

# Wilful Damage Charging Policy

2020-21



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**Staff Lead:** Karen Thomson  
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## TBAP AP AND SPECIAL ACADEMIES



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## **Criminal Damage**

### **What is meant by Criminal Damage?**

Criminal damage is any damage which has been caused by an individual to some form or property. When a case is concerned with damage to property which is criminal, the case is brought by the state against that individual in a criminal court. Probably the best example of criminal damage is arson.

### **Legislation**

When dealing with offences concerning damage to property the Criminal Damage Act 1971 is the primary piece of legislation. There are a few offences still contained within the Malicious Damage Act 1861 but the main body of legislation is contained within the Criminal Damage Act 1971.

Criminal Damage is defined by the Criminal Damage Act 1971 as occurring when a person who without lawful excuse, destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property will be destroyed or damage shall be guilty of the offence.

Therefore the following elements need to be established:

- Damage
- To Property
- Belonging to another
- That was damaged without lawful excuse
- Intention to cause the damage / recklessness as to whether the damage would be caused

## **Damage**

### ***Definition of Damage***

There is no specific definition of damage contained within the Criminal Damage Act 1971 and so it is up to the court on a case by case basis to establish whether there has in fact been damage taking into account matters of fact and degree. When discussing damage there are a couple of factors which should be taken into consideration however. There is no requirement for the damage to be permanent. This could include smearing mud or paint etc. on property

The damage does not have to be visible. In this case if the damage affects the proper functioning of the property then that will be taken to be damage regardless of the fact it cannot be seen.

### ***Recklessness***

In order to prove criminal damage one of the key aspects to be present is that the defendant acted in a reckless manner. Section 1 of the Criminal Damage Act 1971 defines recklessness as the following:

A person acts recklessly with respect to: -

- A circumstance when he is aware of a risk that exists or will exist;
- A result when he / she is aware or a risk that it will occur.
- And it is, in the circumstances known to him, unreasonable to take that risk.
- There is no need to separate intention and recklessness. For the offence to exist it is only sufficient to prove recklessness.

### **Property**

Property is defined by Section 10 of the Criminal Damage Act 1971 to have a wider definition than property under the Theft Act 1968 so that it includes land. This means that if waste is dumped onto another individual's land then this will fall within the definition of criminal damage.

### **Belonging to Another**

- Property will be deemed to belong to any person
- Who has custody or control of it
- Having a proprietary right or interest
- Having a charge on it.

This means that an owner can damage his or her own property if at the same time it belongs to someone else falling within the definition contained in Section 10. An example of this is the property being owned by the individual but also to the mortgage company if the property is the subject of a mortgage.

### **Without Lawful Excuse**

Section 5 of the Criminal Damage Act 1971 provides a list of circumstances whereby it would be held to be a lawful excuse and therefore a defence against a charge of criminal damage. They are as follows:

- Whereby at that time the person believed that consent was given
- If the damage was caused during the protection of that person's own property if that property was in immediate need of protection and that the means taken to protect that property were in fact reasonable
- The damage will be said to have been without lawful excuse if it does not fall within Section 5 of the Criminal Damage Act 1971.

### **Intent to Endanger Life**

Section 2 of the Criminal Damage Act 1971 makes it an offence to destroy or damage property intending thereby to endanger the life of another or being reckless as to whether the life of another would thereby be endangered.

As is the case here where it is not with the simple case of Criminal Damage the judge will separate it into two counts in order to assist the jury and to enable the judge to know on what basis the jury has convicted. The two counts are as follows: -

- Intending to destroy / damage property or being reckless as to whether property will be destroyed / damaged and intending to endanger the life of another
- Intending to destroy / damage property or being reckless as to whether property will be destroyed / damaged and being reckless as to whether life would be endangered
- Intention and recklessness are seen as one in the same when it comes to the damage committed to the property but are separated when it comes to whether there was intention to endanger the life of another. This is specifically seen in cases concerning arson. That is criminal damage by fire.

### **Threat to Destroy or Damage Property**

Section 2 of the Criminal Damage Act 1971 creates two offences of threatening to destroy or damage

- Property belonging to the person threatened or a third person, or
- The defendant's own property in a way which is likely to endanger the life of the person threatened or a third person

In both cases the defendant has to intend that the person threatened would fear that the threat would be carried out.

