



Response to the Sentencing Council's professional consultation on the draft guideline on burglary offences

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About the Criminal Justice Alliance

The Criminal Justice Alliance (CJA) is a coalition of 58 organisations - including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions - involved in policy and practice across the criminal justice system. The CJA's current member organisations are: Action for Prisoners' Families; Adullam Homes Housing Association; the Apex Charitable Trust; the Association of Black Probation Officers; the Association of Members of Independent Monitoring Boards; Birth Companions; Carers Federation; Catch22; the Centre for Crime and Justice Studies; the Centre for Mental Health; Chance UK; the Children's Society; the Churches' Criminal Justice Forum; Circles UK; Clean Break; Clinks; Concord Prison Trust; DrugScope; the Fawcett Society; the Griffins Society; Gwalia Care and Support; Hafal; INQUEST; the Institute for Criminal Policy Research; JUSTICE; Leap; Nacro; the National Appropriate Adult Network; the New Bridge Foundation; Pact; Partners of Prisoners and Families Support Group; Penal Reform International; the Police Foundation; the Prison Officers' Association; the Prison Reform Trust; Prisoners Abroad; Prisoners' Advice Service; the Prisoners Education Trust; the Prisoners Families and Friends Service; the Public and Commercial Services Union; the Quaker Crime, Community and Justice Group; RAPt; Release; the Restorative Justice Council; Rethink; Revolving Doors Agency; the RSA Prison Learning Network; Safe Ground; SOVA; the St Giles Trust; Transform Drug Policy Foundation; UNLOCK; User Voice; Women in Prison; Women's Breakout; Working Chance; the Young Foundation; and Young Minds.¹ The Criminal Justice Alliance works to establish a fairer and more effective criminal justice system.

Introduction

The CJA is pleased to have the opportunity to participate in the Sentencing Council's consultation on the draft burglary offences guideline. We supported the establishment of a new Sentencing Council and believe that the Council can promote stability and consistency in sentencing and improve the availability of data and other information about sentencing, while also playing a role in reviving public confidence in the sentencing process and maintaining judicial confidence.

The CJA supports the overall structure of the guideline, and welcomes the inclusion of a number of specific features, including: the recognition of 'Mental disorder and learning disability' as a factor indicating lower culpability at step 1 and as a potential mitigating factor at step 2; the recognition of 'Age and/or lack of maturity', 'Determination, and/or demonstration of steps taken to address addiction or offending behaviour' and 'Sole or primary carer for dependent relatives' as mitigating factors at step 2; and the recognition of the importance of restorative justice principles. However, we are disappointed that the Sentencing Council has not recognised lack of maturity as a factor indicating lower culpability at step 1, as we have previously urged. We are also disappointed that the Council has not taken this opportunity to halt the drift towards substantially longer sentences for domestic burglary offences. The prison population in England and Wales recently reached an all-time high, and the prison estate is currently severely overcrowded; the prison system does not, consequently, have the space or resources to engage meaningfully with prisoners, and reoffending rates are accordingly high. We therefore urge the Sentencing Council to take positive steps towards addressing this by lowering the starting points and offence ranges for all domestic burglary offences, and by promoting a greater focus on community sentences for lower level domestic burglary offences.

¹ Although the CJA works closely with its members, this consultation response should not be seen to represent the views or policy positions of each individual member organisation.

Response to the consultation questions

We have responded to the consultation questions on which we have a view below.

Question 1

Do you agree that there should be three offence categories?

Yes. We agree with the Sentencing Council that the three offence category model provides a clear structure for assessment of the level of an individual offence, and believe that the continued use of this approach, which was first set out in the recently implemented assault guideline, will help to promote consistency of sentencing.

Question 2

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

Overall, the CJA agrees with the harm and culpability factors proposed at step one, and is supportive of the approach taken. We are, in particular, very pleased that, as with the assault guideline, 'Mental disorder or learning disability' has been included as a factor indicating lower culpability, as well as a factor reflecting personal mitigation at step 2. We are also pleased that 'Offender exploited by others' has been included as a factor indicating lower culpability, as recommended by the Sentencing Advisory Panel in their advice to the Sentencing Guidelines Council on sentencing for domestic burglary. As the Sentencing Advisory Panel acknowledged, "whatever the role of the offender, he or she may have been exploited by others due to vulnerability relating to factors such as age, maturity or intelligence."² However, we would urge the Council to go further in its recognition of maturity, and specifically, lack of maturity, as a factor impacting on the culpability of the offender. We would echo the recommendation of the Transition to Adulthood (T2A) Alliance, the work of which the CJA has contributed to and whose submission to this consultation the CJA endorses, that where it is linked to the commission of an offence, lack of maturity should be explicitly recognised as a factor indicating lower culpability at step 1.

