of the property. Proving that an offender acted dishonestly demonstrates not only that the conduct was wrong in accordance with society's standards, but also that the offender understood the wrongfulness of the conduct.³ It is a further feature of the offences considered in this advice that the offender acted intentionally.⁴
9. In most offences of theft and dishonesty, the requirement for dishonesty and intention will place the offender within the highest level of culpability. Even so, the Council guideline states that the precise level of culpability will vary according to factors such as the offender's motivation, whether the offence

was planned or spontaneous and whether the offender was in a position of trust.⁵

10. The motivations of those who commit offences of theft and dishonesty vary significantly. Some may be motivated by greed or a desire to live beyond their means. Others may be motivated by financial pressure. In its consultation paper, the Panel asked whether being motivated by greed or a desire to live beyond his or her means increases an offender's culpability. We agree with those respondents who expressed the view that, as most offenders who commit theft and dishonesty offences are motivated either by greed or by a desire to live beyond their means, the Panel's proposals should assume such a motivation and should not treat it as a factor that increases culpability.
11. The Panel takes the view that, of itself, financial pressure is a factor which neither increases nor diminishes an offender's culpability; however, where financial pressure on the offender is exceptional and not of his or her own making, this may be treated as personal mitigation.

Recommendation 1

Financial pressure should be treated as personal mitigation only where it is both exceptional and not of the offender's own making.

Harm

12. When assessing the harm caused by theft and dishonesty offences, the Panel considers that

¹ Criminal Justice Act 2003, s. 143(1)

² Published 16 December 2004, www.sentencing-guidelines.gov.uk

³ *Ghosh* [1982] QB 1053

⁴ Intention is a legal requirement of each of the offences discussed in this advice, with the exception of abstracting electricity. By its nature, however, this offence usually will be committed intentionally.

⁵ Council guideline *Overarching Principles: Seriousness*, supra n. , para. 1.17

the starting point should be the loss suffered by the victim. In general, the greater the loss, the more serious the offence. However, the monetary value of the loss may not reflect the full extent of the harm caused by the offence. The court should also take into account the impact of the offence on the victim, any harm to persons other than the direct victim and any harm in the form of public alarm or erosion of public confidence.

13. In some theft and dishonesty cases, the harm that results from an offence may be greater than the harm intended by the offender. In others, the offender may have intended more harm than actually results. In these situations, harm should be judged in light of the offender's culpability.⁶

Aggravating factors

14. The Council guideline *Overarching Principles: Seriousness* identifies a number of factors that might increase the seriousness of an offence because they indicate a higher level of culpability or a greater than usual degree of harm to the victim.⁷ The complete list is set out in Annex B. The Panel considers that the following factors, drawn from the list, are particularly likely to be relevant to the offences discussed in this advice.

Factors indicating higher culpability

- a) Planning of an offence;
- b) Offenders operating in groups or gangs; and
- c) Deliberate targeting of vulnerable victims.

Factors indicating a more than usually serious degree of harm

- a) Victim is particularly vulnerable;
- b) High level of gain from the offence; and
- c) High value (including sentimental value) of property to the victim or substantial consequential loss.

Mitigating factors

15. The Council guideline *Overarching Principles: Seriousness* sets out four factors which indicate that an offender's culpability is unusually low or that the harm caused by an offence is less than usually serious.⁸ These are set out in Annex B. The Panel has not identified any additional mitigating factors pertinent to these offences.

Return of stolen property

16. In some cases, stolen property is recovered when the offender is apprehended, particularly if this is at the scene of the crime or shortly afterwards. It may then be possible to return the property to the victim. The offender has no control over the recovery of the property in such cases so can take no credit for its return. The Panel, therefore, suggests that, whilst the level of harm may be reduced in these circumstances, this factor should neither influence the assessment of offence seriousness nor provide personal mitigation.
17. In other cases, an offender may return stolen property *voluntarily*. A pragmatic reason for giving credit for voluntary restitution is that it may create an incentive for offenders to

⁶ *ibid*, para. 1.7

⁷ *ibid*, paras 1.22 and 1.23

⁸ *ibid*, paras 1.25

return property; this is particularly important as it may be difficult for a victim to recover his or her losses in any other way.⁹ The Panel considers that the point made in the Council guideline on robbery is applicable to cases of theft and dishonesty: 'The point at which the property is returned will be important and, in general, the earlier the property is returned the greater the degree of mitigation the offender should receive.'¹⁰ The Panel considers that voluntary restitution of stolen property should be treated as personal mitigation.

18. However, in some circumstances, an offender will make efforts to return the property but be prevented (temporarily or permanently) from doing so only by circumstances beyond his or her control. In these circumstances, the Panel believes that the degree of personal mitigation for making voluntary restitution should depend on the point in time at which the offender makes efforts to return the property and the amount of effort made.

Recommendation 2

The voluntary return of property, or voluntary attempts to return property, should constitute personal mitigation. The degree of personal mitigation should depend on the point in time at which the offender makes efforts, and the amount of effort made, to return the property.

⁹ This is because the scope of restitution orders under the Powers of Criminal Courts (Sentencing) Act 2000 is tightly circumscribed and the courts traditionally have been reluctant to impose compensation orders in conjunction with custodial sentences.

¹⁰ Council guideline *Robbery*, published 25 July 2006, www.sentencing-guidelines.gov.uk

Impact on sentence of offender's dependency

19. It is recognised widely that many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, alcohol or gambling.¹¹ Consistent with Court of Appeal authority,¹² the Panel is of the view that this does not mitigate the seriousness of the offence. However, an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose a drug rehabilitation requirement or an alcohol treatment requirement as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending, even if an immediate custodial sentence would otherwise be warranted.¹³

Restitution orders

20. Restitution orders are governed by section 148 of the Powers of Criminal Courts (Sentencing) Act 2000. Under that section, the court may order that stolen goods be restored to the victim or that a sum not exceeding the value of the goods be paid to the victim from money taken out of the offender's possession at the time of apprehension. Further, on the application of the victim, the court may order that other goods representing the proceeds of

¹¹ See, for example, *Kelly* [2003] 1 Cr App R (S) 89

¹² See, for example, *Lawrence* (1988) 10 Cr App R (S) 463

¹³ Guidance on community orders and suspended sentences, and the circumstances in which one should be preferred over the other, is provided in the Council guideline *New Sentences: Criminal Justice Act 2003*, published 16 December 2004, www.sentencing-guidelines.gov.uk, in particular paras. 2.2.10 to 2.2.14. The Court of Appeal gave guidance on the approach to making drug treatment and testing orders, which also applies to the making of a drug rehabilitation requirement in *Attorney General's Reference No. 64 of 2003 (Boujettif and Harrison)* [2004] 2 Cr App R (S) 22 and *Woods and Collins* [2005] Crim LR 982.

disposal or realisation of the stolen goods be transferred to the victim. The reach of section 148 is clearly limited: in cases where the stolen property cannot be traced or the offender is not in possession of sufficient money at the time of apprehension, restitution orders will not be available and compensation orders should be considered instead.

21. Consistent with the approach to return of stolen property (paragraphs 16 to 18 above), the Panel believes that a restitution order normally should not impact on an offender's sentence as the offender has no control over the making of the order.

Recommendation 3

A restitution order should not influence the choice of sentence.

Compensation orders

22. Under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000, the court may order an offender to pay compensation in any case where an offence has resulted in personal injury, loss or damage. When determining whether to make such an order and in what amount, the court must have regard to the offender's means (to the extent that these are known).¹⁴ The court is required to explain its reasons if it decides against making a compensation order.¹⁵
23. Data provided by the Home Office shows that, in 2005, compensation was ordered in approximately 29% of cases involving adult offenders convicted of the forms of theft and dishonesty considered in this advice. Respondents unanimously agreed with the

Panel's proposition that courts should be encouraged to impose compensation orders in as many cases of theft and dishonesty as possible, particularly in the light of the increased emphasis on reparation as a purpose of sentencing and the provision that a compensation order can be imposed as a sentence in its own right.¹⁶ In cases where the full extent of the victim's loss is difficult to ascertain, the Court of Appeal has held that:

"... where a court is of the opinion that a complete reconciliation as between the parties would present a complex and difficult task but that the calculation of the minimum loss arising is a comparatively simple task, and that it would be in the interests of justice to make a compensation order in a sum representing the minimum loss arising, it should make such an order rather than decline on grounds of complexity."¹⁷

24. The Panel agrees, but takes the view that this principle should be extended: *in such cases the court should make a compensation order in a sum representing the agreed loss or, where the prosecution and defence cannot agree, the likely (as opposed to minimum) loss. If there is insufficient information before the court for the likely loss to be determined, an adjournment should be granted for evidence to be obtained.*

Recommendation 4

Compensation should be ordered wherever possible. Courts should not refuse to award compensation simply because the full extent of the victim's loss is difficult to ascertain; in such cases, consideration should be given to making a compensation order for an amount representing the agreed or likely loss.