### **Sentencing**

For cases where the damage is less than £5000 the maximum sentence usually handed down will not be greater than six months imprisonment. For offences of criminal damage where the damage caused is over £5000 the maximum sentence will be 10 years imprisonment.

**Source – 2105 ('Free Legal Information' – In Brief).**

## **Local Context**

TBAP Multi-Academy Trust exists to ensure that those most vulnerable, excluded yet able to achieve through targeted interventions are afforded every opportunity to excel and fulfil their aspirations and life chances. This is our principle aim. However, in recognising this vision, it is fundamental that transition through the school, mirrors the aspirational expectations of the wider community, particularly in our approach to managing anti-social behaviour and criminal damage. In supporting this aim, we have constructed our Wilful Damage Policy (**WDP**).

Our WDP seeks to achieve three principle things, namely:

- **Consistency of expectation across the TBAP Multi-Academy Trust linked to behaviour**
- **Clarity of intention for all learners, carers and staff**
- **Continuum of excellence through modelled behaviour & ethos.**

We recognise, that learner achievement is not a given. This is why we continually aim to build on all successes. We are mindful of our challenges and fluid in our tolerances however are very clear, that criminal damage and anti-social behaviour are not acceptable. In summarising Anti-Social Behaviour (**ASB**) as it is commonly known, for the purpose of this policy, we define it as:

'Anti-social behaviour is anything that causes alarm, distress, nuisance or annoyance to a person. This might include, amongst other things:

- **Vandalism**
- **Damage to property**
- **Excessive noise disturbance**
- **Violence, threats and intimidation**
- **Harassment of neighbours**
- **Frequent serious disturbance**

It is therefore such like behaviour that we seek to mitigate. Clearly, it may adversely impact on the Trust, its assets and or our neighbours within the broader community.

### Policy Objective

This policy is written to support the learner journey. It gives guidance for an approach to managing ASB and criminal damage as it occurs, and supports the acknowledged transitional behaviours of our learners, within our academies.

In recognising this, we are able to develop common thresholds of tolerance which those tasked with learner administration, are thereafter able to follow and ensure that robust arrangements are in place to deliver the required academic outcomes. For example and as a point of note, our WDP 2016-17 clearly sets out unashamedly how we as a Trust, financially support learners to access the widest range of intervention and learning pathways at *nil cost*.

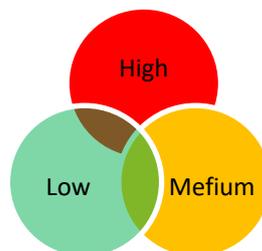
### Procedure

Our procedure is set out within this policy document and staff will follow what is documented and signed off by the CEO. In order to ensure that are arrangements are resilient, we will review this document annually.



### Thresholds

Damage thresholds are distinct and are learner focused. Every effort is made to ensure that learners are afforded every opportunity to recognise the impact of their negative behaviour and the impact that this may have on personal developments or access to wider interventions. Our thresholds are set in to three distinct categories and are managed independently yet collectively as part of our organisational thread. These are colour coded below.



## Process Management

### Green

We embrace our learners; we acknowledge their variances in communication, presentation and circumstance. However it is critical that learners, staff members and those persons that transition through the academy environs are afforded dignity and respect. This is the golden thread of our being and arguably, necessary as the cornerstone of student learning. As such, we fully expect all learners to adhere to the agreed terms as set out in their introductory TBAP interview. We would take a view on behaviours that were contrary to this with the most likely outcome being advice and Learner Support Professional (LSP) follow up through to mediation.

Damage in this category may include:

- Transition throughout the Trust that results in property damage
- Wilful defacing of TBAP property, such as vandalism

**Actions to deal with 'GREEN' damage will result in one of the following or referral to the TBAP Student Services Manager:**

- Writing to the young learner; highlighting nuisance and asking them to take more care and to be aware of the effect on their fellow learners and or staff.
- Offer a 121 discussion with a LSP.

### Amber

This type of behaviour is serious. Staff members continually challenge learners' unacceptable behaviours, and are proactive in alleviating property damage through targeted patrols and managed zones. Every effort is taken, where necessary to remind the learners of health and safety implications, wellbeing, duty of care and personal safety. Where learners choose to deliberately disregard guidance and act in a manner not consistent with expectations, our principle concern therein, is for the safety of others and our wider community.