A recent review of research and other literature relating to the issue of the maturity of young adult offenders, commissioned by the Barrow Cadbury Trust (which convenes the T2A Alliance) and conducted by the University of Birmingham, has found that "development of those areas of the brain concerned with higher order cognitive processes and executive functions, including control of impulses and regulation and interpretation of emotions, continues into early adulthood; the human brain is not 'mature' until the early to mid-twenties."³ As such, young adults potentially face greater difficulties in controlling behaviour, are more prone to risky behaviour and are less able to plan for the future. As the T2A Alliance sets out in their submission to this consultation, "this suggests that young adults' levels of maturity may affect their culpability." We therefore support their recommendation that 'Age/lack of maturity where linked to the commission of the offence' should be included as a factor indicating lower culpability, taken into account at step 1 of the guideline, and, to prevent double counting, 'Age/lack of maturity where not linked to the commission of the offence' should be included as a factor reflecting personal mitigation, taken into account at step 2 of the guideline. We believe, additionally, that this should be the case for all future sentencing guidelines.

We are pleased that, for offences of domestic burglary and non-domestic burglary, 'Offence committed on impulse' is recognised as a factor indicating lower culpability, although we would question the need for qualification of this with 'with limited intrusion into property'. In its advice, the Sentencing Advisory Panel recognised that "in *Saw the*

² p.17: Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing for domestic burglary*.

³ p.8: Prior, D. et al (2011) *Maturity, young adults and criminal justice: A literature review* - available at <http://www.t2a.org.uk/publication-download.php?id=42>

Court confirmed that where a domestic burglary is committed on impulse this will indicate a lesser degree of culpability”⁴, and did not seek to narrow the application of this factor in any way. Indeed, we would argue that ‘limited intrusion into property’ is, more properly, a factor relating to harm, and that to include this as part of a factor relating to culpability risks confusion.

Question 3

Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

As we highlighted in our responses to the consultations on the assault and drug offences guidelines, for those with mental health problems or learning disabilities or difficulties, the experience of the criminal justice system, and in particular custody, can be extremely distressing.⁵ It is therefore entirely appropriate that ‘Mental disorder or learning disability’ is recognised as a factor reflecting personal mitigation at step 2, and we are very pleased at its continued inclusion.

Additionally, we welcome the continued inclusion of ‘Age and/or lack of maturity’ as a mitigating factor at step 2. As the T2A Alliance has argued in their submission to this consultation, there is extensive evidence, both developmental and demographic, that ‘young adulthood’ is a particular stage in life and that young adults require distinct treatment because of their levels of maturity and the economic, social and structural factors that specifically impact upon them. It is, therefore, appropriate that the maturity of young adults should be recognised within the criminal justice system, including in sentencing. However, as we have set out in our response to the previous question, we believe that lack of maturity may also affect the culpability of a young adult offender. In line with the T2A Alliance’s recommendations, we therefore believe that ‘Age/lack of maturity where linked to the commission of the offence’ should be included as a factor indicating lower culpability, taken into account at step 1 of the guideline, and, to prevent double counting, ‘Age/lack of maturity where not linked to the commission of the offence’ should be included as a factor reflecting personal mitigation, taken into account at step 2 of the guideline.

We are also pleased that ‘Sole or primary carer for dependent relatives’ has been included as a mitigating factor, as it was in the definitive guideline on assault, and in the draft guideline on drug offences. As we have set out in previous responses, imprisonment of a parent is extremely damaging, with children of prisoners having about three times the risk of developing mental health problems compared to their peers and experiencing higher levels of social disadvantage. In spite of this, however, about 160,000 children a year have a parent sent to custody and 7% of all children will see a parent imprisoned during their school years.⁶ The recognition of caring responsibilities as a mitigating factor is of particular relevance to female offenders: at least one third of women offenders are lone parents prior to being imprisoned, and it is estimated that up to 17,700 children each year are separated from their mothers due to imprisonment. Just 5% of the children of women offenders remain in their own home once their mother has been sentenced.⁷ The effect of a custodial sentence on a female offender who is the sole carer for her children can, therefore, be severe, not only for her but also for her children.

