



RESPONSE TO CONSULTATION ON ARSON AND CRIMINAL DAMAGE DRAFT SENTENCING GUIDELINE

Introduction

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 4,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Response

Introduction

4. Although the Magistrates' Court Sentencing Guidelines (MCSG) give guidance on sentencing for summary only offences of 'arson (criminal damage by fire)', 'criminal damage (other than by fire) and racially or religiously aggravated criminal damage', there are currently no sentencing guidelines for offenders sentenced in the Crown Court for offences of criminal damage (by arson or otherwise); arson in its aggravated form; or threats to destroy or damage property. Currently, sentencers in the Crown Court rely on the guidance given in *Att.-Gen.'s Reference (No. 68 of 2008) (R. v. Myrie) [2009]*

2 *Cr.App.R.(S.)* 48, CA where the Court of Appeal identified starting point sentences of 8 to 10 years' imprisonment for offences of arson with intent to endanger life; and generally, a lower starting point sentence for offences involving the reckless endangerment of life – whilst recognizing that there can be a fine line between the most serious cases of reckless endangerment and the least serious cases of intentional endangerment.

5. These offences are encountered frequently in the Crown Court, and the CBA therefore welcomes the Sentencing Council's decision to issue guidelines for such offences. It is understood that the draft guidelines are intended to complement the MCSGs as opposed to supersede them.
6. There is a vast range of seriousness of offending associated with these offences. At the higher end of the scale of seriousness, is deliberate fire setting with the intention of causing a loss of life and, or substantial loss of property. At the other end of the scale of seriousness, is damaging or destroying property of low value or making threats to do the same, which tend to form part of a course of criminal conduct or collection of multiple offending.
7. Therefore, it can be seen that the Sentencing Council's draft guidelines for offences of Arson and Criminal Damage offences, has the difficult task of seeking to provide comprehensive guidance for a wide scope of offending which overlaps with previous guidance given by the Sentencing Council in the MCSGs; Overarching Principles, Domestic Violence guideline; and Offences taken into consideration and totality guideline. The draft guideline, in the view of the CBA, has in the large part achieved that goal.
8. In respect of serious offences of arson particularly, the experience of the membership of the CBA, is that offending typically (but not exclusively) falls into three categories:
 - a. offences committed by offenders suffering from mental health or psychological deficits;
 - b. offences committed by offenders with the intention of making false claims against insurance policies; and
 - c. offences committed by offenders with the intention of exacting revenge or enforcing a form of intimidation.
9. The draft guidelines deal amply with these three categories of offences.
10. The draft guidelines do not cover offences of:
 - a. Possessing anything with intent to destroy or damage property,

contrary to section 3 of the Criminal Damage Act 1971;

- b. Unauthorized acts causing, or creating risk of, serious damage, contrary to section 3ZA of the Computer Misuse Act 1990;
 - c. Railway offences contrary to sections 35 and 36 of the Malicious Damage Act 1861; and
 - d. Terrorism related offences, contrary to sections 2, 3 and 4 of the Explosive Substances Act 1883.
11. The CBA takes the view that the exclusion of these offences from the draft guidelines is rational. Offences under section 3 of the Criminal Damage Act 1971 are 'low volume' with only 25 offenders being sentenced for such an offence in 2016; and it is assumed by the CBA that offences under the Malicious Damage Act 1861 are similarly 'low volume'. Offences under the Explosive Substances Act 1883 are dealt with in the Terrorism Offences definitive guideline and different considerations plainly apply. Offences under the Computer Misuse Act 1990 are also likely to involve different considerations as to culpability and harm, and with the increased reliance on information technology and the recent GDPR legislation, such offences may be susceptible to a separate sentencing guideline in the years to come.

Overview

12. The Sentencing Council's draft, provides 5 separate guidelines (with different sentencing tables and sentencing approaches) for the following 5 types of offending:
- a. **Arson** (section 1 of the Criminal Damage Act 1971);
 - b. **Criminal Damage/ Arson with intent to endanger life or reckless as to whether life is endangered** (section 1(2) of the Criminal Damage Act 1971);
 - c. **Criminal Damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage** (section 1(1) of the Criminal Damage Act 1971 and section 30 of the Crime and Disorder Act 1988 respectively);
 - d. **Criminal Damage (other than by fire) value under £5,000, and racially or religiously aggravated criminal damage** (section 1(1) of the Criminal Damage Act 1971 and section 30 of the Crime and Disorder Act 1988 respectively); and
 - e. **Threats to destroy or damage property** (section 2 of the Criminal Damage Act 1971).

