



Mandy Banks
Office of the Sentencing Council
Room EB16
Royal Courts of Justice
London WC2A 2LL

18 June 2014

Dear Ms Banks,

Consultation on the draft Theft Offences Guideline

Thank you for the opportunity to comment on this draft Guideline.

The Institute for Archaeologists

The Institute for Archaeologists (IfA) is a professional body for the study and care of the historic environment. It promotes best practice in archaeology and provides a self-regulatory quality assurance framework for the sector and those it serves.

The IfA has over 3,000 members and more than 70 registered practices across the United Kingdom. Its members work in all branches of the discipline: heritage management, planning advice, excavation, finds and environmental study, buildings recording, underwater and aerial archaeology, museums, conservation, survey, research and development, teaching and liaison with the community, industry and the commercial and financial sectors.

IfA has successfully petitioned for a Royal Charter of Incorporation which was granted on 03 June 2014.

The draft Theft Offences Guideline

General

IfA welcomes the draft Theft Offences Guideline and, in particular, the identification of issues relating to heritage crime (any offence which harms the value of heritage assets and their settings to this and future generations) in the Guideline. The Institute is a member of the Alliance to Reduce Crime against Heritage (ARCH).

Research commissioned by English Heritage suggests that there are *'around 75,000 crimes affecting designated historic buildings and sites annually'* (see <http://www.english-heritage.org.uk/content/imported-docs/f-j/researchsummary.pdf>). Although heritage crime is not confined to offences under the Theft Act 1968, such crimes (including but not limited to metal theft) are a significant element. Nor is heritage crime concerned solely with structures. Artefacts of heritage value (which in many cases does not correlate with monetary value) are stolen, handled or taken without required reporting both in terrestrial and marine contexts. (For instance, those involved in activities such as metal detecting are subject to reporting requirements in the Treasure Act 1996 and those who recover material from shipwrecks are required to report such recoveries to the Receiver of Wreck under the Merchant Shipping Act 1995.)

English Heritage and ARCH have done much to promote awareness of heritage crime (and the issues which it raises) both amongst the general public and those involved in the administration of justice (see, for example, English Heritage's Guidance on Prosecutions and Alternative Disposals and on Heritage Crime Impact

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Statements: <http://www.english-heritage.org.uk/professional/advice/advice-by-topic/heritage-crime/what-is-heritage-crime-and-what-is-being-done-about-it/>). Although this is an English initiative, the devolved administrations are considering how similar schemes may be taken forward elsewhere in the United Kingdom.

In answering the following specific questions, IfA confines itself to addressing the draft Guideline insofar as it relates to heritage crime.

Specific Questions

Section three – Theft from a shop or stall

Q1. Do you agree with the proposed factors for theft from a shop or stall within these 3 categories? If not, please tell us why.

1.1 No comment.

Q2. Do you think the financial amounts in the three categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.

2.1 No comment.

Q3. Is the approach at harm B clear? Is it clear how the additional harm should be considered?

3.1 No comment.

Q4. Do you agree with the proposed approach to the treatment of previous convictions across all offences? If you do not agree, please tell us why.

4.1 No comment.

Q5. Do you agree with the proposed aggravating factors for theft from a shop or stall? If not, please specify which you would add or remove and why.

5.1 No comment.

Q6. Do you agree with the principle of treating prevalence as an aggravating factor? If not, please tell us how else you think this issue could be reflected within the guideline.

6.1 No comment.

Q7. Are there any other mitigating factors which are not listed here which you think should be? Please tell us any others you think should be included and why.

7.1 No comment.

Q8. Do you consider that the sentence passed in Scenario A is proportionate? Specifically, do you consider that a short custodial sentence in such a case is appropriate?

8.1 No comment.

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Q9. If you do not agree, please say what sentence should be passed and why.

9.1 No comment.

Q10. Please give your views on the proposed sentence levels for theft from shop in Scenario B.

10.1 No comment.

Q11. Do you think the mechanisms to move upwards from the starting point, including outside a category for previous convictions or for additional harm offer flexibility to sentencers? Are they clearly explained within the guideline?

11.1 No comment.

Q12. Do you feel the shop theft guideline gives the right level of guidance? If not, please tell us why.

12.1 No comment.

Section four – General theft

Q13. Do you agree that a single guideline is appropriate for general theft offences? If not, please tell us why not, including any other options for grouping these offences together.

13.1 A separate guideline for ‘heritage crime’ might be appropriate given the emphasis on financial loss in assessing harm in step one, notwithstanding the inclusion of ‘*the wider impact on the victim*’ in that step ‘*as a driver of the starting point*’ (and in the case of metal theft ‘*as a key driver of the starting point*’: see page 6 of the consultation document). Financial loss is an imperfect measure of public harm in relation to heritage assets. Other measures (such as the significance of the asset, the nature and extent of damage to the asset and its significance and the degree to which that damage is irreversible, given that heritage assets are finite and irreplaceable) should also be given appropriate consideration.

13.2 Furthermore, identification of a ‘*victim*’ is not straightforward in relation to ‘heritage crime’. Victims often cannot be individually identified and the effects of the crime extend to future generations.

Q14. Do you agree with the proposed factors within these three categories? If not, please tell us why.

14.1 Subject to the response under question 13, no comment.

Q15. Do you agree the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives and reasons why you believe these will provide greater assistance.