⁴ p.16: Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing for domestic burglary*.

⁵ See, for instance, Durcan, G. (2008) *From the inside: Experiences of prison mental health care*, London: Centre for Mental Health, and Loucks, N. (2007) *No one knows: Offenders with learning difficulties and learning disabilities - Review of prevalence and associated needs*, London: Prison Reform Trust.

⁶ Action for Prisoners’ Families, Clinks, pact and the Prison Reform Trust (2007) *The children and families of prisoners: Recommendations for Government* - Parliamentary briefing

⁷ Smee, S. (2009) *Engendering justice - From policy to practice*, London: The Fawcett Society.

We welcome the inclusion of 'Subordinate role in group or gang' as a mitigating factor at step 2. We also welcome the inclusion of 'Offender has made voluntary reparation to the victim' as a mitigating factor, which we believe will help to encourage wider use of restorative justice in the adult criminal justice system. As we have set out in a recently published briefing,⁸ there are clear benefits to restorative justice. It has high victim satisfaction rates: research published by the Ministry of Justice found that 85% of victims said they were very or quite satisfied with the conferencing they experienced, and almost 80% would recommend it to others.⁹ As a report by Victim Support has highlighted, restorative justice can also help victims to feel a sense of closure, and can be effective in alleviating post-traumatic stress symptoms for victims of serious crime.¹⁰ It also reduces reoffending. As the evidence report published alongside the criminal justice green paper 'Breaking the Cycle' documents, analysis of Ministry of Justice research data found that restorative justice reduced the frequency of reoffending by around 14%.¹¹ Moreover, a 2007 review of research on restorative justice in the UK and abroad has shown that it can be effective in reducing reoffending for a range of offences, and found substantial reductions in repeat offending for both violent and property crime.¹² Finally, restorative justice can deliver cost savings. Analysis conducted by the Restorative Justice Council, a member of the CJA, and Victim Support has found that offering pre-sentence restorative justice to all victims of burglary, robbery and violence against the person in cases where the offender pleads guilty would deliver cashable cost savings of £185 million to criminal justice agencies over two years as a result of a reduction in reconviction rates.¹³ We believe that the Sentencing Council has an important role to play in promoting the use of restorative justice at the pre-sentence stage, as well as its use as all or part of a sentence, and we would urge the Council to consider what further steps it could take in this area.

We are pleased at the inclusion of 'Determination, and/or demonstration of steps taken to address addiction or offending behaviour' as a factor reflecting personal mitigation: this may be of particular benefit if it leads to a community order or suspended sentence order being imposed instead of a custodial sentence. As the draft guideline acknowledges, many offenders convicted of acquisitive crimes are motivated by an addiction, often to illegal drugs or alcohol. However, as we have previously highlighted in our response to the consultation on the drug offences guideline, prison is, generally, a problematic environment in which to deliver drug and alcohol treatment. Current levels of overcrowding - at present, over 60% of the prisons in England and Wales are officially

⁸ Criminal Justice Alliance (2011) *Restorative Justice: Time for action* - available at <http://criminaljusticealliance.org/RJtimeforaction.pdf>

⁹ Shapland, J. et al (2007) *Restorative justice: The views of victims and offenders. The third report from the evaluation of three schemes*, London: Ministry of Justice.

¹⁰ Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing* - available at <http://www.victimsupport.com/About%20us/Policy%20and%20research/-/media/Files/About%20us/News/Sentencing%20report%202010/Victim-Support-Sentencing-report-Dec-2010>

¹¹ Ministry of Justice (2010) *Green Paper evidence report*, London: Ministry of Justice.