13. The starting point sentences and sentencing ranges are in line with current sentencing practice. This appears to have been a deliberate decision by the Sentencing Council, which analyzed the sentencing remarks of sentencers in the Crown Court of 110 offenders convicted of arson and criminal damage offences; and a survey of 25 magistrates (which promoted a greater focus on the intention and motivation of offenders). The sentencing tariffs in the sentencing tables have also been arrived at by analysing data from the Ministry of Justice's Court Proceedings database (CPD). Therefore, the draft guidelines apparently seeks to regularise the *status quo*.
14. The draft guidelines follow the familiar structure of assessing the culpability of the offender and the harm caused by the offence at step one; then at step two, using the results of the assessments of culpability and harm to arrive at a starting point sentence; and then adjusting the starting point sentence based on familiar aggravating or mitigating factors, in order to arrive at a notional (pre-credit) sentence.
15. The draft guidelines might have been simpler had there been just 2 guidelines based on the different sentencing maxima for such offences (life imprisonment for arson with intent to endanger life or being reckless as to such endangerment; and 10 years' imprisonment for all other offences). However, owing to the vast range of seriousness of offending associated with these offences, the guidelines as drafted achieves a more tailored approach to sentencing and overcomes presentational difficulties.
16. Specifically, in respect of criminal damage offences, intuitively, it would have been simpler for there to have been a single guideline (regardless of the value of the damage) and for value to have been reflected as an indicative factor in the harm assessment. However, offences of criminal damage under £5000 are triable only summarily and so a single guideline for criminal damage offences would have been impracticable. There is though the potential for inconsistency and confusion by virtue of the fact that where there has been no sending for trial on a charge of criminal damage, and the indictment is amended to add a count of criminal damage, the maximum sentence is 10 years' imprisonment even if the value involved is less than £5,000 (*R v Alden* [2002] 2 Cr.App.R. (S) 74). The CBA would suggest that to avoid any confusion, the guideline for criminal damage offences where the value is less than £5000 should state that unless in exceptional circumstances, it should be applied regardless of the mechanism by which the count is added to the indictment.
17. On the title page of each of the 5 draft guidelines, is the following caption

'Where offence committed in a domestic context, also refer to the Domestic Abuse: Overarching Principles guideline'. This is a well thought out addition given the fact that arson and criminal damage offences are often committed in a domestic context and often in combination with other types of offending against partners and relatives.

18. In respect of the draft guidelines for arson in its simple and aggravated forms (and threats to do the same), at the foot of the respective sentencing tables, sentencers are advisers to consider obtaining psychiatric reports where there may be an underlying mental health disorder. This follows (to some extent) the guidance in *R v Calladine*, *The Times*, 3rd December 1975, CA that it is unwise to sentence in a case of arson without a psychiatric report.
19. However, although the draft guidelines for: simple arson offences; criminal damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage; criminal damage (other than by fire) value under £5,000, and racially or religiously aggravated criminal damage; and threats to destroy or damage property includes the following indicative factor of lesser culpability: *'Offender's responsibility substantially reduced by mental disorder or learning disability'*. However, it later adds the caveat *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'*. This is replicated (in the context of mental disorder or learning disability as a mitigating factor) in the sentencing approaches for criminal damage/ arson with intent to endanger life or reckless as to whether life is endangered.
20. The treatment of 'reduced responsibility' based on mental disorder or leaning disability, as a culpability factor for some offences and a mitigating factor for other offences, is not inconsistent *per se*. However, the caveat (as drafted) could give the suggestion that mental illness can be self-induced (and thus, is less deserving of leniency). The reality is that it is not always possible to ascertain the cause of mental illness (certainly without clear medical evidence which will not always be available) or whether the abuse of drugs or alcohol (which exacerbates the disorder) is a symptom of the disorder itself. Offenders do not want to be mentally unwell, and often it is the illness that drives them to abuse substances. To reflect this, the CBA suggests that the caveat should be amended to read *'Reduced weight may be given to this factor where there is medical evidence that the offender's mental disorder is treatable and there is demonstrable evidence that the offender has failed or refused to follow medical advice or accept help that could have prevented the commission of the offence'*.
21. We would ask that consideration is given to inserting a sentence above the sentencing ranges in terms similar to *"Where there is a sufficient prospect of*

rehabilitation or mental health treatment, a community order with appropriate requirements can be a proper alternative to a short or moderate length custodial sentence". Given the frequency within which arson and criminal damage cases relate to those with mental health issues, we would ask that consideration to including this be given. This caveat would be similar to the one used in the sexual offences guidelines where there is a sufficient prospect of rehabilitation.

