

Child Cruelty Definitive Guideline

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Contents

Applicability of guideline	2
Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect	3
Children and Young Persons Act 1933 (section 1(1))	
Causing or allowing a child to suffer serious physical harm	9
Domestic Violence, Crime and Victims Act 2004 (section 5)	
Causing or allowing a child to die	9
Domestic Violence, Crime and Victims Act 2004 (section 5)	
Failing to protect girl from risk of genital mutilation	15
Female Genital Mutilation Act 2003 (section 3A)	
Annex: Community orders	21

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 1 January 2019, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Structure, ranges and starting points

For the purposes of sections 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders is set out in the annex at page 21.

Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect

Children and Young Persons Act 1933 (section 1(1))

Triable either way

Maximum: 10 years' custody

Offence range: Community order – 8 years' custody

This is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Culpability demonstrated by one or more of the following:	
A	<p>High culpability:</p> <ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty, including serious neglect • Gratuitous degradation of victim and/or sadistic behaviour • Use of very significant force • Use of a weapon • Deliberate disregard for the welfare of the victim • Failure to take any steps to protect the victim from offences in which the above factors are present • Offender with professional responsibility for the victim (where linked to the commission of the offence)
B	<p>Medium culpability:</p> <ul style="list-style-type: none"> • Use of significant force • Prolonged and/or multiple incidents of cruelty, including neglect • Limited steps taken to protect victim in cases with category A factors present • Other cases falling between A and C because: <ul style="list-style-type: none"> ◦ Factors in both high and lesser categories are present which balance each other out; and/or ◦ The offender’s culpability falls between the factors as described in high and lesser culpability
C	<p>Lesser culpability:</p> <ul style="list-style-type: none"> • Offender’s responsibility substantially reduced by mental disorder or learning disability or lack of maturity • Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence) • Steps taken to protect victim but fell just short of what could reasonably be expected • Momentary or brief lapse in judgement including in cases of neglect • Use of some force or failure to protect the victim from an incident involving some force • Low level of neglect

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim is minor or trivial.

Category 1	<ul style="list-style-type: none"> • Serious psychological, developmental, and/or emotional harm • Serious physical harm (including illnesses contracted due to neglect)
Category 2	<ul style="list-style-type: none"> • Cases falling between categories 1 and 3 • A high likelihood of category 1 harm being caused
Category 3	<ul style="list-style-type: none"> • Little or no psychological, developmental, and/or emotional harm • Little or no physical harm

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

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

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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

Other aggravating factors:

Failure to seek medical help (where not taken into account at step one)

Commission of offence whilst under the influence of alcohol or drugs

Deliberate concealment and/or covering up of the offence

Blame wrongly placed on others

Failure to respond to interventions or warnings about behaviour

Threats to prevent reporting of the offence

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim

Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)

Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

Serious medical condition requiring urgent, intensive or long-term treatment

Mental disorder, learning disability or lack of maturity (where not taken into account at step one)

Co-operation with the investigation

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Parental responsibilities of sole or primary carers**

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

STEP SIX**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SEVEN**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Causing or allowing a child to suffer serious physical harm

Domestic Violence, Crime and Victims Act 2004 (section 5)

Indictable only

Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

Causing or allowing a child to die

Domestic Violence, Crime and Victims Act 2004 (section 5)

Indictable only

Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

These are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

This guideline applies only when the victim of the offence is aged 15 or under.

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Culpability demonstrated by one or more of the following:	
A	<p>High culpability:</p> <ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty, including serious neglect • Gratuitous degradation of victim and/or sadistic behaviour • Use of very significant force • Use of a weapon • Deliberate disregard for the welfare of the victim • Failure to take any steps to protect the victim from offences in which the above factors are present • Offender with professional responsibility for the victim (where linked to the commission of the offence)
B	<p>Medium culpability:</p> <ul style="list-style-type: none"> • Use of significant force • Prolonged and/or multiple incidents of cruelty, including neglect • Limited steps taken to protect victim in cases with category A factors present • Other cases falling between A and C because: <ul style="list-style-type: none"> ◦ Factors in both high and lesser categories are present which balance each other out; and/or ◦ The offender’s culpability falls between the factors as described in high and lesser culpability
C	<p>Lesser culpability:</p> <ul style="list-style-type: none"> • Offender’s responsibility substantially reduced by mental disorder or learning disability or lack of maturity • Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence) • Steps taken to protect victim but fell just short of what could reasonably be expected • Momentary or brief lapse in judgement including in cases of neglect • Use of some force or failure to protect the victim from an incident involving some force • Low level of neglect