¹⁴ Powers of Criminal Courts (Sentencing) Act 2000, s. 130(11)

¹⁵ *ibid*, s. 130(3)

¹⁶ Criminal Justice Act 2003, s. 142(1)(e) and Powers of Criminal Courts (Sentencing) Act 2000, s. 130

¹⁷ *James* [2003] 2 Cr App R (S) 97

25. Consistent with the approach to return of stolen property (paragraphs 16 to 18 above), the Panel believes that a compensation order normally should not impact on an offender's sentence as the offender has no control over the making of the order. However, in cases where the court considers that it is appropriate to impose both a fine¹⁸ and a compensation order, and the offender has insufficient means to pay both, priority must be given to the compensation order.¹⁹ Further, where the offender has acted to free assets in order to be able to pay compensation, this is akin to making voluntary restitution and may be regarded as personal mitigation.

Recommendation 5

A compensation order should not influence the choice of sentence. However, where the offender has acted to free assets in order to be able to pay compensation, this may be regarded as personal mitigation.

Confiscation orders

26. Where there is evidence in a case before the Crown Court that the offender has benefited financially from his or her offending, the court must, in accordance with the Proceeds of Crime Act 2002, consider whether to make a confiscation order. A magistrates' court may commit the offender to the Crown Court for sentence with a view to such an order being made. The Secretary of State may permit magistrates' courts to make orders

confiscating amounts up to £10,000,²⁰ but has not exercised this power.

27. If the court makes a confiscation order for a theft or dishonesty offence, it must take account of the order before it imposes:
- a) a fine;
 - b) an order that requires the defendant to make a payment, unless that payment is under a compensation order; or
 - c) a deprivation order.²¹
28. Except as provided in paragraph 27 above, the court must not take account of the confiscation order in deciding the appropriate sentence.²²
29. Where a court makes both a compensation order and a confiscation order, compensation takes priority; if the court believes that the offender does not have sufficient assets to satisfy both orders, it must direct that the compensation is paid from the confiscated assets.²³

Deprivation orders

30. Under section 143 of the Powers of Criminal Courts (Sentencing) Act 2000, both magistrates' courts and the Crown Court have the power to deprive an offender of property used or intended to be used to commit or facilitate the commission of an offence.²⁴ Where property has been seized under a deprivation order, it may be sold to finance

¹⁸ The court must also impose a surcharge of £15 when sentencing an offender in any case in which a fine is imposed. Where there is insufficient means, compensation will take priority over the surcharge but the surcharge will take priority over a fine.

¹⁹ Powers of Criminal Courts (Sentencing) Act 2000, s. 130(12)

²⁰ Serious Organised Crime and Police Act 2005, s. 97

²¹ Proceeds of Crime Act 2002, s. 13(2) and (3)

²² *ibid*, s. 13(4)

²³ *ibid*, s. 13(5) and (6)

²⁴ The property need not belong to the offender; it must be in his or her possession or under his or her control.

compensation for the victim.²⁵ In cases where the property seized has an 'innocent use' as well as being used to commit or facilitate the commission of an offence, the Court of Appeal has established that a deprivation order must be taken into account when considering whether the overall penalty is commensurate with the seriousness of the offence.²⁶ However, where the property can be used only for the purpose of crime, the Panel considers that a deprivation order should not be taken into account when determining the appropriate sentence.

Recommendation 6

Normally, a deprivation order should be taken into account when considering whether the overall penalty is commensurate with the seriousness of the offence. However, an order depriving an offender of property which can be used only for the purpose of crime should have no impact on sentence.

Disqualification from driving

31. Courts also have powers to disqualify an offender from holding or obtaining a driving licence under sections 146 and 147 of the Powers of Criminal Courts (Sentencing) Act 2000. Section 147 is the latest statutory provision governing the long-standing power, available only in the Crown Court, to disqualify an offender from driving in a case where a motor vehicle has been used for the purpose of committing or facilitating the commission of an offence. Disqualification from driving may be ordered for such period as the court thinks fit, regardless of whether it was the offender or another person who drove the vehicle.²⁷

32. Section 146 is an additional power to disqualify an offender from driving. Under this general power, the Crown Court and magistrates' courts may disqualify an offender from driving, on conviction for any offence, for such period as the court thinks fit. Read literally, the exercise of the power does not require any connection between the offence and use of a vehicle. However, in *Cliff*,²⁸ the Court of Appeal held that the general power cannot be used arbitrarily; there must be sufficient reason for the disqualification. The Court did not elaborate on what might constitute 'sufficient reason', although it concluded that disqualification from driving was appropriate in that case because the offender had admitted that, prior to the incident of affray (for which he was convicted), he had driven his car whilst affected by alcohol or drugs.

33. The Panel takes the view that, where an offender has a driving licence and access to a vehicle, disqualification from driving can be a particularly effective punishment, whether imposed in conjunction with a fine or community order or as a stand-alone penalty, especially for offences commonly sentenced in a magistrates' court. The Panel considers that there does not need to be any link between the facts of the offence and the offender's driving behaviour.

Recommendation 7

When sentencing for theft and dishonesty offences, a court may consider imposing an order disqualifying an offender from driving under section 146 of the Powers of Criminal Courts (Sentencing) Act 2000, either on its own or alongside other

²⁵Powers of Criminal Courts (Sentencing) Act 2000, s. 145

²⁶*Buddo* (1982) 4 Cr App R(S) 268, *Joyce and others* (1989) 11 Cr App R (S) 253, *Priestley* [1996] 2 Cr App R (S) 144

²⁷*Skitt* [2005] 2 Cr App R (S) 122

²⁸[2005] 2 Cr App R (S) 22

penalties, even though there is no link between the offence and the offender's driving behaviour.

34. Respondents unanimously agreed with the Panel's proposal that an order disqualifying an offender from driving under either of these provisions constitutes an additional form of punishment (rather than being primarily for road safety reasons as it is following conviction for a motoring offence) and therefore should be taken into account when assessing whether the overall penalty is commensurate with the seriousness of the offence.

Recommendation 8

An order under section 146 or 147 of the Powers of Criminal Courts (Sentencing) Act 2000 should be taken into account when assessing whether the overall penalty is commensurate with the seriousness of the offence.

PART 2 – OFFENCES

Theft

35. Section 1(1) of the Theft Act 1968 provides that a person is guilty of theft if he or she 'dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it'. For the purposes of sentencing, the offence of theft can be divided into four main categories of conduct:

- a) theft in breach of trust – for example, theft by an employee from an employer or theft by a provider of services, for example a solicitor, banker or accountant, from clients' funds;
- b) theft from the person – this category covers thefts involving close physical proximity of the offender to the victim;

- c) theft in a dwelling – this category covers theft by an offender who, with lawful authority, is in a dwelling; and
- d) theft from a shop – commonly known as 'shoplifting'. This form of theft has been addressed in a separate advice to the Sentencing Guidelines Council.

Theft in breach of trust

36. The current guideline judgment for theft in breach of trust is *Clark*,²⁹ which updated the guidance issued in *Barrick*.³⁰ In those cases, the Court of Appeal indicated that a term of immediate imprisonment is inevitable in breach of trust cases unless there are exceptional circumstances or the amount of money involved is very small. Whilst emphasising that the amount involved is not the only relevant factor, the Court set out the following sentence ranges in respect of an offender who has pleaded not guilty:

Amount 'not small' but less than £17,500	Term from 'very short' to 21 months imprisonment
£17,500 to £100,000	Two to three years imprisonment
£100,000 to £250,000	Three to four years imprisonment
£250,000 to £1,000,000	Five to nine years imprisonment ³¹
£1,000,000 or more	Ten or more years imprisonment ³²

37. Data provided by the Home Office shows that in 2005, 83% of adult offenders convicted of theft from their employers were sentenced in a magistrates' court. Overall, 63% of offenders received a community sentence whilst only 13% received a sentence of immediate imprisonment.