¹² Sherman, L. and Strang, H. (2007) *Restorative justice: The evidence* - available at http://www.esmeefairbairn.org.uk/docs/RJ_full_report.pdf

¹³ Restorative Justice Council (2011) *A new way of doing justice: The response of the Restorative Justice Council to 'Breaking the Cycle'* - available at http://www.restorativejustice.org.uk/assets/_ugc/fetch.php?file=5kn7_a_new_way_of_doing_justice_restorative_justice_council_response_to_breaking_the_cycle_green_paper_5hybc.pdf; see also Victim Support (2010) *Victims' justice? What victims and witnesses really want from sentencing* - available at <http://www.victimsupport.com/About%20us/Policy%20and%20research/-/media/Files/About%20us/News/Sentencing%20report%202010/Victim-Support-Sentencing-report-Dec-2010>

overcrowded¹⁴ - and the subsequent pressure on prison places means that there is significant movement of prisoners ('churn') within the prison estate, which disrupts the delivery of programmes; short prison sentences rarely allow enough time for programmes to be completed; and there is insufficient capacity for the numbers of prisoners that need access to treatment programmes.

Additionally, the widespread availability of drugs in prisons makes it a wholly unsuitable environment for treatment. The Blakey Review observed that "anecdotally, and in the press, one hears of prisons being 'awash' with drugs and research and interviews with prisoners conducted outside of this review would seem to indicate a ready availability. Certainly substantial amounts of all types of drugs do get into prisons."¹⁵ Many prisoners with drug or alcohol dependencies also have mental health problems; however, prisons have very limited provision for dual diagnosis. The Centre for Mental Health, a member of the CJA, has argued that "there is a big gap in dual diagnosis services in prisons and a lack of co-ordination between different teams".¹⁶ A later study reported that mental health and substance misuse services recognised the need to work closely together, but largely failed to do so.¹⁷ As such, we firmly believe that community sentences, with treatment requirements, should be used wherever possible, and believe that the inclusion of this mitigating factor should help towards this. As we set out below, in response to Question 6, we also believe that further guidance on the selection of sentences for dependent offenders would be a positive addition to the guideline.

We are disappointed that the Sentencing Council has decided against the inclusion of financial pressure as a mitigating factor. Whilst financial pressure that is exceptional and not of the offender's making, which the Council believes constitutes offender mitigation, may be relatively rare, we nevertheless believe that, where it does occur, it is of sufficient significance to be considered, and it should therefore be included to prevent it being overlooked by sentencers. We would also echo the concern of the T2A Alliance that, as a result of higher levels of unemployment and lower levels of benefits, financial pressure is likely to be concentrated within the young adult age group; as such, omitting this as a mitigating factor could have a disproportionate impact on young adults, who may receive unnecessarily severe sentences as a result.

Finally, we would question the inclusion of 'Established evidence of community impact' as an aggravating factor. As we set out in our response to the draft drug offences guideline, we believe that the inclusion of this factor imposes a disproportionate burden of responsibility on an individual for wider societal circumstances. It is, additionally, questionable how widely community impact statements are used, which could lead to inconsistent application of this as an aggravating factor, or indeed, how representative of a community's views such a statement might or can be.

Question 4

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

As we have set out in response to Question 3, the CJA welcomes the draft guideline's recognition of the importance of restorative justice principles, and we believe that this adds to the guideline's consideration of the needs of victims. As we have highlighted above, Ministry of Justice research has shown restorative justice to have high victim

¹⁴ <http://www.justice.gov.uk/downloads/publications/statistics-and-data/hmps/prison-population-bulletin-june.doc>

¹⁵ p.7: Blakey, D. (2008) *Blakey Review: Disrupting the supply of illegal drugs into prisons* - available at <http://www.justice.gov.uk/publications/docs/blakey-report-disrupting.pdf>

¹⁶ p.5: Centre for Mental Health (2007) *Mental health care in prisons*, London: Centre for Mental Health.

¹⁷ Durcan, G. (2008) *From the Inside: Experiences of prison mental health care*, London: Centre for Mental Health.

satisfaction rates; it also demonstrated that restorative justice can enable victims to move on from the offence, with more than 70% of victims feeling that they had been provided with a sense of closure.¹⁸ We would, in addition, highlight evidence given by Victim Support to the Justice Committee on the draft burglary guideline, which emphasised that restorative justice “improves the victim’s confidence in the criminal justice system”.¹⁹ We would, therefore, repeat our suggestion, set out above, that the Sentencing Council considers what further steps it could take to encourage more widespread use of restorative justice, particularly at the pre-sentence stage, and as all or part of a sentence.²⁰

Question 5

Do you agree with the proposed approach to previous convictions?

