

Sentencing youths for sexual offences involves a number of different considerations from adults. The primary difference is the age and immaturity of the offender. Young people are less emotionally developed than adults; offending can arise through inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; or a lack of understanding regarding consent, exploitation and coercion.

Background factors may also play a part:-

- A history of abuse within the family (sexual, physical or emotional)
- Exposure to pornography or materials which are unsuitable for a person of the age of the offender
- Involvement in gangs associated with child sexual exploitation
- Unstable living or educational arrangements
- A trigger event such as the death of a close relative or a family breakdown

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on the full range of sentences that are available by age. The guideline also includes details on issues such as grave crime determination and dangerousness.

The first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

STEP 1: OFFENCE SERIOUSNESS – Nature of the offence

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A community sentence or an appropriate non custodial sentence may be the most suitable disposal where one or more of the following factors apply:

- Any form of non penetrative sexual activity
- Sexual activity (including **isolated** penetrative activity) without coercion, exploitation or pressure
- No psychological or physical harm caused to the victim

A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance or Fostering may be justified where one or more of the following factors apply:

- **Repeated penetrative activity or** any penetrative activity involving coercion, exploitation or pressure
- Coercion through violence or threats of violence
- Sustained or repeated offence
- Significant psychological or physical harm caused to the victim

STEP 2: OFFENCE SERIOUSNESS – Aggravating and mitigating factors

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

Aggravating factors (non exhaustive)

- 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
- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/ drugs on victim to facilitate the offence
- Abuse of trust (e.g. where the offender is babysitting the victim or is an older relative of the victim)
- Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups
- Grooming

- Significant disparity of age between offender and victim
- Specific targeting of particularly vulnerable victim
- Any steps taken to prevent reporting the incident/ seeking assistance
- Pregnancy or STI as a consequence of offence
- Blackmail

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Participated in offence due to peer pressure/ bullying
- Genuine belief that activity was lawful
- **Limited awareness or understanding of offence**

STEP 3: OFFENDER MITIGATION

Having assessed the offence seriousness the court should then consider the mitigation personal to the offender to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one or a community sentence to a different means of disposal.

Offender mitigating factors (non exhaustive)

- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour, exposure by others to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour

STEP 4: 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.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence, or
- by reducing a community sentence to a different means of disposal.

See the Overarching Principles – Sentencing Youths definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

STEP 5: REVIEW THE SENTENCE

The court must now review the sentence to ensure it is the most appropriate one for the young offender. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.

Youth Rehabilitation Order

The following non custodial sentences are available under a Youth Rehabilitation Order:

| | Offender profile | Requirements of order |
|------------------|--|---|
| Standard | Low likelihood of re-offending and a low risk of serious harm | Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> • reparation; • unpaid work; • supervision; and/or • attendance centre. |
| Enhanced | Medium likelihood of re-offending or a medium risk of serious harm | Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or • a combination of the above. |
| Intensive | High likelihood of re-offending or a very high risk of serious harm | Seek to ensure the control of the young person through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour; • requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or • a combination of the above. |

YRO with Intensive Supervision and Surveillance (ISS) or YRO with fostering

A YRO with an ISS or fostering requirement is a community alternative to custody. The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the offender to reside with a local authority foster parent for a specified period of up to 12 months.

Custodial Sentences

Where a custodial sentence is **unavoidable** the length of custody imposed must be commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

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