38. The courts' view of the seriousness of theft in breach of trust appears to have altered since the judgments in *Barrick* and *Clark*. In *Kefford*,³³ the Court of Appeal held that:

²⁹[1998] 2 Cr App R (S) 95
³⁰(1985) 7 Cr App R (S) 142
³¹This range reflects the possibility of consecutive sentences, which the Court considered may be called for where the sums involved are very large and not stolen on a single occasion, or where the dishonesty is directed at more than one victim. In cases involving a single offence, the maximum penalty is seven years imprisonment.
³²*ibid.*
³³[2002] 2 Cr App R (S) 495

"In the case of economic crimes, for example obtaining undue credit by fraud, prison is not necessarily the only appropriate form of punishment. Particularly in the case of those who have no record of previous offending, the very fact of having to appear before a court can be a significant punishment. Certainly, having to perform a form of community punishment can be a very salutary way of making it clear that crime does not pay... In appropriate cases, it can be better that an offender repays his debt to society by performing some useful task for the public than spending a short time in prison..."

39. As a result, the Panel has reviewed the guidelines laid down in *Barrick* and updated in *Clark*. In particular, the Panel's proposals for sentencing theft in breach of trust are intended to provide greater guidance for the least serious cases of this type.

Aggravating factors

Long course of offending

40. Some cases of theft in breach of trust involve offending carried out over a period of months or even years.³⁴ The Panel considers that this increases the offender's culpability because it represents a sustained and deliberate course of conduct. In addition, offending over an extended period may result in greater harm to the victim in terms of financial loss and/or distress. The Panel, therefore, is of the view that a long course of offending aggravates an offence.

Suspicion deliberately thrown on others

41. In many offences, another person initially may be suspected of the offence and may

be arrested, charged or convicted as a result. A person on whom suspicion is thrown is an additional victim of the offence and this will increase the level of harm caused by the offence; as this is a common feature of many different offences it is accounted for within the starting points proposed by the Panel.

42. However, in some cases of theft in breach of trust, the offender incriminates one or more colleagues, either at the time of committing the offence or subsequently;³⁵ as a result, the colleague(s) may fall under suspicion and even suffer disciplinary sanctions. In these circumstances, the offender's culpability is increased as he or she has acted intentionally to cause the colleague(s) to become additional victims of the offence. The Panel believes that, unless a separate offence (such as wasting police time) is charged, an offence of theft in breach of trust should be aggravated where the offender takes positive steps to throw suspicion on another.

Quality and degree of trust reposed in the offender

43. There will be significant variations in the quality and degree of trust reposed in those convicted for theft in breach of trust but, in general terms, the Panel considers that the seriousness of an offence increases in line with the level of trust breached. At the lower end of the scale are thefts by employees who are not in a position of trust over and above that inherent in the employment relationship. At the higher end are thefts by employees who have been specifically entrusted with the care of the property or funds stolen, sometimes on behalf of the general public.

³⁴ See, for example, *Kefford* [2002] 2 Cr App R (S) 495 and *Reid* (1992) 13 Cr App R (S) 645

³⁵ examples include committing the offence by using another's computer login and hiding stolen property in another's locker

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44. The Panel considers that thefts by offenders in whom a high degree of trust has been placed should generally attract higher sentences than thefts of similar amounts by offenders in whom a lower degree of trust has been placed. The Panel's proposals for sentencing theft in breach of trust treat a high degree of trust as a factor that moves the offence into a higher sentencing range.
45. In the Panel's view it would be unhelpful for any guideline to specify occupational categories where the level of trust reposed in the offender is so high as to place the offender in a higher sentencing range. Whilst any list would not be intended to be exhaustive, it might create the erroneous impression of excluding some groups of offenders. Accordingly, the extent to which the nature and degree of trust placed in an offender should be regarded as increasing the seriousness of the offence will depend on a careful assessment of the circumstances of each individual case.

Personal mitigation

Excessive responsibility and/or inadequate training

46. When considering the effect on sentence of the nature and degree of trust reposed in the offender, some respondents invited the Panel to consider the position of young people starting their first job, commonly in the retail sector, and succumbing to temptation when they see a significant amount of money for the first time. It was suggested that these offenders are more likely to be female, as proportionately more young women are employed in the retail sector. In many cases, these offenders are likely to have been given

excessive responsibility or inadequate training. In *Barrick*, Lord Lane CJ suggested that being placed under strain due to excessive responsibility may provide personal mitigation. The Panel agrees with the Court of Appeal, and takes the view that excessive responsibility and/or inadequate training and support should both constitute personal mitigation.

Recommendation 9

In cases of theft in breach of trust, excessive responsibility and/or inadequate training and support should both be treated as personal mitigation.

Cessation of offending

47. In some cases, particularly those involving a prolonged course of offending, an offender may claim to have ceased offending before being discovered. In such cases, often it will be hard for the sentencing court to be confident that the offending has, in fact, stopped. The Panel believes that *voluntary cessation of offending does not reduce the seriousness of the offence*. However, if the claim to have stopped offending is genuine, it may constitute personal mitigation, particularly if it is evidence of remorse.³⁶

Reporting an undiscovered offence

48. Related to the issue of voluntary cessation of offending, some cases of theft in breach of trust are discovered only because the offender brings the offending to the attention of his or her employer or the authorities. The Panel considers that reporting an undiscovered offence is evidence of ready co-operation with the authorities. The Council has stated that this may be treated as personal mitigation.³⁷ In order to promote disclosure at

³⁶ Council guideline *Overarching Principles: Seriousness*, supra n.2, para. 1.27

³⁷ *ibid*, para. 1.29

the earliest possible time, the Panel believes that the point at which the disclosure is made should determine the degree of mitigation: in general, the earlier the disclosure is given, the greater the degree of mitigation the offender should receive.

Loss of employment

49. In many cases of theft in breach of trust, termination of an offender's employment will be a natural consequence of committing the offence. In *Barrick*, Lord Lane CJ stated that, as offenders bring the loss of employment and consequential financial, social and emotional suffering upon themselves, these factors should not influence the sentence imposed. The Panel agrees and suggests that, other than in the most exceptional of circumstances, loss of employment and any consequential hardship should not constitute personal mitigation.

Recommendation 10

When deciding the appropriate sentence for an offence of theft or dishonesty, the loss of employment and any consequential hardship suffered by the offender normally should not be treated as personal mitigation.

Suspended sentence orders

50. In *Barrick*, the Court of Appeal held that suspended sentences rarely would be appropriate in cases of theft in breach of trust. The Criminal Justice Act 2003 has made a number of changes to suspended sentences: it no longer requires 'exceptional circumstances' to justify suspension and it strengthens suspended sentence orders by

requiring that one or more requirements be imposed on the offender for part or all of the period of suspension. Suspended sentences are available where the court imposes a term of imprisonment between 14 days and 12 months.³⁸ The Council issued guidance on suspended sentences in its guideline *New Sentences: Criminal Justice Act 2003*.³⁹

51. In light of these changes to the sentencing framework, the Panel considers that it is appropriate to reconsider the restrictive approach articulated in *Barrick* and suggests that a suspended sentence order may be particularly appropriate where this might allow for reparation to be made either to the victim or to the community at large.

Recommendation 11

Where a court is considering imposing a custodial sentence of less than 12 months for an offence of theft in breach of trust, there is no reason why that sentence should not be suspended provided the criteria in the Council guideline 'New Sentences: Criminal Justice Act 2003' are met.

The Panel's proposals

52. The Panel's proposals for sentencing theft in breach of trust are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in the Council guideline, which is reproduced in Annex B. Other aggravating factors and aspects of personal mitigation, common to this type of offending, are set out below.

³⁸ Criminal Justice Act 2003, ss. 189 and 190

³⁹ *supra* n. 13

Theft in breach of trust

Theft (Theft Act 1968, s. 1): dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.

Triable **either way**. Maximum penalty: **7 years** imprisonment.