The CJA does not believe that, in the text that describes the function of the step two factors, it is necessary for the guideline to highlight that ‘in particular, relevant recent convictions are likely to result in an upward adjustment’. The statutory duty, under section 143(2) of the *Criminal Justice Act 2003*, for sentencers to take account of recent and relevant previous convictions when assessing the seriousness of an offence, is already highlighted in the guideline through its inclusion as a statutory aggravating factor at step 2. The duty is, therefore, clearly set out, and a further reminder is unnecessary. Additionally, and as the draft guideline acknowledges, though the rate of previous convictions for burglary is higher than for some other offences, it is far from exceptional in this regard, with the rate of previous convictions for shoplifting, for instance, significantly higher. As such, the idea that the record of the offender is of more significance in the case of burglary offences than other crimes is, in our opinion, questionable; we do not, therefore, believe that the inclusion of the additional text can be justified on this basis.

Whilst we recognise that it is beyond the remit of the Sentencing Council to address this, we would like to set out the CJA’s firm opposition to the use of mandatory minimum sentences. The evidence for the deterrent value of such sentences is non-existent;²¹ moreover, mandatory minimum sentences do not allow the specific circumstances of an offence to be taken into account by the individual sentencer and, as such, can lead to the disruption of proportionality, fairness and consistency in sentencing. With regards to the statutory minimum sentence for an adult offender convicted of a third domestic burglary, we agree with the Council that it is unnecessary for the guideline to set out specific guidance on the decision not to impose the minimum sentence, as this is well understood by sentencers. In line with this, we also believe that the requirement to impose the statutory minimum sentence is well known and understood by sentencers, and as such, we believe that the additional text in the guideline that highlights this duty is unnecessary.

Question 6

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

As we have set out earlier (see Question 3, above) we believe that, where an offender has an addiction, the imposition of a community sentence is often a more appropriate and constructive response than the use of custody. As such, whilst we acknowledge the guidance included in the guideline relating to the custody threshold, and believe that this

¹⁸ Shapland, J. et al (2007) *Restorative justice: The views of victims and offenders. The third report from the evaluation of three schemes*, London: Ministry of Justice.

¹⁹ House of Commons Justice Committee (2011) *Draft sentencing guidelines: drugs and burglary, Seventh report of session 2010-12*, London: The Stationery Office Limited.

²⁰ For further case study evidence of restorative justice following burglary offences see: <http://www.guardian.co.uk/commentisfree/2011/may/21/conversation-restorative-justice>; http://www.restorativejustice.org.uk/resource/the_woolf_within_peter_wills_story/

²¹ Ashworth, A. (2010) *Sentencing and criminal justice*, Cambridge: Cambridge University Press.

is helpful, we would recommend that additional guidance on the selection of sentences for dependent offenders should be included. Whilst we acknowledge the Council's concern about increasing the length of the guideline, we do not believe that this increase would be unnecessary, or that it would fail to add significant value. As the draft guideline recognises, many offenders convicted of acquisitive crimes are motivated by an addiction, and thus guidance of this nature would be of particular relevance here, and indeed particular value.

Though we would not disagree with the Council that considerations of dependency and the selection of sentence are well understood by sentencers, we are, nevertheless, concerned by the continuing underuse of some treatment options in the community, including the alcohol treatment requirement (ATR). Although almost half of probation clients are recorded as having an alcohol problem,²² last year 5,949 ATRs were started under a community order, accounting for just 2.7% of all community order requirements commenced in 2010.²³ Though there are range of barriers to sentencers' use of specific requirements, including lack of actual availability, research by the Centre for Crime and Justice Studies, a member of the CJA, has identified lack of knowledge about the availability of community order requirements in local areas as a significant issue contributing to underuse.²⁴ We believe that the inclusion of specific guidance on the range of sentences available for dependent offenders could help to address this by reminding sentencers of the options available to them in the community, and by prompting them to find out more and engage with the requirements available locally. If, however, the inclusion of this guidance in the burglary guideline is decided against, we would recommend that the Sentencing Council produces general guidance on the sentencing of dependent offenders in the near future.

Question 9

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

No. The CJA is disappointed that the Sentencing Council has not taken this opportunity to halt the drift towards substantially longer sentences for domestic burglary offences. As the analysis and research bulletin published alongside the draft guideline demonstrates, the average sentence length received by those sentenced to immediate custody for domestic burglary has increased in the past decade, from just over 1 year 7 months in 1999 to 1 year 11 months in 2009. Indeed, as the advice produced by the Sentencing Advisory Panel set out, for those sentenced in the Crown Court, the average custodial sentence increased from 20.9 months in 1998, to 24.8 months in 2008,²⁵ a rise that is far from insignificant.