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

Category 1	<ul style="list-style-type: none"> • Death
Category 2	<ul style="list-style-type: none"> • Serious physical harm which has a substantial and/or long term effect • Serious psychological, developmental and/or emotional harm • Significantly reduced life expectancy • A progressive, permanent or irreversible condition
Category 3	<ul style="list-style-type: none"> • Serious physical harm that does not fall into category 2

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Harm	Culpability		
	A	B	C
Category 1	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 7 – 14 years' custody	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 7 years' custody	Starting point 3 years' custody	Starting point 1 year 6 months' custody
	Category range 5 – 9 years' custody	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 3 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody	Category range High level community order – 2 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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

Other aggravating factors:

Failure to seek medical help (where not taken into account at step one)

Prolonged suffering prior to death

Commission of offence whilst under the influence of alcohol or drugs

Deliberate concealment and/or covering up of the offence

Blame wrongly placed on others

Failure to respond to interventions or warnings about behaviour

Threats to prevent reporting of the offence

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse

Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim

Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)

Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)

Serious medical condition requiring urgent, intensive or long-term treatment

Mental disorder, learning disability or lack of maturity (where not taken into account at step one)

Co-operation with the investigation

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Parental responsibilities of sole or primary carers**

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

STEP SIX**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SEVEN**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP EIGHT**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP NINE

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP TEN

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Failing to protect girl from risk of genital mutilation

Female Genital Mutilation Act 2003 (section 3A)

Indictable only

Maximum: 7 years' custody

Offence range: Community order – 6 years' custody

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STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.

Culpability demonstrated by one or more of the following:	
A	<p>High culpability:</p> <ul style="list-style-type: none"> • Child was the subject of an FGM Protection Order • Failure to respond to interventions or warnings including, but not limited to, those from medical professionals/social services • Involving others through coercion, intimidation or exploitation • Failure to take any steps to protect the victim from the FGM offence
B	<p>Medium culpability:</p> <ul style="list-style-type: none"> • Limited steps taken to protect the victim from the FGM offence • Other cases falling between A and C because: <ul style="list-style-type: none"> ◦ Factors in both high and lesser categories are present which balance each other out; and/or ◦ The offender’s culpability falls between the factors as described in high and lesser culpability
C	<p>Lesser culpability:</p> <ul style="list-style-type: none"> • Steps taken to protect the victim but fell just short of what could reasonably be expected • Offender is victim of domestic abuse (where linked to commission of the offence) • Offender subjected to coercion, intimidation or exploitation • Offender’s responsibility substantially reduced by mental disorder or learning disability

Harm
 The court should consider the factors set out below to determine the level of harm that has been caused to the victim.

Psychological harm
 A finding that the psychological harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological harm exists. It is important to be clear that the absence of such a finding does **not** imply that the harm suffered by the victim is minor or trivial.

Category 1	<ul style="list-style-type: none"> • Serious physical or psychological harm which has a substantial or long-term effect
Category 2	<ul style="list-style-type: none"> • Harm which does not fall into category 1

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

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

See page 18.

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

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
Other aggravating factors:
Failure to seek medical help when necessary
Deliberate concealment and/or covering up of the offence
Blame wrongly placed on others
Threats to prevent reporting of the offence
Failure to comply with current court orders (where not taken into account at step one)
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
Offender particularly isolated with limited access to support
Appropriate medical care sought for victim
Sole or primary carer for dependent relatives (see step five for further guidance on parental responsibilities)
Good character and/or exemplary conduct
Serious medical condition requiring urgent, intensive or long-term treatment
Age and/or lack of maturity
Mental disorder or learning disability (where not taken into account at step one)
Co-operation with the investigation

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Parental responsibilities of sole or primary carers**

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Annex:

Community orders

In this guideline, community sentences are expressed as one of three levels (low, medium or high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below.

Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 40 – 80 hours of unpaid work • Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • Greater number of hours of unpaid work (for example 80 – 150 hours) • Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 150 – 300 hours of unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months

The table above is also set out in the *Imposition of Community and Custodial Sentences Guideline* which includes further guidance on community orders.

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