Nature of activity	Starting point	Range
Theft of £125,000 or more OR Theft of £20,000 or more in breach of a high degree of trust	3 years imprisonment	2 to 7 years imprisonment
Theft of £20,000 or more but less than £125,000 OR Theft of £2,000 or more but less than £20,000 in breach of a high degree of trust	2 years imprisonment	12 months to 3 years imprisonment
Theft of £2,000 or more but less than £20,000 OR Theft of less than £2,000 in breach of a high degree of trust	18 weeks imprisonment	Community order (HIGH) to 12 months imprisonment
Theft of less than £2,000	Community order (MEDIUM)	Fine (Band B) to 26 weeks imprisonment

Common aggravating and mitigating factors are set out in Annex B.

<p>Additional aggravating factors:</p> <ul style="list-style-type: none"> • Long course of offending • Suspicion deliberately thrown on others 	<p>Additional aspects of personal mitigation:</p> <ul style="list-style-type: none"> • Exceptional financial pressure not of the offender's own making • Voluntary restitution of property • Freeing assets to be able to pay compensation • Excessive responsibility and/or inadequate training • Voluntary cessation of offending
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Theft from the person

53. Theft from the person encompasses conduct such as 'pick-pocketing', where the victim is unaware that the property is being stolen, as well as the snatching of handbags, wallets, jewellery and mobile telephones from the victim's possession (where it may come close to robbery) or from the vicinity of the victim. Whilst the monetary value involved is often low, the sentimental or other value to the victim may be significant.
54. In the Panel's view, the most serious aspects of theft from the person are the invasion of the victim's privacy and the level of distress, fear and inconvenience that may be experienced by the victim during or after the event.

Factors relevant to sentencing

Vulnerable victims

55. Some offenders target victims who are perceived as being unlikely or unable to resist the theft. This type of exploitation is highly culpable and is, therefore, identified as an aggravating factor in the Council guideline *Overarching Principles: Seriousness*.⁴⁰ Thefts from such victims may also result in a greater than usual degree of harm, for example, in terms of distress, inconvenience or difficulties in replacing stolen items.
56. Tourists are a group of vulnerable victims often targeted for thefts from the person. In *Chebout*⁴¹ the Court of Appeal observed that this is because they are more likely to be in possession of money, passports and

credit cards than many residents. The Court also considered that foreign tourists may be targeted because of a perception that they will be unlikely to return to give evidence when the matter comes to trial, thereby making it harder to secure a conviction. Tourists who have their wallets or bags stolen may experience greater distress and inconvenience than other victims in arranging replacement documents, cash and cards. The Panel considers that such factors should be taken into account as increasing the seriousness of the offence.

'Professional' offenders

57. Some of those convicted of theft from the person offend in a systematic and professional manner. Characteristics include planning, embarking on 'sprees' of offences, wearing disguises and working in groups. The Council has stated that planning an offence, 'professional' offending and offenders operating in groups or gangs are all aggravating factors.⁴²

Confrontation with the victim

58. Many thefts from the person are committed without the victim realising that their property has been stolen until after the event. In some cases, however, there may be intimidation and/or a face-to-face confrontation between the offender and victim, for example, if the offender becomes aware that the theft is occurring. This may result in a greater than usual degree of harm being caused to the victim in terms of fear and distress. The Panel, therefore, is of the view that this should be regarded as an aggravating factor.

⁴⁰ *supra* n.2, para. 1.22

⁴¹ (1990) 12 Cr App R (S) 324

⁴² Council guideline *Overarching Principles: Seriousness*, *supra* n.2, para. 1.22

59. Where the offender uses or threatens to use force to commit the theft, the conduct may constitute the more serious offence of robbery.⁴³ Whilst the Crown Prosecution Service charging policy advises that, in such circumstances, a charge of robbery should be preferred, there may be some cases involving force which are charged as theft from the person. In such cases, an offender can be sentenced only for the offence of which he or she is convicted and the court is bound by the maximum penalty for that offence. At the same time, the Panel considers that the court must have regard to all the circumstances of the case when determining the appropriate sentence. This may result in sentencers concluding that the offending was aggravated by the use or threat of force, and that a more severe sentence is warranted. This approach is consistent with that proposed by the Panel in its advice on *Assault and Other Offences against the Person*.⁴⁴

Offence prevalence and deterrence

60. In several decisions the Court of Appeal has expressed concern about the prevalence of theft against the person and, in particular, pick-pocketing. In *Spencer and Carby*,⁴⁵ the Court indicated that the prevalence of the offence, and the associated need for deterrence, are legitimate factors to be taken into account when determining the length of any custodial sentence.
61. However, the Council guideline *Overarching Principles: Seriousness* signals a need for caution when considering issues of local prevalence.⁴⁶ Further, national prevalence

should not be used by sentencers to justify including a deterrent element in sentences as this is already taken into account in Council guidelines.

The Panel's proposals

62. The Panel's proposals for sentencing for theft from the person are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in the Council guideline, which is reproduced in Annex B. Other aggravating factors and aspects of personal mitigation, common to this type of offending, are set out in the table below.
63. The Panel's proposals are based on the assumption that most thefts from the person do not involve property of high monetary value or of high value to the victim. The Council has stated that a more than usually serious degree of harm is caused where the stolen property is of high value (including sentimental value) to the victim or where substantial consequential loss results (such as where the theft of equipment causes serious disruption to the victim's life or business).⁴⁷ In such circumstances, the Panel is of the view that the appropriate sentence may be beyond the range into which the offence otherwise would fall. For an offence of theft from the person, the Panel has defined high monetary value as being more than £2,000.

⁴³ Theft Act 1968, s. 8(1)

⁴⁴ Published 27 June 2007, www.sentencing-guidelines.gov.uk

⁴⁵ (1995) 16 Cr App R (S) 482

⁴⁶ *supra* n. 2, paras. 1.38 and 1.39

⁴⁷ *ibid*, para. 1.23

Theft from the person

Theft (Theft Act 1968, s. 1): dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.

Triable **either way**. Maximum penalty: **7 years** imprisonment.

Nature of activity	Starting point	Range
Where the stolen property is worth more than £2,000 or is of high sentimental value to the victim, or where substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft involving intimidation or the use or threat of force (falling short of robbery) against a vulnerable victim	18 months imprisonment	12 months to 3 years imprisonment
Theft from a vulnerable victim	18 weeks imprisonment	Community order (HIGH) to 12 months imprisonment
Other theft(s) from the person	Community order (MEDIUM)	Fine (Band B) to 18 weeks imprisonment

Common aggravating and mitigating factors are set out in Annex B.

Common aggravating and mitigating factors are set out in Annex B.	
<p>Additional aggravating factors:</p> <ul style="list-style-type: none"> • Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offender into a higher sentencing range] • Intimidation or face-to-face confrontation with victim [except where this raises the offender into a higher sentencing range] • High level of inconvenience caused to victim, for example replacing house keys, credit cards etc 	<p>Additional aspects of personal mitigation:</p> <ul style="list-style-type: none"> • Exceptional financial pressure not of the offender's own making • Voluntary restitution of property • Freeing assets to be able to pay compensation

Theft in a dwelling

64. The category of theft in a dwelling covers the situation where a theft is committed by an offender who is present in a dwelling with the authority of the owner or occupier. Examples include thefts by lodgers or visitors to the victim's residence, such as friends, relatives or salespeople. Where an offender enters a dwelling as a trespasser in order to commit theft, his or her conduct will generally constitute the more serious offence of burglary.⁴⁸
65. In the Panel's view, theft in a dwelling shares several features with burglary; even though it does not involve the element of trespass, it involves a violation of the privacy of the victim's home and often constitutes an abuse of the victim's trust.

Factors relevant to sentencing

Victim present in dwelling

66. Some thefts in a dwelling are committed while the victim is at home. In the context of the offence of burglary in a dwelling, the Court of Appeal accepted the Panel's advice that this should be taken into account as an aggravating factor,⁴⁹ recognising the risk that those present may suffer fear, distress or trauma either during or after the event. In the Panel's view, the same approach may be appropriate in certain circumstances for theft in a dwelling. There will be an additional aggravating factor where there is an actual confrontation between the offender and victim.

⁴⁸ Burglary in a dwelling is subject to a maximum penalty on indictment of 14 years' imprisonment: Theft Act 1968, s. 9. The Court of Appeal issued sentencing guidelines for burglary in a dwelling in *McInerney and Keating* [2003] 2 Cr App R (S) 39.