22. In terms of the aggravating and mitigating factors, they are sensible and comprehensive. However, they do not cater for the situation where an offender omits to act after accidentally causing a fire, (which would make him/her guilty nonetheless - *R. v. Miller [1983] 2 A.C. 161, HL*). This could be factored into the draft guideline in the culpability sections, but that might clutter them. It therefore may be better reflected as a mitigating factor, expressed as '*offender caused the fire accidentally * but reduced weight may be given to this factor where an offender accidentally caused the fire and did little if anything thereafter to minimize its effect*'.
23. In respect of racially aggravated offences of criminal damage, the draft guideline proposes that sentencers should first decide the appropriate sentence for the base offence (whether it be criminal damage over or under £5000) and then apply an appropriate uplift based on the level of racial or religious aggravation. This approach is in line with current sentencing practice for hate crimes as *R v Kelly and Donnelly [2001] EWCA Crim 170* and is an appropriate way of handling this potentially significant aggravating factor.
24. Finally, there is a typographical error in the draft guideline at page 65, where it states that racially or religiously aggravated criminal damage carries a maximum sentence of 10 years, whereas section 30(2)(b) of the Crime and Disorder Act 1998 provides that the maximum sentence is 14 years.

Structure of draft guideline

(1) ARSON

25. The assessment of culpability is based on the following factors:

Culpability demonstrated by one or more of the following	
A – High culpability	<ul style="list-style-type: none">• High degree of planning or premeditation• Revenge attack• Use of accelerant• Intention to cause very serious damage to property• Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none">• All other cases that fall between categories A and C• Intention to cause significant damage to property• Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none">• Little or no planning; offence committed on impulse• Offender's responsibility substantially reduced* by mental disorder or learning disability• Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

26. The assessment of harm is based on the following factors:

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none">• Serious physical and/or psychological harm caused• Serious consequential economic or social impact of offence• High value of damage caused
Category 2	<ul style="list-style-type: none">• Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none">• No or minimal physical and/or psychological harm caused• Low value of damage caused

27. The following sentencing table is based on the earlier assessments of harm and culpability:

In exceptional cases within category 1A, sentences of above 8 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 4 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 2 – 8 years' custody	Category range 9 months – 3 years' custody	Category range 6 months – 1 year 6 months' custody
Category 2	Starting point 2 years' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 – 4 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Low level community order
	Category range 6 months – 2 years' custody	Category range Medium level community order – 9 months' custody	Category range Discharge – High level community order

28. Starting point sentences are then adjusted based on the following aggravating and mitigating factors:

Factors increasing seriousness	
Statutory aggravating factors:	
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction	
Offence committed whilst on bail	
Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.	
Other aggravating factors:	
Commission of offence whilst under the influence of alcohol or drugs	
Victim is particularly vulnerable	
Fire set in or near a public amenity	
Damage caused to heritage assets	
Significant impact on emergency services or resources	
Established evidence of community/wider impact	
Failure to comply with current court orders	
Offence committed on licence or post sentence supervision	
Offences taken into consideration	

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address offending behaviour

(2) Criminal Damage/ Arson with intent to endanger life or reckless as to whether life is endangered

29. The assessment of culpability is based on the following factors:

Culpability A:	<ul style="list-style-type: none"> Offender intended to endanger life
Culpability B:	<ul style="list-style-type: none"> Offender was reckless as to whether life was endangered

30. The assessment of harm is based on the following factors:

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> Very serious physical and/or psychological harm caused High risk of very serious physical and/or psychological harm Serious consequential economic or social impact of offence caused Very high value of damage caused
Category 2	<ul style="list-style-type: none"> Significant physical and/or psychological harm caused Significant risk of serious physical and/or psychological harm Significant value of damage caused All other harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> No or minimal physical and/or psychological harm caused Low risk of serious physical and/or psychological harm Low value of damage caused

31. The following sentencing table is based on the earlier assessments of harm and culpability:

In exceptional cases within category 1A, sentences of above 12 years may be appropriate.

