

# Sentencing Council

**Sentencing Council meeting:** 17 July 2015  
**Paper number:** SC(15)JUL08 - Youths  
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## **1 ISSUE**

- 1.1 To finalise the list of offences that will be the subject of specific guidelines for youths and to consider an initial draft of the youth guidelines on robbery, dwelling burglary, sexual assault, sexual assault of a child under 13, and causing or inciting a child under 13 to engage in sexual activity.
- 1.2 The timetable is for the youth guidelines and overarching principles to be signed off by November 2015 ready for consultation to take place during February to April 2016. The final post consultation version of the guidelines will be signed off in September 2016 and published in December 2016.

## **2 RECOMMENDATION**

- 2.1 The Council is asked to:
  - finalise the offences that will be the subject of specific youth guidelines;
  - consider postponing the youth guideline on knife offences;
  - consider the proposed sentencing options that should appear within the guidelines; and
  - consider the first drafts of five of the offence specific guidelines, in particular noting the differing structures, the specific youth content, and the proposed sentencing levels.

## **3 CONSIDERATION**

- 3.1 In January of this year the Council discussed and considered the merits of offence specific guidelines for youths. It was widely acknowledged that youth sentencing ought to be individualistic, and that providing specific guidelines creates a danger of shifting the focus of the sentencer away from the offender

and towards the offence and its effects. However the Council also considered that offence specific guidance will assist sentencers in making fair and consistent decisions.

3.2 During the recent road testing, some youth court magistrates indicated that they sometimes felt bereft of guidance when sentencing in the youth court, and most of the sentencers welcomed the idea of offence specific guidelines, particularly for more serious offences. Some also said that whilst they usually sentenced in line with the recommendation from the Youth Offending Team, they would like to have some guidance to help reduce their reliance on others, and so that they could challenge the recommendations on those occasions where they felt the proposal was inappropriate.

3.3 In January the Council decided that on balance there was a need for offence specific guidance for some offences, either because those offences are so serious that the welfare of others outweighs the usual individual considerations pertaining to the welfare of the offender, or in the case of robbery and domestic burglary, because the offence is high volume and there is a need for guidance to assist the courts to apply a consistent approach.

3.4 The Council agreed to the following list:

- Rape – (s1 Sexual Offences Act 2003);
- Assault by penetration - (s2 Sexual Offences Act 2003);
- Sexual assault - (s3 Sexual Offences Act 2003);
- Rape of a child under 13 - (s5 Sexual Offences Act 2003);
- Assault by penetration of a child under 13 - (s6 Sexual Offences Act 2003);
- Sexual Assault of a child under 13 - (s7 Sexual Offences Act 2003);
- Causing or inciting a child under 13 to engage in sexual activity (s8 Sexual Offences Act 2003);
- Robbery (s8 Theft Act 1968);
- Domestic burglary (s9(3)(a) Theft Act 1968); and
- Knife offences (s1 and s1A Prevention of Crime Act 1953 and s139, s139A and s139AA Criminal Justice Act 1988).

3.5 The Council also agreed to update the existing SGC Sexual Offences youth specific guidelines. These guidelines cover those sexual offences that carry a

different statutory maximum for youths than for adults. For each of the offences the maximum for the youth is 5 years as opposed to a maximum of 10 or 14 years for an adult. The offences are:

- Sexual activity with a child (s9 Sexual Offences Act 2003);
- Causing or inciting a child to engage in sexual activity (s10 Sexual Offences Act 2003);
- Engaging in sexual activity in the presence of a child (s11 Sexual Offences Act 2003);
- Causing a child to watch a sexual act (s12 Sexual Offences Act 2003);
- Sexual activity with a child family member (s25 Sexual Offences Act 2003);  
and
- Inciting a child family member to engage in sexual activity (s26 Sexual Offences Act 2003).

3.6 The above offences are relatively low volume, but as the existing guidelines are now out of date it was agreed that they need to be amended.

**Question 1: Is the Council still in agreement that we should produce offence specific guidelines for those offences listed in the above two lists?**

### **Knife offences**

3.7 The Office has recently started some preparatory work on the development of a knife offence guideline for adults. So far a project initiation document has been drawn up and the team are starting to think about the research that will be needed to complete the work. Knife offences are expected to be on the Council's agenda from the end of this year, with a provisional date for consultation in September- November 2016, and final publication of a guideline in July 2017.