⁴⁹ *McInerney and Keating* [2003] 2 Cr App R (S) 39

Use of force

67. Generally, where theft in a dwelling is accompanied by force or the threat of force, it will be appropriate to charge the offender with the more serious offence of robbery. However, as discussed in paragraph 59 above, there may be some circumstances in which this is not possible. Consistent with its approach to this issue in the context of theft from the person, the Panel suggests that the use of force (falling short of robbery) may be regarded as an aggravating factor in cases involving theft in a dwelling.

Use of deception

68. Some offences of theft in a dwelling occur after the offender has deceived the victim in order to gain entry, for example by falsely claiming to be a meter reader. Thefts in these circumstances are similar to 'confidence tricks'; the Panel consulted on sentencing for 'confidence tricks' in its consultation paper on sentencing for fraud offences.⁵⁰ In that consultation paper it was noted that being deceived can cause 'a greater than usual degree of harm to the victim, not least because many victims of deception are among the most vulnerable members of society.'⁵¹ The Panel, therefore, considers that using deception to gain entry may be regarded as an aggravating factor in cases of theft in a dwelling.

⁵⁰ Published 16 August 2007, www.sentencing-guidelines.gov.uk, consultation closed 6 December 2007

⁵¹ *ibid*, para. 86

Taking steps to prevent the victim reporting the crime or seeking help

69. In some cases of theft in a dwelling the offender, whilst not necessarily using or threatening force, takes steps to prevent the victim reporting the offence or seeking help, such as by damaging a telephone.⁵² This may cause or increase any fear, distress or trauma suffered by the victim. The Panel therefore believes that taking steps to prevent the victim reporting the crime or seeking help should be an aggravating factor.

The Panel's proposals

70. The Panel's proposals for sentencing for theft in a dwelling are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in the Council guideline, which is reproduced in Annex B. Other aggravating factors and aspects of personal mitigation, common to this type of offending, are set out below.

71. The Panel's proposals are based on the assumption that most thefts in a dwelling do not involve property of high monetary value or of high value to the victim. Consistent with the approach to this issue in the context of theft from the person (paragraph 63 above), the Panel considers that where the property stolen is of high value (including sentimental value) to the victim, or substantial consequential loss is caused, the appropriate sentence may be beyond the range into which the offence otherwise would fall.

⁵² As occurred in *Richardson* [2000] 2 Cr App R (S) 373, although the offender in that case also used force.

Theft in a dwelling

Theft (Theft Act 1968, s. 1): dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it.

Triable **either way**. Maximum penalty: **7 years** imprisonment.

Nature of activity	Starting point	Range
Where the stolen property is of high value (including sentimental value) to the victim, or where substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		
Theft from a vulnerable victim involving intimidation or the use or threat of force (falling short of robbery) or the use of deception	18 months imprisonment	12 months to 3 years imprisonment
Theft from a vulnerable victim	18 weeks imprisonment	Community order (HIGH) to 12 months imprisonment
Other theft(s) in a dwelling	Community order (MEDIUM)	Fine (Band B) to 18 weeks imprisonment

Common aggravating and mitigating factors are set out in Annex B.	
<p>Additional aggravating factors:</p> <ul style="list-style-type: none"> • Victim present in dwelling • Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offender into a higher sentencing range] • Use of deception [except where this raises the offender into a higher sentencing range] • Intimidation or face-to-face confrontation with victim [except where this raises the offender into a higher sentencing range] • Offender takes steps to prevent the victim from reporting the crime or seeking help 	<p>Additional aspects of personal mitigation:</p> <ul style="list-style-type: none"> • Exceptional financial pressure not of the offender's own making • Voluntary restitution of property • Freeing assets to be able to pay compensation

Burglary in a building other than a dwelling

72. The offence of burglary may be committed in a dwelling or in any other building. The Panel previously provided advice to the Court of Appeal regarding domestic burglary and the Court subsequently issued sentencing guidelines in *McInerney and Keating*.⁵³ This advice is therefore concerned solely with burglary committed in a building other than a dwelling.
73. Under section 9 of the Theft Act 1968 the offence may be committed in one of two ways:
- a) where the offender enters a building as a trespasser with the intent to steal, or to commit grievous bodily harm or criminal damage. In this form, the burglary is complete as soon as the entry has occurred. No theft (or other further offence) needs to take place; or
 - b) where the offender enters a building as a trespasser and actually goes on to steal or commit grievous bodily harm (or attempts to steal or commit grievous bodily harm).
74. This advice is limited to situations in which an offender enters a building as a trespasser with intent to steal or actually goes on to steal, since the other forms of burglary do not require dishonesty.
75. The offence of burglary always involves an element of trespass. As a consequence, the victim's right to privacy and security in his or her property inevitably is violated. The Panel considers, however, that in most cases unauthorised entry into a dwelling is likely

to cause more trauma and distress to victims than unauthorised entry into a non-residential building.

76. The seriousness of individual instances of this offence can vary significantly. At the lower end are cases of opportunistic offending by a single offender where there was no forced entry, no damage caused and nothing stolen. Towards the other end of the spectrum are cases involving significant planning and professionalism, multiple offenders going equipped with implements to facilitate the commission of the offence, targeting of particular premises and the theft of property or cash of a significant value.

Factors relevant to sentencing

Targeting premises

77. Some offenders deliberately target premises because high value, often easily disposable, property is likely to be found there. In the Panel's view, this is an aggravating factor as the deliberate selection of premises indicates a degree of professionalism and organisation in the offending, as well as an intention to derive a high level of gain.
78. Community premises such as schools, clubrooms, places of worship and doctors' surgeries may be targeted because they are perceived as having relatively weak security and because high value items such as computers, entertainment equipment or pharmaceutical drugs may be kept there. Burglaries of such premises may result in a higher than usual degree of harm in terms of, for example, the inconvenience caused by the theft of the property. The Panel, therefore, considers that this should be regarded as an aggravating factor.

⁵³ [2003] 2 Cr App R (S) 39

79. Premises which have been burgled on a prior occasion are also sometimes targeted, often on the assumption that security is weak or that the goods stolen in the earlier burglary will have been replaced. The Panel considers that this indicates planning, organisation and professionalism and, therefore, should be regarded as increasing the offender's culpability. Repeat victimisation may also increase the harm caused by the offence in terms of distress, inconvenience and expense to the victim.

Damage caused to the building and/or property

80. This offence sometimes results in damage to the building and/or property within it. For example, windows may be broken or doors forced in order to gain entry, and items such as display cabinets or gaming machines may be destroyed in order to access their contents. Where the damage caused was gratuitous or exceeded what was necessary to commit the offence, the Council guideline *Overarching Principles: Seriousness* recognises that it is an aggravating factor.⁵⁴

Breach of trust

81. Some cases of burglary in a building other than a dwelling involve a breach of trust reposed in the offender. There are clear parallels between these cases and cases of theft in breach of trust. However, theft in breach of trust usually does not involve an element of trespass and sentencing levels for that offence do not reflect this feature. Where the offence encompasses a breach of trust, this should be treated as an aggravating factor in line with the Council guideline *Overarching Principles: Seriousness*.⁵⁵

⁵⁴ *supra* n.2, para. 1.22

⁵⁵ *ibid*, para. 1.22

Possession of a weapon

82. Where an offender is in possession of a weapon, his or her conduct may constitute the more serious offence of aggravated burglary, contrary to section 10 of the Theft Act 1968, which carries a maximum penalty of life imprisonment. To satisfy the elements of this offence, it must be established that the offender had possession of the weapon at the time of entry into the building or commission of the theft.

83. In cases where it is not clear whether the offender was in possession of the weapon at the relevant time, the Crown Prosecution Service charging policy suggests that a charge of burglary should be preferred, possibly with an additional charge of possession of an offensive weapon. The additional charge may not be available, however, if there are difficulties establishing that the offender had possession of the weapon in a public place.

84. Accordingly, while it is to be expected that the charges will reflect accurately the full extent of the offending, there may be some situations where an offender found with a weapon is charged solely with burglary. Consistent with the approach outlined in paragraphs 59 and 67 above, the Panel considers that possession of a weapon may be regarded as an aggravating factor in such circumstances, subject to the overriding principle that an offender can be sentenced only for the offence of which he or she has been convicted.

