

Sentencing Activity – You Be the Judge!

Using the sentencing guidelines used in the Magistrates and Crown Courts, work out what sentence would be given to the offenders in the scenarios below:

[sentencing guidelines - [Magistrates' courts sentencing guidelines – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)]

Search the offence on the website and follow the questions to work out the sentence.

Check your answers (below)

Scenario 1:

domestic burglary (Theft Act 1968 (section 9))

Rachel is a second year university student living in university halls of residence. She had run up significant debts during her time at university and was very worried about how to repay the money. One morning, she saw that a neighbouring student had left her bedroom door open on her way out. Rachel entered the room and stole £35 cash which was lying on the study table and a TV, which she later sold for £50. She was seen on CCTV and the university authorities reported the matter to the police. Following her arrest, Rachel co-operated fully with the police, and admitted what she had done immediately. She was very remorseful and paid back the money.

She has no previous convictions.

What levels of harm and culpability does the offender have?

What category of offence should the offender be placed in? What would the sentence starting point be? What aggravating and mitigating factors would you take into account?

Which of these sentencing options would you choose?

1. Conditional discharge
2. Community order with unpaid work of 40 hours
3. Community order with unpaid work of 150 hours
4. Immediate custodial sentence for three months

Scenario 2

domestic burglary (Theft Act 1968 (section 9))

Duncan is 22 and has a long-standing drug problem. While under the influence of drugs, he was walking down a residential street and saw an open window. He rang the doorbell of the house to check whether the owners were at home and, when there was no answer climbed in through the open window and stole a laptop, camera, jewellery and £50 cash which the victim says were left on the kitchen table. The police obtained fingerprint evidence that identified him. By the time of his arrest, he had sold the items he had stolen. The laptop and the camera were worth £500 and £200 respectively. They were of a high personal value to the victim, since their contents (including photographs of the victim's late father) hadn't been backed up and are therefore lost. The jewellery which was stolen, although not of high value, was also of sentimental value to the victim. He pleaded not guilty and was convicted following a trial.

He had a significant number of previous convictions - in the past five years he has received two custodial sentences, one for possession of Class A drugs and one for domestic burglary. He has also received two community orders for possession of drug offences, but had failed to comply with these.

However, he has recently become a father and says he wants to turn his life around to ensure he can be a good father, able to care and provide for his partner and son. He has voluntarily enrolled in a drug treatment programme, which his GP has arranged for him.

What levels of harm and culpability does the offender have?

What category of offence should the offender be placed in?

What would the sentence starting point be? What aggravating and mitigating factors would you take into account?

1. Community sentence for three years with drug rehabilitation requirement
2. Immediate custodial sentence for 12 months
3. Immediate custodial sentence for 18 months
4. Immediate custodial sentence for two years

Scenario 3:

domestic burglary (Theft Act 1968 (section 9))

Andrew, who is 25, noticed that an elderly couple had moved into a street near where he lives. One night, he went to their house and using a screwdriver, forced open a ground floor window, causing damage to the window frame. He got into the house quietly, but while he was going through the contents of the living room, he knocked over a vase. This woke the couple up who called the police but did not venture downstairs. He was arrested by the police as he was leaving the house, unaware that they had been called and were on the scene.

He has a number of relevant previous convictions: two for domestic burglary, together with a further two for actual bodily harm, and five for drug-related offending. The elderly couple no longer feel safe living alone in their home and became withdrawn and depressed. They have therefore put their house on the market, and plan to move to assisted accommodation.

What levels of harm and culpability does the offender have?

What category of offence should the offender be placed in? What would the sentence starting point be? What aggravating and mitigating factors would you take into account?

Which of these sentencing options would you choose?

1. Immediate custodial sentence for two and half years
2. Immediate custodial sentence for three years
3. Immediate custodial sentence for four years
4. Immediate custodial sentence for six years

Answers:

Scenario 1:

explanation Culpability and harm This case would come under lower culpability as it was committed on impulse with limited intrusion. In terms of harm, it is likely that the court would regard it as lesser harm as the property stolen was of low value.

Aggravating and mitigating factors Mitigating factors would include Rachel's lack of previous convictions, her remorse as demonstrated by repaying the money and co-operation with the police. **Guilty plea and Sentence** Lesser harm and lower culpability would place the offence in category 3 which has a range of a low level community order to 26 weeks' custody.

The starting point is a high level community order. There is a guilty plea at the earliest opportunity, which will lead to a reduction in the punitive elements of the sentence. A likely sentence could be a community order for 12 months with the following requirements:

1. Unpaid work 40 hours (reduced from 60 hours to reflect guilty plea)
2. Rehabilitation activity requirement – whereby Rachel would be required to undertake activities designed to prevent her from offending again.

Scenario 2:

explanation Culpability and harm This case would come under lower culpability as it was committed on impulse and does not contain any of the factors which would indicate higher culpability. It would come under greater harm as there was a significant loss to the victim. **Aggravating and mitigating factors** Duncan's previous convictions are aggravating factors as are his failure to comply with previous court orders and the fact that he committed this offence when he was under the influence of drugs.

The court would consider his determination to address his offending behaviour by enrolling on a drug treatment programme to be a mitigating factor; however the credit he would be given for any expression of remorse would be reduced by the fact that he was convicted after a trial.

Guilty plea and Sentence Greater harm and lower culpability would place the offence in category 2 which has a range of a high level community order to two years' custody.

The starting point is one year's custody. He was convicted after a trial, so there can be no reduction for a guilty plea. If the court is satisfied of his determination to address his drug abuse a high level community order with a drug rehabilitation requirement would be a likely sentence.

Otherwise a custodial sentence of 18 months would be likely.

Scenario 3:

explanation Culpability and harm This case would come under higher culpability as he deliberately targeted vulnerable victims; he planned the offence, took a screwdriver with him and caused damage. It would come under greater harm as the occupiers were at home and were caused significant trauma.

Aggravating and mitigating factors Andrew's previous convictions are aggravating factors and as this is his third conviction for a domestic burglary the court must impose a sentence of at least three years unless there are particular circumstances that would make it unjust to do so. The fact that the offence was committed at night is an additional aggravating factor.

There are no mitigating factors. Guilty plea and Sentence Greater harm and greater culpability would place the offence in category 1 which has a range of two to six years' custody.

The starting point is three years' custody. The guilty plea will lead to a reduction in the sentence of up to a third (the maximum reduction to a three year minimum term is 20 per cent).

The likely sentence on these facts is at least three years' custody.