3.8 Given that the Council will be embarking on very detailed consideration of knife offences we need to consider whether it is sensible to produce a youth guideline on this subject now, in advance of the adult guideline, and before the office has had the opportunity to carry out any detailed work, research or analysis. For all of the other proposed youth guidelines there has been a relatively recent adult equivalent published, and we can lean heavily on those

guidelines, making adjustments to ensure the factors are more youth specific, and to adjust the sentencing levels.

- 3.9 For these reasons it is proposed that we do not produce a knife guideline for youths at this time, but we do so as part of our knife offences project. This rationale can be clearly explained within the youth consultation paper. With the digitalisation of the MCSG it will be possible to insert the youth knife guideline into the other youth guidelines once it is ready, so that they remain as a package of guidance for the assistance of the youth court.

**Question 2: Is the Council content to remove knife offences from the list of youth offence specific guidelines?**

**Youth Sentencing**

- 3.10 All of the offences in the two lists above (save for knife crime) are grave crimes, meaning that they could be dealt with in either the youth court or the Crown Court. For this reason the sentencing levels within the draft guidelines include:

- Detention – for those sentences above 2 years which are dealt with by the Crown Court as grave crimes;
- Detention and Training Orders (DTOs) for those cases retained in the youth court where a sentence of 2 years or below is imposed;
- Youth Rehabilitation Orders (YROs) for those cases that reach the ‘serious enough’ threshold; and
- Discharge- which would include both absolute and conditional discharge, the lowest sentences available.

- 3.11 There are other available youth sentences, not specifically mentioned within the draft guidelines, which include:

- Referral orders (both compulsory and discretionary);
- Reparation orders;
- Fines; and
- YRO with Intensive Supervision and Surveillance (YRO with ISS).

- 3.12 Compulsory referral orders stand alone and the draft guidelines provide specific text to make clear that if the compulsory referral order conditions

apply the court must impose the sentence unless a DTO, discharge or hospital order is appropriate.

3.13 Discretionary referral orders, reparation orders and fines are available for those offences that fall below the 'serious enough' threshold, and YRO with ISS is available for offences that cross the 'so serious' threshold but where the court has chosen not to impose detention. None of these sentences appear as sentencing starting points in the draft guidelines, as they are felt to be too specific. Instead the proposal is to have starting points indicating detention or DTO with a specific length; YRO; and discharge. This covers the 3 key thresholds, and allows sentencers to use the other available sentences within the range.

**Question 3: Is the Council in agreement with these sentencing options?**

3.14 The proposed draft sentencing guidelines attached to this paper are as follows:

<b>Annex A1</b>	Road testing version of the robbery guideline
<b>Annex A2</b>	Revised version of the robbery guideline (the preferred version)
<b>Annex B</b>	Domestic burglary guideline
<b>Annex C1</b>	Road testing version of the sexual assault guideline
<b>Annex C2</b>	Revised version of the sexual assault guideline (the preferred version)
<b>Annex D</b>	Sexual assault of a child under 13 guideline
<b>Annex E</b>	Causing or inciting a child under 13 to engage in sexual activity guideline

**Robbery**

3.15 The Council will see two drafts of the guideline at Annex A. The first, A1 was the subject of road testing. The second, A2 is the preferred option, incorporating changes as a result of the information learnt from testing.

3.16 Both draft guidelines have been based on the new draft adult guideline for street and less sophisticated commercial robbery. It is proposed that we only produce one robbery guideline and that we do not provide separate guidelines for professionally planned commercial robbery or dwelling robbery, as these types of offences are rarely committed by youths.

**Question 4: Does the Council agree that we need only produce one youth robbery guideline covering the less serious forms of the offence?**

3.17 During the production of the adult robbery guideline the Council expressed the view that sentence levels must reflect the serious social problem of

offenders carrying knives or threatening to use knives. It was felt necessary to reflect society's concern that knife crime has become widespread, especially in the case of street robberies. This aim has largely been addressed through the way in which we now assess culpability within the adult guideline, ensuring that those cases involving a knife etc will always end up in the highest categories of culpability.