The Panel's proposals

85. The Panel's proposals for sentencing for burglary in a building other than a dwelling are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is

set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in the Council guideline, which is reproduced in Annex B. Other aggravating factors and aspects of personal mitigation, common to this type of offending, are set out below.

Burglary in a building other than a dwelling

Burglary (Theft Act 1968, s. 9): entering any building or part of a building as a trespasser with intent to steal anything in the building or part of it, inflict on any person therein grievous bodily harm or do unlawful damage to the building or anything therein; or having entered any building as a trespasser stealing or attempting to steal anything in the building or part of it or inflicting or attempting to inflict on any person therein grievous bodily harm.

Triable **either way**. Maximum penalty: **10 years** imprisonment.

Nature of activity	Starting point	Range
Where the goods are of particularly high value, there is a professional burglary and/or evidence of significant planning, a sentence of more than 7 years imprisonment may be appropriate		
Burglary involving goods valued at £20,000 or more	2 years imprisonment	12 months to 7 years imprisonment
Burglary involving goods valued at £2,000 or more but less than £20,000	18 weeks imprisonment	Community order (HIGH) to 12 months imprisonment
Burglary involving goods valued at less than £2,000	Community order (MEDIUM)	Fine (Band B) to 26 weeks imprisonment

Common aggravating and mitigating factors are set out in Annex B.	
<p>Additional aggravating factors:</p> <ul style="list-style-type: none"> • Targeting premises containing property of high value • Targeting vulnerable community premises • Targeting premises which have been burgled on prior occasion(s) • Possession of a weapon (where this is not charged separately) 	<p>Additional aspects of personal mitigation:</p> <ul style="list-style-type: none"> • Exceptional financial pressure not of the offender's own making • Voluntary restitution of property • Freeing assets to be able to pay compensation

Making off without payment

86. Section 3(1) of the Theft Act 1978 provides that a person commits this offence if he or she, knowing that payment on the spot for any goods supplied or service done is required or expected, dishonestly makes off without having paid and with intent to avoid payment.
87. This offence covers situations such as where the offender fills his or her car with petrol or has a meal in a restaurant and leaves without paying. There are similarities between this offence and theft from a shop: both result in the offender acquiring something without paying for it and both generally are committed against commercial or business interests rather than individuals.⁵⁶ The Panel accordingly considers that a similar approach to sentencing should be adopted for these offences. As noted above, theft from a shop has been addressed in a separate advice to the Sentencing Guidelines Council. When developing its proposals for making off without payment, the Panel has had regard to the starting points and ranges suggested in that advice.

The Panel's proposals

88. The Panel's proposals for sentencing for making off without payment are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in

the Council guideline, which is reproduced in Annex B. Other aspects of personal mitigation, common to this type of offending, are set out below.

89. The Panel's proposals indicate that non-custodial sentences are likely to be imposed in most cases of making off without payment. In its consultation paper, the Panel sought views on the circumstances in which a custodial sentence might be appropriate; the Panel has concluded that an offence of making off without payment is unlikely to cross the custody threshold unless the offender has relevant previous convictions and there are other aggravating factors present that would place it in the most serious category for this offence.

Recommendation 12

An offence of making off without payment normally will not cross the custody threshold unless the offender has relevant previous convictions and there are other aggravating factors present that place it in the most serious category for this offence.

⁵⁶ The main legal difference is that, to constitute theft, it must be established that the offender was acting dishonestly at the time he or she acquired the property, which may be difficult to prove in some cases. Making off without payment focuses on the offender's state of mind at the time when he or she actually leaves without paying.

Making off without payment

Making off without payment (Theft Act 1978, s. 3): knowing that payment on the spot for any goods supplied or service done is required or expected, dishonestly making off without having paid as required or expected and with intent to avoid payment of the amount due.

Triable **either way**. Maximum penalty: **2 years** imprisonment.

Nature of activity	Starting point	Range
Offence displaying one or more of the following: - offender acting in unison with others - evidence of planning - offence part of a 'spree' - intimidation of victim - goods or services worth £200 or more	Community order (MEDIUM)	Community order (LOW) to 12 weeks imprisonment
Single offence committed by an offender acting alone with evidence of little or no planning, goods or services worth less than £200	Fine (Band C)	Fine (Band A) to Community order (HIGH)

Common aggravating and mitigating factors are set out in Annex B.

Additional aspects of personal mitigation:

- Exceptional financial pressure not of the offender's own making
- Voluntary restitution of property
- Freeing assets to be able to pay compensation

Abstracting electricity

90. A person is guilty of abstracting electricity, contrary to section 13 of the Theft Act 1968, if he or she dishonestly uses any electricity without due authority or dishonestly causes any electricity to be wasted or diverted.
91. In the Panel's view, one of the most serious aspects of this offence is that invariably it involves a degree of planning and organisation, for example, in fixing a device on an electricity meter or re-wiring circuits to bypass the meter. This is identified as an aggravating factor in the Council guideline *Overarching Principles: Seriousness*.⁵⁷ Furthermore, the steps taken to execute the offence (such as altering the meter) usually indicate an intention to continue the offending over a prolonged period. The Panel considers that this also increases the offender's culpability (see paragraph 40 above).

Factors relevant to sentencing

Danger to property and/or life

92. In some cases, the means used by the offender to commit the offence may give rise to a risk of danger to property and/or persons. For example, re-wiring carried out by an unqualified offender in order to bypass an electricity meter may create a risk of electric shock or fire. Section 143(1) of the Criminal Justice Act 2003 requires sentencers to have regard to potential, as well as actual, harm. Therefore, the Panel considers that any danger to property and/or life should be an aggravating factor.

Electricity abstracted to commit another offence

93. Some offenders abstract electricity in order to facilitate the commission of another offence, for example cultivating cannabis using hydroponics equipment. In its consultation paper the Panel suggested that, when an offender's motivation for abstracting electricity is to enable and support a wider criminal enterprise, his or her culpability is increased and accordingly the offence is aggravated.
94. The Panel has reconsidered that approach in light of suggestions that, in such circumstances, either the offender would have been convicted of both offences, so the sentence could reflect the totality of the offending, or the other offence would not have been proven to the criminal standard. The Panel has concluded that the purpose for which the electricity was abstracted should *not* aggravate the seriousness of the offence where that purpose could be charged as a separate offence.

The Panel's proposals

95. The Panel's proposals for sentencing the abstraction of electricity are set out below. The proposed table for the Magistrates' Court Sentencing Guidelines is set out in Annex C. The definitions of 'starting point', 'range' and 'first time offender' are contained in Annex D. Sentencers must always have regard to the full list of aggravating and mitigating factors in the Council guideline, which is reproduced in Annex B. Other aggravating factors and aspects of personal mitigation, common to this type of offending, are set out below.

⁵⁷ supra n. 2, para. 1.22

96. The Panel's proposals indicate that a custodial sentence will not be appropriate in most cases of abstracting electricity. However, where electricity is abstracted for commercial purposes, such as to run a factory, and provides the offender with a substantial commercial gain, the Panel suggests that a custodial sentence may be appropriate.

Recommendation 13

A custodial sentence may be appropriate for a first time offender convicted of abstracting electricity if the offence results in substantial commercial gain.

Abstracting electricity

Abstracting electricity (Theft Act 1968, s. 13): dishonestly using without due authority, or dishonestly causing to be wasted or diverted, any electricity.

Triable **either way**. Maximum penalty: **5 years** imprisonment.