We are concerned that the Sentencing Council has failed to take into account the increasingly punitive sentencing of domestic burglary offences in developing this guideline, and would argue that proportionality is not best served by reflecting current sentencing practice. We would, therefore, recommend that lower starting points and offence ranges are set out for all three offence categories; more specifically, we would strongly recommend that custody is not available as an option for category 3 domestic burglary offences. As the Sentencing Advisory Panel highlighted in its advice, offences of

²² Fitzpatrick R. and Thorne L. (2011) *A label for exclusion - Support for alcohol-misusing offenders*, London: Centre for Mental Health.

²³ Ministry of Justice (2010) *Offender management caseload statistics 2010* - available at <http://www.justice.gov.uk/publications/statistics-and-data/prisons-and-probation/oms-quarterly.htm>

²⁴ Mair, G., Cross, N. and Taylor, S. (2008) *The community order and the suspended sentence order: The views and attitudes of sentencers*, London: Centre for Crime and Justice Studies.

²⁵ p.10: Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing for domestic burglary*.

domestic burglary vary broadly in their levels of seriousness, and can include opportunistic offences involving no forced entry, no damage and no theft.²⁶ Lowering the starting point and offence range for category 3 offences would ensure that sentencers are able to accurately reflect the seriousness of such offences, and deal with them appropriately. We believe that it would be possible to take such an approach without upsetting public confidence: as the guideline acknowledges, “research demonstrates that whilst some members of the public are of the view that domestic burglary generally merits imprisonment, this is not a universal view.”

As well as ensuring proportionality, we believe that a greater emphasis on community sentences would help to ensure that resources are focused on responses to offending that are efficient and effective; at a time of austerity, this is of particular importance. Ministry of Justice analysis has demonstrated that offenders receiving a community order reoffend at a lower rate than those receiving an immediate custodial sentence of less than twelve months, with the difference ranging between 5.9 and 8.3 percentage points for the years 2005 to 2008.²⁷ Indeed, it is well established that short prison sentences are highly ineffective in dealing with offending, with the most recent figures showing that 59.4% of those who are released having served a sentence of less than twelve months are reconvicted of a further offence within a year.²⁸

The prison population in England and Wales recently reached an all-time high,²⁹ and the prison estate is, as we have set out above, severely overcrowded at present. Consequently, the prison system does not, quite simply, have the space or resources to engage meaningfully with prisoners. We would therefore urge the Sentencing Council to take positive steps towards addressing this by lowering the starting points and offence ranges of all domestic burglary offences, and by ensuring that offenders who have committed lower level offences are directed towards effective community sentencing.

Question 10

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

In line with what we have set out above in relation to domestic burglary, we would also recommend that custody should be removed as an option for category 3 non-domestic burglary offences, and that the starting points and offence ranges for the other categories should be lowered accordingly, to ensure that proportionality is maintained.

Question 11

Are there any further comments you wish to make?

As we have set out previously in our response to the consultation on the drug offences guideline, we believe that a separate step should be inserted after step 5, once the appropriate sentence has been determined, where sentencers should consider whether a custodial sentence should be suspended in any case where the court has decided that the appropriate sentence is not more than twelve months' imprisonment (in accordance with the current criteria for suspended sentences as set out under section 189 of the Criminal Justice Act 2003). One reason why we believe it may be appropriate to suspend a custodial sentence is that the offender is the sole or primary carer for dependent relatives. As we

²⁶ p.11: Sentencing Advisory Panel (2010) *Advice to the Sentencing Guidelines Council: Sentencing for domestic burglary*.

²⁷ Ministry of Justice (2011) *Compendium of reoffending statistics and analysis* - available at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2011-compendium-reoffending-stats-analysis.pdf>

²⁸ Ministry of Justice (2011) *Adult reconvictions: Results from the 2009 cohort England and Wales* - available at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/adult-reoffending-statistics-09.pdf>

²⁹ <http://www.bbc.co.uk/news/uk-14252315>

have set out above in response to Question 3, the effect of the imprisonment of a sole or primary carer can be extremely damaging for children and, indeed, for other dependent family members. We believe that this consideration should, therefore, be specifically mentioned in the new step in order to allow full recognition of this.

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