- 3.18 If the Council is content to adopt the format of the adult guideline for youths, those offences that involve use of, or threats to use a bladed article, firearm or imitation firearm will result in more cases falling within the highest levels of culpability, which is likely to result in some inflation in sentences for youths.
- 3.19 Annex A1 was drafted using the draft adult guideline, but with sentencing levels largely based upon the SGC youth robbery guideline. Road testing showed that the format of the guideline led to an appreciable uplift in sentences.
- 3.20 The Council will know that the sample size for our road testing exercises is very small<sup>1</sup>, so findings only give an indication of what *might* happen in practice, but to give an idea of the uplift, the road testing of scenario one (a serious robbery where a vulnerable victim was threatened with a knife) showed an uplift on current sentencing levels of roughly 38 months in custody, and for scenario 2 (a serious robbery with significant force but no weapon), the uplift was roughly 28 months. These increases were due to both high starting points and ranges in the draft guideline, and higher categorisation under the new guideline.
- 3.21 Since the road testing, changes have been made to the draft guideline, in part to reflect the changes that the Council has made to the equivalent adult guideline, but also to address the high starting points and ranges.
- 3.22 The Council will be aware that the existing Overarching Principles directs that there may be occasions where it will be appropriate for a youth sentencer to look at an adult guideline and, depending on maturity, apply a starting point sentence from half to three quarters of that which would have been identified for an adult. Following this principal, the guideline at Annex A2 (and replicated overleaf) includes sentences that are broadly three quarters of the level of the

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<sup>1</sup> The sample consisted of 4 district judges and 14 magistrates, yielding 17 interviews in total (two magistrates were interviewed together). Scenario 1 was tested seven times and scenario 2, ten times.

current draft adult guideline. Three quarters has been selected as the guideline is aimed at 17 year olds with the expectation that sentencers move down the range for those offenders that are younger or less mature. The resultant sentences at A1, B1 and A2 are lower than the version that went to road testing and the SGC version, but at B3, C2 and C3 the sentences are marginally higher.

3.23 Based on the sentencers' categorisation during road testing, our estimate of the uplift under the new draft at Annex A2 would be 27 months and 22 months for scenarios 1 and 2 respectively.

3.24 If the Council chooses to adopt a youth guideline that takes a different approach to the adult guideline, in order to avoid inflation in youth sentences, a clear rationale would need to be given in the consultation to explain this.

**Question 5: Is the Council content for the youth robbery guideline to adopt the same structure as the new adult guideline?**

3.25 The youth specific elements of the guideline have been highlighted in Annex A2 to show the changes that we have made to the adult version of the guideline.

**Question 6: Is the Council content with the youth specific factors within the guideline?**

The Proposed Youth Sentencing Table:

Harm	Culpability		
	A	B	C
Category 1	<p><b>Starting point</b> 6 years' detention</p> <p><b>Category range</b> 5 – 9 years' custody</p>	<p><b>Starting point</b> 3 years' 6 months detention</p> <p><b>Category range</b> 24 months' DTO– 6 years' detention</p>	<p><b>Starting point</b> 3 years' detention</p> <p><b>Category range</b> 12 months' - 5 years' detention</p>
Category 2	<p><b>Starting point</b> 3 years' 6 months detention</p> <p><b>Category range</b> 24 months' DTO– 6 years' detention</p>	<p><b>Starting point</b> 3 years' detention</p> <p><b>Category range</b> 12 months' - 5 years' detention</p>	<p><b>Starting point</b> 18 months DTO</p> <p><b>Category range</b> YRO – 3 years' detention</p>
Category 3	<p><b>Starting point</b> 3 years' detention</p> <p><b>Category range</b> 12 months DTO - 5 years' detention</p>	<p><b>Starting point</b> 18 months DTO</p> <p><b>Category range</b> YRO – 3 years' detention</p>	<p><b>Starting point</b> 6 months DTO</p> <p><b>Category range</b> YRO – 24 months' DTO</p>

The Draft Adult Street/ Less Sophisticated Commercial Robbery Sentencing Table:

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 8 years' custody <b>Category range</b> 7 – 12 years' custody	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 - 7 years' custody
<b>Category 2</b>	<b>Starting point</b> 5 years' custody <b>Category range</b> 3 – 8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 - 7 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 year – 4 years' custody
<b>Category 3</b>	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 - 7 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 year – 4 years' custody	<b>Starting point</b> 1 year custody <b>Category range</b> High Level Community Order – 3 years' custody

The SGC Youth Robbery Sentencing table:

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	Community Order	Community Order – 12 months detention and training order
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	3 years detention	1-6 years detention
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	7 years detention	6-10 years detention