Nature of activity	Starting point	Range
Where the offence results in substantial commercial gain, a custodial sentence may be appropriate		
Offence involving evidence of planning and indication that the offending was intended to be continuing, such as using a device to interfere with the electricity meter or re-wiring to by-pass the meter	Community order (MEDIUM)	Fine (Band A) to Community order (HIGH)

Common aggravating and mitigating factors are set out in Annex B.	
Additional aggravating factor: <ul style="list-style-type: none"> Risk of danger caused to property and/or life 	Additional aspects of personal mitigation: <ul style="list-style-type: none"> Exceptional financial pressure not of the offender's own making Freeing assets to be able to pay compensation

Statutory definitions and maximum penalties for the theft and dishonesty offences considered in this advice

Offence	Statutory provision	Statutory definition	Maximum custodial term in Crown Court	Maximum custodial term in Magistrates' Court
Theft	Theft Act 1968, s.1	Dishonestly appropriating property belonging to another with the intention of permanently depriving the other of it	7 years	6 months
Burglary in a building other than a dwelling	Theft Act 1968, s.9(1)	Entering any building or part of a building as a trespasser and with intent to: <ul style="list-style-type: none"> - steal anything in the building or part of it; - inflict on any person therein any grievous bodily harm; or - do unlawful damage to the building or anything therein; OR Having entered any building or part of a building as a trespasser: <ul style="list-style-type: none"> - stealing or attempting to steal anything in the building or part of it; - inflicting or attempting to inflict on any person therein any grievous bodily harm 	10 years	6 months
Making off without payment	Theft Act 1978, s.3(1)	Knowing that payment on the spot for any goods supplied or service done is required or expected, dishonestly making off without having paid as required or expected and with intent to avoid payment of the amount due	2 years	6 months
Abstracting electricity	Theft Act 1968, s.13	Dishonestly using without due authority, or dishonestly causing to be wasted or diverted, any electricity	5 years	6 months

Aggravating and mitigating factors identified in the Sentencing Guidelines Council guideline '*Overarching Principles: Seriousness*'

Aggravating factors

Factors indicating higher culpability:

- Offence committed whilst on bail for other offences
- Failure to respond to previous sentences
- Offence was racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by, or demonstrating, hostility based on the victim's disability (or presumed disability)
- Previous conviction(s), particularly where a pattern of repeat offending is disclosed
- Planning of an offence
- An intention to commit more serious harm than actually resulted from the offence
- Offenders operating in groups or gangs
- 'Professional' offending
- Commission of the offence for financial gain (where this is not inherent in the offence itself)
- High level of profit from the offence
- An attempt to conceal or dispose of evidence
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Offence committed whilst on licence
- Offence motivated by hostility towards a minority group, or a member or members of it
- Deliberate targeting of vulnerable victim(s)
- Commission of an offence while under the influence of alcohol or drugs
- Use of a weapon to frighten or injure victim
- Deliberate and gratuitous violence or damage to property, over and above what is needed to carry out the offence
- Abuse of power
- Abuse of a position of trust

Factors indicating a more than usually serious degree of harm:

- Multiple victims
- An especially serious physical or psychological effect on the victim, even if unintended
- A sustained assault or repeated assaults on the same victim
- Victim is particularly vulnerable
- Location of the offence (for example, in an isolated place)
- Offence is committed against those working in the public sector or providing a service to the public
- Presence of others e.g. relatives, especially children or partner of the victim
- Additional degradation of the victim (e.g. taking photographs of a victim as part of a sexual offence)
- In property offences, high value (including sentimental value) of property to the victim, or substantial consequential loss (e.g. where the theft of equipment causes serious disruption to a victim's life or business)

Mitigating factors

Factors indicating significantly lower culpability:

- A greater degree of provocation than normally expected
- Mental illness or disability
- Youth or age, where it affects the responsibility of the individual defendant
- The fact that the offender played only a minor role in the offence

Personal mitigation

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

Proposed Tables for the Magistrates' Court Sentencing Guidelines

Theft in breach of trust	Theft Act 1968, s. 1
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) A. IDENTIFY THE APPROPRIATE STARTING POINT Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Theft of less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Theft of £2,000 or more but less than £20,000 OR Theft of less than £2,000 in breach of a high degree of trust	18 weeks custody	High level community order to Crown Court
Theft of £20,000 or more OR Theft of £2,000 or more in breach of a high degree of trust	Crown Court	Crown Court
OFFENCE SERIOUSNESS (CULPABILITY AND HARM) B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE) Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:		
Factors indicating higher culpability 1. Long course of offending 2. Suspicion deliberately thrown on others		
FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION Common factors are identified in the pullout card. The following factors may also be relevant:		
1. Exceptional financial pressure not of the offender's own making 2. Voluntary restitution of property 3. Freeing assets to be able to pay compensation 4. Excessive responsibility and/or inadequate training 5. Voluntary cessation of offending		
CONSIDER A REDUCTION FOR A GUILTY PLEA		
CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION Refer to paragraphs 20 to 34 for guidance on available ancillary orders		
DECIDE SENTENCE GIVE REASONS		

Theft from the person	Theft Act 1968, s. 1
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
A. IDENTIFY THE APPROPRIATE STARTING POINT
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Other theft(s) from the person	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim	18 weeks custody	High level community order to Crown Court
Theft involving the use or threat of force (falling short of robbery) against a vulnerable victim	Crown Court	Crown Court

Where the stolen property is worth more than £2,000 or is of high sentimental value to the victim, or where substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS
(OTHER THAN THOSE WITHIN EXAMPLES ABOVE)

Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:

Factors indicating greater degree of harm

1. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offender into a higher sentencing range]
2. Intimidation or face-to-face confrontation with victim [except where this raises the offender into a higher sentencing range]
3. High level of inconvenience caused to victim, for example, replacing house keys, credit cards etc

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in the pullout card. The following factors may also be relevant:

1. Exceptional financial pressure not of the offender's own making
2. Voluntary restitution of property
3. Freeing assets to be able to pay compensation

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION
Refer to paragraphs 20 to 34 for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Theft in a dwelling	Theft Act 1968, s. 1
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 7 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) A. IDENTIFY THE APPROPRIATE STARTING POINT Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Other theft(s) in a dwelling	Medium level community order	Band B fine to 18 weeks custody
Theft from a vulnerable victim	18 weeks custody	High level community order to Crown Court
Theft from a vulnerable victim involving either the use or threat of force (falling short of robbery) or the use of deception	Crown Court	Crown Court
Where the stolen property is of high value (including sentimental value) to the victim, or where substantial consequential loss results, a sentence higher than the range into which the offence otherwise would fall may be appropriate		

OFFENCE SERIOUSNESS (CULPABILITY AND HARM) B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS (OTHER THAN THOSE WITHIN EXAMPLES ABOVE) Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:
<u>Factors indicating greater degree of harm</u>
<ol style="list-style-type: none"> 1. Victim present in dwelling 2. Use of force, or threat of force, against victim (not amounting to robbery) [except where this raises the offender into a higher sentencing range] 3. Use of deception [except where this raises the offender into a higher sentencing range] 4. Intimidation or face-to-face confrontation with victim [except where this raises the offender into a higher sentencing range] 5. Offender takes steps to prevent the victim from reporting the crime or seeking help

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION Common factors are identified in the pullout card. The following factors may also be relevant:
<ol style="list-style-type: none"> 1. Exceptional financial pressure not of the offender's own making 2. Voluntary restitution of property 3. Freeing assets to be able to pay compensation

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION Refer to paragraphs 20 to 34 for guidance on available ancillary orders

DECIDE SENTENCE GIVE REASONS

Burglary in a building other than a dwelling	Theft Act 1968, s. 9
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 10 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
A. IDENTIFY THE APPROPRIATE STARTING POINT
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Burglary involving goods valued at less than £2,000	Medium level community order	Band B fine to 26 weeks custody
Burglary involving goods valued at £2,000 or more but less than £20,000	18 weeks custody	High level community order to Crown Court
Burglary involving goods valued at £20,000 or more	Crown Court	Crown Court

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS
(OTHER THAN THOSE WITHIN EXAMPLES ABOVE)

Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:

Factors indicating higher culpability

1. Targeting premises containing property of high value
2. Targeting vulnerable community premises
3. Targeting premises which have been burgled on prior occasion(s)
4. Possession of a weapon (where this is not charged separately)

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION

Common factors are identified in the pullout card. The following factors may also be relevant:

1. Exceptional financial pressure not of the offender's own making
2. Voluntary restitution of property
3. Freeing assets to be able to pay compensation

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION
Refer to paragraphs 20 to 34 for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Making off without payment	Theft Act 1978, s. 3
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 2 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
A. IDENTIFY THE APPROPRIATE STARTING POINT
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single offence committed by an offender acting alone with evidence of little or no planning, goods or services worth less than £200	Band C fine	Band A fine to high level community order
Offence displaying one or more of the following: - offender acting in unison with others - evidence of planning - offence part of a 'spree' - intimidation of victim - goods or services worth £200 or more	Medium level community order	Low level community order to 12 weeks custody

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS
(OTHER THAN THOSE WITHIN EXAMPLES ABOVE)

Common aggravating and mitigating factors are identified in the pullout card.