Harm	Culpability	
	A	B
Category 1	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 – 12 years' custody	Category range 4 – 10 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 6 months – 3 years' custody	Category range High level community order – 2 years 6 months' custody

32. Starting point sentences are then adjusted based on the following aggravating and mitigating factors:

Factors increasing seriousness
<i>Statutory aggravating factors:</i>
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
Offence committed whilst on bail
Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity.
<i>Other aggravating factors:</i>
Commission of offence whilst under the influence of alcohol or drugs
Revenge attack
Significant degree of planning or premeditation
Use of accelerant
Fire set in or near a public amenity
Victim is particularly vulnerable
Damage caused to heritage assets
Multiple people endangered
Significant impact on emergency services or resources
Established evidence of community/wider impact
Failure to comply with current court orders
Offence committed on licence or post sentence supervision
Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Involved through coercion, intimidation or exploitation
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Offender's responsibility substantially reduced* by mental disorder or learning disability
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

(3) Criminal Damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage

33. The assessment of culpability is based on the following factors:

Culpability demonstrated by one or more of the following:	
A – High culpability	<ul style="list-style-type: none"> • High degree of planning or premeditation • Revenge attack • Intention to cause very serious damage to property • Recklessness or intention to create a high risk of injury to persons
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C • Intention to cause significant damage to property • Recklessness or intention to create a significant risk of injury to persons
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender’s responsibility substantially reduced* by mental disorder or learning disability • Involved through coercion, intimidation or exploitation

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

34. The assessment of harm is based on the following factors:

Harm The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress caused • Serious consequential economic or social impact of offence • High value of damage or damaged items of great sentimental value
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused • Low value damage

35. The following sentencing table is based on the earlier assessments of harm and culpability:

Harm	Culpability		
	A	B	C
Category 1	Starting point 1 year 6 months' custody	Starting point 6 months' custody	Starting point High level community order
	Category range 6 months – 4 years' custody	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 6 months' custody	Starting point High level community order	Starting point Low level community order
	Category range High level community order – 1 year 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 1 year's custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order

36. Starting point sentences are then adjusted based on the same aggravating and mitigating factors proposed in the arson offence, with the exception of *'fire set in or near a public amenity'*, for obvious reasons.

37. Having adjusted the starting point sentence based on the aggravating and mitigating factors, and having arrived at a notional sentence for the base offence, the following factors must then be considered in racially or religiously aggravated offences in order to determine the level of aggravation:

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation was the predominant motivation for the offence. Offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence). Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Racial or religious aggravation formed a significant proportion of the offence as a whole. Aggravated nature of the offence caused some distress to the victim or the victim's family (over and above the distress already considered at step one). Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> Aggravated element formed a minimal part of the offence as a whole. Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	Consider a more onerous penalty of the same type identified for the basic offence.

(4) Criminal Damage (other than by fire) value under £5000

38. The assessment of culpability is based on the same factors as identified for offences over criminal damage where the value of the damage is over £5000:
39. The assessment of harm is based on the following factors:

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> Serious distress caused Serious consequential economic or social impact of offence High value of damage or items damaged of great sentimental value
Category 2	<ul style="list-style-type: none"> All other cases

40. The following sentencing table is based on the earlier assessments of harm and culpability:

Harm	Culpability		
	A	B	C
Category 1	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Medium level community order – 3 months' custody	Category range Band C fine – High level community order	Category range Discharge – Low level community order
Category 2	Starting point Low level community order	Starting point Band B fine	Starting point Band A fine
	Category range Band C fine – High level community order	Category range Discharge – Low level community order	Category range Discharge – Band B fine

41. Starting point sentences are then adjusted based on the same aggravating and mitigating factors identified for offences over criminal damage where the value of the damage is over £5000:

(5) Threats to destroy or damage property

42. The assessment of culpability is based on the following factors:

Culpability demonstrated by one or more of the following:	
A – High culpability	<ul style="list-style-type: none"> • Significant planning or premeditation • Offence motivated by revenge • Threat to burn or bomb property
B – Medium culpability	<ul style="list-style-type: none"> • All other cases that fall between categories A and C
C – Lesser culpability	<ul style="list-style-type: none"> • Little or no planning; offence committed on impulse • Offender's responsibility substantially reduced* by mental disorder or learning disability

* Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice.