3.26 Over the last few years the number of youth offenders sentenced for robbery has declined, from approximately 3,700 in 2011 to 2,300 in 2013. Community orders (YROs) are the most frequent sentence outcome, comprising 73 per cent of those sentenced in 2013. Just under a quarter (23 per cent) of offenders were sentenced to immediate custody in 2013, with an average mean custodial sentence length (after credit for guilty plea) of 1 year 7 months and a median custodial sentence length of 1 year. Of those youths sentenced to custody, 82 per cent received a term of 2 years or less, and 91 per cent, 3 years or less (after credit for guilty plea in each case). The longest custodial sentence length received was 8 years 6 months.

3.27 It is important to bear in mind that whilst a large percentage of young offenders receive a YRO for this offence, there is no way of knowing whether that community order was in fact a YRO with ISS, which is a community



alternative to custody and can only be imposed if the offence has crossed the custody threshold. Therefore, those cases that fall within C3 of our proposed guideline could frequently be sentenced to a YRO with ISS.

- 3.28 The Council may, however, feel that the proposed youth robbery guideline ought to include a starting point of a YRO given that the SGC youth version does and given what we know about the statistics. Doing this would, however, mean moving away from the proposal to include sentencing levels based on three quarters of the adult equivalent.

**Question 7: Does the Council agree to the sentencing starting points and ranges currently within the draft youth robbery guideline at Annex A2?**

**Domestic Burglary**

- 3.29 The Council will see the first draft of the guideline at Annex B of the papers. This draft is based on the existing adult domestic burglary guideline. As a result, the Council will note that the format of the guideline is different to the format that the Council has chosen for robbery, and is also different from the guidelines that we will come on to consider for the sexual offences guidelines. The Council may be concerned that the youth package will not be consistent however the alternative would be to provide youth guidelines that are inconsistent with their adult counterparts and would result in much more work within a tight timetable.

**Question 8: Does the Council agree to the format of this domestic burglary guideline replicating that of the adult guideline?**

- 3.30 The youth specific elements of the guideline have been highlighted in Annex B to show the changes that we have made to the adult version of the guideline.

**Question 9: Is the Council content with the youth specific factors within the guideline?**

- 3.31 In 2013 approximately 1,600 youth offenders were sentenced for domestic burglary offences. This represented 4 per cent of all youth offences sentenced in 2013. Community orders were the most frequent sentence outcome and in 2013 they comprised 77 per cent of all sentences imposed. This proportion has been increasing since 2010. The proportion of immediate custodial sentences has remained relatively stable over the last five years;

within the range 19 to 22 per cent. In 2013 the average custodial sentence length (after any guilty plea reduction) was 1 year.

3.32 The draft guideline at Annex B includes sentences broadly based on three quarters of that of the adult guideline.

Proposed Youth Sentencing Table

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
Category 1	24 months DTO	18 months DTO – 4 years' detention
Category 2	6 months DTO	YRO – 18 months DTO
Category 3	YRO	Discharge – 4 months DTO

Existing Adult Guideline Sentencing Table:

<b>Offence Category</b>	<b>Starting Point (Applicable to all offenders)</b>	<b>Sentencing Range</b>
Category 1	3 years' custody	2 - 6 years' custody
Category 2	1 year custody	High level community order – 2 years' custody
Category 3	High level Community Order	Low level community order – 26 weeks' custody

**Question 10: Does the Council agree to the sentencing starting points and ranges within the domestic burglary guideline at Annex B?**

**Sexual Offences Guidelines**

3.33 The Council recently produced a Sexual Offences definitive guideline for adults. This guideline was the result of detailed consideration, discussion, research, analysis and testing and it is for that reason that it is proposed that the youth guidelines rely heavily on the format and content. Annexes C1, C2 D, and E include draft guidelines for sexual assault, sexual assault of a child under 13 and causing or inciting a child under 13 to engage in sexual activity.