15.1 No comment.

Q16 Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

16.1 No. IfA strongly supports the reference to ‘Damage to heritage structures’ in ‘harm B’, but other property with heritage value (such as artefacts) can be affected. For instance, theft of artefacts from archaeological sites (in some instances categorised as ‘nighthawking’) is an issue. It would be better to use

the broader term 'heritage assets' (defined to include heritage structures and other material with heritage value).

16.2 It would also be helpful to make clear that metal theft is but one element of theft offences affecting the historic environment (albeit an important one). Another element, for instance, is the theft of material (still owned by the Crown) from Royal Naval wrecks. Indeed, the guideline makes no reference to theft offences in a marine context (see, for example, the recent conviction of two divers for related offences under the Merchant Shipping Act 1995: <https://www.gov.uk/government/news/divers-guilty-of-raiding-shipwrecks-without-declaring-their-find>).

Q17. Do you agree with the proposed aggravating and mitigating factors for general theft? If not, please specify which you would add or remove and why.

17.1 Yes. Evidence of community / wider impact should take account of the wider impact on the community of theft in relation to heritage assets

Q18. Do you consider that the mechanisms to move upwards from the starting point, including outside a category range due to the level of previous convictions/additional harm caused to the victim, and the prevalence leads to a proportionate sentence in Scenario C?

18.1 No comment.

Q19. Do you consider the mechanism to adjust the sentence upwards including outside the category range due to the additional harm caused to the victim/amount of previous convictions/prevalence issue is workable?

19.1 No comment.

Q20. Do you think the mechanism to adjust the sentence upwards including outside the category range in Scenario D leads to a proportionate sentence?

20.1 Yes.

Section five – Abstracting electricity

Q21. Do you agree that the new theft definitive guideline should include guidance for this low volume offence of abstracting electricity? If not, please tell us why.

21.1 No comment.

Q22. If you agree that this offence should be included, should it be within a single guideline?

22.1 No comment.

Q23. If not, should it be contained within one of the other five guidelines, with a separate sentencing table? If so, please state which other guideline it should be contained in and why.

23.1 No comment.

Q24. Do you agree with the culpability factors?

24.1 No comment.

Q25. Do you agree with the proposed one stage approach to the assessment of harm? If not, please tell us why.

25.1 No comment.

Q26. Do you agree with the factors included in greater and lesser harm? Are there any other factors which you think should be included?

26.1 No comment.

Q27. Do you agree with the proposed aggravating and mitigating factors for abstracting electricity? If not please specify which you would add or remove and why.

27.1 No comment.

Q28. Please give your views on the proposed sentence levels for this offence in Scenario E.

28.1 No comment.

Section six – Making off without payment

Q29. Do you agree that this offence of making off without payment should be contained within its own guideline? If not, please state why and where you think guidance for this offence would best be placed.

29.1 No comment.

Q30. Do you agree with the list of culpability factors? If not, please tell us why.

30.1 No comment.

Q31. Do you think the financial amounts in the two categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

31.1 No comment.

Q32. Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

32.1 No comment.

Q33. Do you agree with the proposed aggravating and mitigating factors for making off without payment? If not please specify which you would add or remove and why.

33.1 No comment.

Q34. Please give your view on the proposed sentence levels for this offence in Scenario F.

34.1 No comment.

Section seven – Handling stolen goods

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Q35. Do you agree with the culpability factors? If not please tell us why.

35.1 No comment.

Q36. Do you think the financial amounts in the four categories are set at levels which will assist sentencers? If not, please suggest alternatives which you think may give greater assistance.

36.1 No comment.

Q37. Is the wording at harm B clear? Is it clear what the impact of additional harm can have?

37.1 No. IfA strongly supports the reference to 'Damage to heritage structures' in 'harm B', but other property with heritage value (such as artefacts) can be affected. It would be better to use the broader term 'heritage assets' (defined to include heritage structures and other material with heritage value).

Q38 Do you agree with the proposed aggravating and mitigating factors for handling stolen goods? If not please specify which you would add or remove and why.

38.1 Yes. The deliberate destruction, disposal or defacing of stolen property is particularly significant in the case of property with heritage value and sentence should reflect the community / wider impact of such loss or damage.

Q39. Please give your view on the proposed sentence levels for this offence in Scenario G – do you think it is proportionate?

39.1 No comment.

Q40. Please give your view on the proposed sentence level for this offence in Scenario H – do you think it is proportionate?

40.1 No comment.

Q41. Do you think the mechanism to increase the sentence for the additional harm in this case works in a proportionate manner?

41. No comment.

Section eight – Going equipped for theft or burglary

Q42. Do you agree with the culpability factors?

42.1 No comment.

Q43. Do you agree with the proposed one stage approach to the assessment of harm?

43.1 No comment.

Q44. Do you agree with the greater and lesser harm factors? Are there any other factors which you think should be included?

44.1 Yes. Facilitating theft involving heritage assets should qualify as 'greater harm' in cases where there is significant public harm since a large number of victims (the wider community and future generations) are involved.

Q45. Do you agree with the proposed aggravating and mitigating factors? If not please specify which you would add or remove and why.

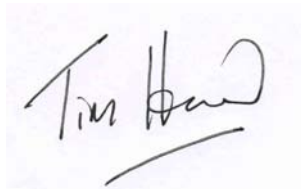
45.1 No comment.

Q46. Do you think the likely sentence levels in Scenario I are proportionate?

46.1 No comment.

The Institute would be delighted further to contribute to the formulation of guidelines for theft offences insofar as they relate to the historic environment. In the meantime, if there is anything further that I can do to assist please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Howard', with a horizontal line underneath.

Tim Howard LLB, Dip Prof Arch
Policy Advisor