43. The assessment of harm is based on the following factors:

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress caused to the victim • Serious disruption/inconvenience caused to others
Category 2	<ul style="list-style-type: none"> • Harm that falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • No or minimal distress caused to the victim

44. The following sentencing table is based on the earlier assessments of harm and culpability:

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years 6 months' custody	Starting point 9 months' custody	Starting point High level community order
	Category range 1 year – 5 years' custody	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody
Category 2	Starting point 9 months' custody	Starting point High level community order	Starting point Medium level community order
	Category range 6 months – 1 year 6 months' custody	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order
Category 3	Starting point High level community order	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 9 months' custody	Category range Band C fine – High level community order	Category range Discharge – Medium level community order

45. Starting point sentences are then adjusted based on the following aggravating and mitigating factors:

Factors increasing seriousness
Statutory aggravating factors:
Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
Offence committed whilst on bail
Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation, or transgender identity
Other aggravating factors:
Commission of offence whilst under the influence of alcohol or drugs
Victim is particularly vulnerable
Threats made in the presence of children
Considerable damage threatened
Established evidence of community/wider impact
Failure to comply with current court orders
Offence committed on licence or post sentence supervision
Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation
No previous convictions or no relevant/recent convictions
Remorse
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity where it affects the responsibility of the offender
Sole or primary carer for dependent relatives
Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Survey responses

(1) Arson

46. Question 1: Do you agree with the proposed factors within culpability? If not, please tell us why.
- a. Yes, subject to the observation about *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'*.
47. Question 2: Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- a. Yes.
48. Question 3: Do you agree with the proposed sentence table? If not, please tell us why.
- a. Yes.
49. Question 4: Do you agree with the inclusion of this text within the guideline?
- a. Yes.
50. Question 5: Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
- a. Yes. Subject to the observation about offenders who cause fires accidentally and then omit to act thereafter.

(2) Criminal Damage/ Arson with intent to endanger life or reckless as to whether

life is endangered

51. Question 6: Do you agree with the proposed approach to culpability for this offence?
- a. Yes.
52. Question 7: Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- a. Yes.
53. Question 8: Do you agree with the proposed sentence table? If not, please tell us why.
- a. Yes.
54. Question 9: Do you agree with the inclusion of this text within the guideline, and the detailed information on mental health disposals at step three?
- a. Yes.
55. Question 10: Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
- a. Yes. Subject to the observation about *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'* and to the observation about offenders who cause fires accidentally and then omit to act thereafter.

(3) Criminal Damage (other than by fire) value over £5,000, and racially or religiously aggravated criminal damage

56. Question 11: Do you agree with the proposed culpability factors? If not, please tell us why.
- a. Yes, subject to the observation about *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'*.
57. Question 12: Do you agree with the proposed harm factors for this offence? If not, please tell us why.

a. Yes.

58. Question 13: Do you agree with the proposed sentence table? If not, please tell us why.

a. Yes.

59. Question 14: Do you agree with the proposed approach to the sentencing of racially or religiously aggravated criminal damage offences? If not, please tell us why and suggest any alternative approaches which you think should be considered.

a. Yes.

(4) Criminal Damage (other than by fire) value under £5000

60. Question 15: Do you agree with the proposed culpability factors? If not, please tell us why.

a. Yes, subject to the observation about *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily **abusing drugs or alcohol or by voluntarily failing to follow medical advice**'*.

61. Question 16: Do you agree with the proposed harm factors for this offence? If not, please tell us why.

a. Yes.

62. Question 17: Do you agree with the proposed sentence table? If not, please tell us why.

a. Yes.

63. Question 18: Do you agree that there should be two separate guidelines, one for offences where the value exceeds £5,000, and one for offences where the value is under £5,000? If you do not agree, please tell us why and suggest any alternative approaches.

a. On balance the CBA agrees that there should be two separate guidelines, but would suggest that the guideline for criminal damage offences where the value is less than £5000 should state that unless in exceptional circumstances, it should be applied regardless of the mechanism by

which the count is on the indictment.

(5) Threats to destroy or damage property

64. Question 19: Do you agree with the proposed culpability factors for this offence? If not, please tell us why.
- a. Yes, subject to the observation about *'Reduced weight may be given to this factor where an offender exacerbates a mental disorder by voluntarily abusing drugs or alcohol or by voluntarily failing to follow medical advice'*.
65. Question 20: Do you agree with the proposed harm factors for this offence? If not, please tell us why.
- a. Yes.
66. Question 21: Do you agree with the proposed sentence table? If not, please tell us why.
- a. Yes.
67. Question 22: Do you agree with the inclusion of this text within the guideline?
- a. Yes.
68. Question 23 Do you agree that the proposed aggravating and mitigating factors cover the most likely factors that would apply to these offences? If not, please tell us why.
- a. Yes.
69. Question 24: Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.
- a. No.

Thomas Schofield,
No5 Chambers.
The Criminal Bar Association

6th June 2018