3.34 Where a young offender commits a sexual offence the Court will need to consider some different factors such as:

- the relative ages of both parties;
- the existence of and nature of any relationship;
- the sexual and emotional maturity of both parties and any emotional or physical effects as a result of the conduct;

- whether in fact a victim freely consented (whilst not a defence it will be relevant to sentence); and
  - whether any breach of duty of responsibility (such as a babysitter, older sibling or family member) or other exploitation is present.
- 3.35 Each of the guidelines has had some youth specific content added to it (highlighted in yellow) to attempt to capture these factors. The majority of the factors already in the adult guidelines are relevant to young people and so they have remained, however a small number of factors have been removed where they appear to be inappropriate.
- 3.36 For each of the draft sex guidelines, sentencing levels are proposed based upon three quarters of the equivalent adult guideline. Next month further road testing will take place of the rape guideline. It will be very useful to find out from sentencers how they feel about the proposed sentencing levels, and whether three quarters of the adult guideline sentence approach is right. The results of that road testing will be presented in September.

### **Sexual Assault**

- 3.37 The Council will see two drafts of the guideline at Annex C. The first, C1 was the subject of road testing. The second, C2 is the preferred option, incorporating changes as a result of the information learnt from testing.
- 3.38 The guidelines at Annex C were based on the adult sexual assault guideline.

### **Question 11: Does the Council agree to the format of this sexual assault guideline replicating that of the adult guideline?**

- 3.39 The guideline has youth specific elements that have been highlighted in Annex C2.

### **Question 12: Is the Council content with the youth specific factors within the guideline?**

- 3.40 Since the road testing some changes have been made, mainly to the sentencing levels. The Council will see that the road testing version included such sentences as Low, Medium and High level YROs. On reflection it may be that these sentences are too specific, also the terminology is inconsistent with that used by the Youth Offending Teams who actually refer to Standard, Enhanced and Intensive YROs. Having looked again at the guideline, and coming back to the principal of applying a sentence based on three quarters

of that of the adult guideline I have suggested the new sentencing levels within Annex C2 (and set out below).

3.41 The number of youth offenders sentenced for sexual assault has fluctuated over the last nine years, with a total of about 120 offenders sentenced in 2013. Of those offenders the majority (86 per cent) received a community order, with just 12 per cent being sentenced to immediate custody. The custodial sentence lengths ranged from a minimum of 4 months (which most offenders were given) to a maximum of 2 years. The mean custodial sentence length was 9 months, and the median 6 months. These averages should, however, be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence.

Proposed Youth Guideline Sentencing Table

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 24 months' DTO – 5 years detention	<b>Starting point</b> 18 months' DTO <b>Category range</b> 12 months' DTO – 3 years detention
<b>Category 2</b>	<b>Starting point</b> 12 months' DTO <b>Category range</b> 6 months' – 3 years detention	<b>Starting point</b> 6 months' DTO <b>Category range</b> YRO – 1 year detention
<b>Category 3</b>	<b>Starting point</b> 4 months DTO <b>Category range</b> YRO – 6 months' DTO	<b>Starting point</b> YRO <b>Category range</b> Discharge - 4 months' DTO

Existing Adult Guideline Sentencing Table:

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 3-7 years' custody	<b>Starting Point</b> 2 years' 6 months' custody <b>Category Range</b> 2-4 years' custody
<b>Category 2</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1-4 years' custody	<b>Starting Point</b> 1 year's custody <b>Category Range</b> High level community order – 2 years' custody
<b>Category 3</b>	<b>Starting Point</b> 26 weeks' custody <b>Category Range</b> High level community order- 1 year's custody	<b>Starting Point</b> High level community order <b>Category Range</b> Medium level community order – 26 weeks' custody

**Question 13: Does the Council agree to the sentencing starting points and ranges within the sexual assault guideline at Annex C2?**

### Sexual Assault of a child under 13

3.42 This draft guideline can be seen at Annex D. It is very similar to the sexual assault guideline, and again the youth specific content has been highlighted. The sentencing levels are broadly three quarters of the level of the adult guideline.

3.43 In 2013 approximately 50 youth offenders were sentenced for these offences. Almost all of the offenders received a community order (96 per cent), but again these are such small numbers that caution should be taken when basing sentencing levels on them.