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in the pullout card. The following factors may also be relevant:

1. Exceptional financial pressure not of the offender's own making
2. Voluntary restitution of property
3. Freeing assets to be able to pay compensation

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION

Refer to paragraphs 20 to 34 for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Abstracting electricity	Theft Act 1968, s. 13
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Triable either way:

Maximum when tried summarily: Level 5 fine and/or 6 months Maximum when tried on indictment: 5 years

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
A. IDENTIFY THE APPROPRIATE STARTING POINT
Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Offence involving evidence of planning and indication that the offending was intended to be continuing, such as using a device to interfere with the electricity meter or re-wiring to by-pass the meter	Medium level community order	Band A fine to high level community order

Where the offence results in substantial commercial gain, a custodial sentence may be appropriate

OFFENCE SERIOUSNESS (CULPABILITY AND HARM)
B. CONSIDER THE EFFECT OF AGGRAVATING AND MITIGATING FACTORS
(OTHER THAN THOSE WITHIN EXAMPLES ABOVE)
Common aggravating and mitigating factors are identified in the pullout card. The following may be particularly relevant:

- Factors indicating greater degree of harm
1. Risk of danger caused to property and/or life

FORM A PRELIMINARY VIEW OF THE APPROPRIATE SENTENCE, THEN CONSIDER OFFENDER MITIGATION
Common factors are identified in the pullout card. The following factors may also be relevant:

1. Exceptional financial pressure not of the offender's own making
2. Freeing assets to be able to pay compensation

CONSIDER A REDUCTION FOR A GUILTY PLEA

CONSIDER ANCILLARY ORDERS, INCLUDING COMPENSATION
Refer to paragraphs 20 to 34 for guidance on available ancillary orders

DECIDE SENTENCE
GIVE REASONS

Meaning of "Range", "Starting Point" and "First Time Offender" within Sentencing Guidelines Council Guidelines

A Council guideline is generally for a *first time offender* convicted after a trial. It commonly provides a *starting point* based on an assessment of the seriousness of the offence and a *range* within which sentence will normally fall.

A clear, consistent understanding of each of these terms is essential and the Council and the Sentencing Advisory Panel have agreed the following definitions.

They are set out in a format that follows the structure of a sentencing decision which identifies first those aspects that affect the assessment of the seriousness of the offence, then those aspects that form part of personal mitigation and, finally, any reduction for a guilty plea.

In practice, the boundaries between these stages will not always be as clear cut but the underlying principles will remain the same.

In accordance with section 174 of the Criminal Justice Act 2003, a court is obliged to "*state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed*".

In particular, "*where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate and the sentence is of a different kind, or is outside that range*" the court must give its reasons for imposing a sentence of a different kind or outside the range.

Assessing the seriousness of the offence

1. a) A typical Council guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a **first time offender** who has been convicted after a trial. Within the guidelines, a **first time offender** is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
- b) As an aid to consistency of approach, a guideline will describe a number of types of activity falling within the broad definition of the offence. These will be set out in a column generally headed "type/nature of activity".
- c) The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the *offence* (beyond those contained in the description itself) to reach a **provisional sentence**.

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- d) The range is the bracket into which the **provisional sentence** will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the **provisional sentence** falls outside the **range**.
 2. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the **provisional sentence** beyond the **range** given particularly where there are significant other aggravating factors present.

Personal Mitigation

3. Once the **provisional sentence** has been identified (by reference to the factors affecting the seriousness of the **offence**), the court will take into account any relevant factors of **personal mitigation**. Again, this may take the provisional sentence outside the range.

Reduction for guilty plea

4. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the **range** provided.

Sentencing Guidelines Council
Sentencing Advisory Panel
May 2007

SUMMARY OF THE PANEL'S RECOMMENDATIONS

Recommendation 1

Financial pressure should be treated as personal mitigation only where it is both exceptional and not of the offender's own making.

Recommendation 2

The voluntary return of property, or voluntary attempts to return property, should constitute personal mitigation. The degree of personal mitigation should depend on the point in time at which the offender makes efforts, and the amount of effort made, to return the property.

Recommendation 3

A restitution order should not influence the choice of sentence.

Recommendation 4

Compensation should be ordered wherever possible. Courts should not refuse to award compensation simply because the full extent of the victim's loss is difficult to ascertain; in such cases, consideration should be given to making a compensation order for an amount representing the agreed or likely loss.

Recommendation 5

A compensation order should not influence the choice of sentence. However, where the offender has acted to free assets in order to be able to pay compensation, this may be regarded as personal mitigation.

Recommendation 6

Normally, a deprivation order should be taken into account when considering whether the overall penalty is commensurate with the seriousness of the offence. However, an order depriving an offender of property which can be used only for the purpose of crime should have no impact on sentence.

Recommendation 7

When sentencing for theft and dishonesty offences, a court may consider imposing an order disqualifying an offender from driving under section 146 of the Powers of Criminal Courts (Sentencing) Act 2000, either on its own or alongside other penalties, even though there is no link between the offence and the offender's driving behaviour.

Recommendation 8

An order under section 146 or 147 of the Powers of Criminal Courts (Sentencing) Act 2000 should be taken into account when assessing whether the overall penalty is commensurate with the seriousness of the offence.

Recommendation 9

In cases of theft in breach of trust, excessive responsibility and/or inadequate training and support should both be treated as personal mitigation.

Recommendation 10

When deciding the appropriate sentence for an offence of theft or dishonesty, the loss of employment and any consequential hardship suffered by the offender normally should not be treated as personal mitigation.

Recommendation 11

Where a court is considering imposing a custodial sentence of less than 12 months for an offence of theft in breach of trust, there is no reason why that sentence should not be suspended provided the criteria in the Council guideline 'New Sentences: Criminal Justice Act 2003' are met.

Recommendation 12

An offence of making off without payment normally will not cross the custody threshold unless the offender has relevant previous convictions and there are other aggravating factors present that place it in the most serious category for this offence.

Recommendation 13

A custodial sentence may be appropriate for a first time offender convicted of abstracting electricity if the offence results in substantial commercial gain.

THE CONSULTATION

In accordance with the duty imposed by section 171(3) of the Criminal Justice Act 2003, the Panel issued a consultation paper on 1 November 2006. The Panel's provisional views on sentencing guidelines for offences of theft and dishonesty were set out.

Copies of the consultation paper were sent to 121 individuals and organisations including the Panel's 33 regular consultees and Resident Judges at each Crown Court Centre in England and Wales. It was published on the Panel's website and in the Justice of the Peace journal.

Responses were received from:

Association of Chief Police Officers
British Retail Consortium
Centre for Crime and Justice Studies
Council of District Judges (Magistrates' Courts) for England and Wales
Council of Her Majesty's Circuit Judges
Criminal Bar Association
Crown Prosecution Service
Justices' Clerks' Society
London Criminal Courts Solicitors' Association
Magistrates' Association
Nacro
National Offender Management Service
Police Federation of England and Wales
Victim Support

Additional responses were also received from:

Association of Convenience Stores
John Stanley Coduri, private individual
Anthony Edwards, solicitor and member of the Sentencing Guidelines Council
HH Judge Lambert
Public and Commercial Services Union
George Tranter, private individual

In addition, one anonymous response was received.

The Sentencing Advisory Panel is an independent advisory and consultative body originally constituted under sections 80 and 81 of the Crime and Disorder Act 1998 (which came into force on 1 July 1999) and now constituted under section 169 of the Criminal Justice Act 2003. Its function, prior to implementation of the relevant provisions in the Criminal Justice Act 2003, was to provide fully researched, objective advice to the Court of Appeal to assist the Court when it framed or revised sentencing guidelines.

The Criminal Justice Act 2003 established a Sentencing Guidelines Council with responsibility for issuing sentencing guidelines. With effect from 27 February 2004, the Sentencing Advisory Panel submits its advice to the Council rather than to the Court of Appeal.

The following were members of the Panel at the time this advice was delivered to the Sentencing Guidelines Council:

Professor Andrew Ashworth (Chairman)

His Honour Judge Anthony Ansell

His Honour Judge Philip Clegg

John Crawford

Ms Joanna Wallace

Amritlal Devani

Mrs Anne Fuller OBE JP

Professor Frances Heidensohn

David Mallen CBE

Michael Morgan

Judge Howard Riddle

John Staples

Ms Joan Webster QPM

Christopher Woolley

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