Damage in this category may include:

- Aggressive or threatening language or behaviour
- Behaviour which directly affects the health or safety of a fellow learners / staff.
- Any deliberate damage to property and vandalism.

**Actions to deal with 'AMBER' damage will result in one of the following or referral to the TBAP Head of School:**

- Issuing learner/s with a fixed timed exclusion
- Meeting with the learner/s and or their family / appropriate adult
- Involving the Police/London Fire Brigade or other responsible Authority
- Recharging for any damage caused with fixed payment plan
- Use of Acceptable Behaviour TBAP Contracts / Behavioural expectations noted on SIMs

## Red

This level of damage and or anti-social behaviour is likely to result in legal consideration and may mean that the Police and or other legal bodies take the lead at the decision of the Executive Head teacher. This is not a consideration that would be taken lightly, however if a learner has wilfully interfered with electricity and or has committed Arson, interference with access or control equipment and or breached health and safety legislation, we are minded to follow legislation accordingly.

Damage / behaviour in this category could include the following:

- Damage to access / exit gates
- Interference with hazardous / flammable substances
- Electrical interference
- Arson
- Window breakage
- Hate Crime
- Racial and or religious aggravated criminal damage

**Actions to deal with 'RED' damage will result in one of the following or referral to the TBAP Executive Head teacher:**

- Issuing learner with a fixed timed exclusion
- Meeting with the learner/s and or their family
- Involving the Police
- Recharging for any damage caused with fixed payment plan
- Use of Acceptable Behaviour TBAP Contracts / Behavioural expectations noted on SIMs
- Permanent exclusion and injunction from the TBAP Multi-Academy Trust estate

## Partnerships

Our partnership arrangements are both robust and overarching. Our damage threshold actions ensure that every opportunity is available used to encourage learning, development and success for learners by any means.



This policy was agreed June 2020 and will be reviewed annually by the TBAP Trust Board

Date of next review: June 2021

**Appendix 1:**

**EXAMPLE LETTER**

Mr L Lewis  
12 Frielde Place  
Stamford Mews  
London.  
N1 5YH

**Payment Required**

Date: April, 2016

Dear Mr L Lewis.

**Re: Kevin Alex Lewis WDP Breach - AMBER**

I am writing to you regarding an incident that took place this morning at the TBAP Bridge Site

Kevin, your Son, repeatedly kicked a door within the Academy site, namely primary classroom 7. This resulted in the electronic lock mechanism breaking on the door. This will now need to be replaced at a cost of £140.

Taking responsibility and being accountable for actions is an important learning element within our provision. This is supported by a curriculum for attainment and supported with a framework of model behaviours, experiences and opportunities which we hope, will encourage all our transitioning learners to maximise their life chances. Through this, it is hoped that incidents of unacceptable behaviour can be minimised.

Due to the high number of incidents within the academic year, we are unable to sustain the costs of these repairs from our planned and responsive maintenance budgets. In line with our TBAP Charging Policy, Parents/Carers are required to contribute towards the cost of the repair and/or replacement. This is in line with our Home School Agreement (HSA) which you signed up to on the 5<sup>th</sup> February, 2015 with the Student Services Manager.

The cost of the repairs will be £140.00. We now require a payment from you of 50% amounting to £70.00. **This must be paid within 14 days of the date of this letter in order to stop all further actions.**

If you choose to ignore this letter and not contact the Student Services Manager, we will refer the matter to the TBAP Board and or relevant body instructing them to make a recommendation.

If you would like to discuss this matter further, please contact **Everol Halliburton – TBAP Student Services Lead on 0203 108 0345**

Yours sincerely

Connery Wiltshire  
Head of School, Octagon AP Academy

**cc PC Lee Robinson 2645Y**

**Signed:** -----  
**(Learner)**

**Date:**

**Signed:** -----  
**(Parent / Carer)**

**Date:**

**Signed:** -----  
**(Facilities Manager)**

**Date:**

**Signed:** -----  
**(Chair of Board)**

**Date:**

**Signed:** -----  
**(Executive Headteacher)**

**Date:**