#### Proposed Youth Guideline Sentencing Table

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 4 years detention <b>Category range</b> 3 – 6 years detention	<b>Starting point</b> 3 years' detention <b>Category range</b> 24 months' DTO – 5 years' detention
<b>Category 2</b>	<b>Starting point</b> 3 years' detention <b>Category range</b> 24 months' DTO – 5 years' detention	<b>Starting point</b> 18 months' DTO <b>Category range</b> 6 months DTO - 3 years' detention
<b>Category 3</b>	<b>Starting point</b> 6 months DTO <b>Category range</b> 4 months DTO – 12 months' DTO	<b>Starting point</b> 4 months DTO <b>Category range</b> YRO - 6 months DTO

#### Existing Adult Guideline Sentencing Table:

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting Point</b> 6 years' custody <b>Category Range</b> 4-9 years' custody	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 3-7 years' custody
<b>Category 2</b>	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 3-7 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1-4 years' custody
<b>Category 3</b>	<b>Starting Point</b> 1 year's custody <b>Category Range</b> 26 weeks' - 2 year's custody	<b>Starting Point</b> 26 weeks' custody <b>Category Range</b> High level community order – 1 year's custody

**Question 14: Is the Council content with the youth specific content in the guideline and the sentencing levels?**

**Causing or inciting a child under 13 to engage in sexual activity**

3.44 This draft guideline can be seen at Annex E. This guideline is based on its adult equivalent, with appropriate youth specific content (highlighted in yellow). The sentencing levels again reflect three quarters of the level of the adult guideline.

3.45 In 2013, approximately 20 youth offenders were sentenced for these offences. The majority of offenders (81 per cent) received a community order.

**Proposed Youth Guideline Sentencing Table**

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 9 years detention <b>Category range</b> 8 – 12 years detention	<b>Starting point</b> 8 years detention <b>Category range</b> 7 – 11 years detention
<b>Category 2</b>	<b>Starting point</b> 6 years detention <b>Category range</b> 3 – 7 years detention	<b>Starting point</b> 4 years detention <b>Category range</b> 24 months' DTO - 6 years detention
<b>Category 3</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 24 months' DTO - 6 years detention	<b>Starting point</b> 12 months' DTO <b>Category range</b> 6 months' DTO - 3 years detention

**Existing Adult Guideline Sentencing Table:**

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting Point</b> 13 years' custody <b>Category Range</b> 11-17 years' custody	<b>Starting Point</b> 11 years' custody <b>Category Range</b> 10-15 years' custody
<b>Category 2</b>	<b>Starting Point</b> 8 years' custody <b>Category Range</b> 5-10 years' custody	<b>Starting Point</b> 6 years' custody <b>Category Range</b> 3-9 years' custody
<b>Category 3</b>	<b>Starting Point</b> 5 year's custody <b>Category Range</b> 3-8 year's custody	<b>Starting Point</b> 2 year's custody <b>Category Range</b> 1-4 year's custody

**Question 15: Is the Council content with the youth specific content in the guideline and the sentencing levels?**

#### **4 IMPACT**

4.1 The potential impact of the proposed guidelines will be explored during road testing, and again during the consultation. The intention is that the new guidelines do not impact sentencing practice but ensure a consistent approach by sentencers. However, should the Council agree that the robbery guideline ought to replicate the adult version, there is likely to be an uplift in sentences for youth robberies involving weapons.

#### **5 RISK**

5.1 The vast majority of youth cases will be heard in the youth court, and many are low in volume. It will be difficult to gather reliable evidence and information about current sentencing practice in order to inform recommendations in the guideline.

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## **Robbery (Street robbery and less sophisticated commercial robbery only)**

**Theft Act 1968 (section 8(1))**

**This guideline applies only to offenders aged 17 and under**

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**Triable only on indictment  
Maximum: Life imprisonment**

**Offence range:**

**STEP ONE**

**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

<b>CULPABILITY</b>	
A – High Culpability	<ul style="list-style-type: none"> <li>• Use of a weapon to inflict violence</li> <li>• Production of a bladed article, firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Organised nature of the offence/ significant planning</li> <li>• A leading role where offending is part of a group activity</li> <li>• Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)</li> <li>• Abuse of position</li> </ul>
B - Medium Culpability	<ul style="list-style-type: none"> <li>• Production of a weapon to threaten violence</li> <li>• Threat of violence by bladed article, firearm or imitation firearm (but which is not produced)</li> <li>• A significant role where offending is part of the group activity</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
C – Lesser Culpability	<ul style="list-style-type: none"> <li>• Performed limited function under direction</li> <li>• Involved through coercion, intimidation or exploitation</li> <li>• Threat or use of minimal force</li> <li>• Very little or no planning</li> <li>• Mental disorder or learning disability where linked to the commission of the offence</li> </ul>

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Serious physical and/ or psychological harm caused to the victim</li> <li>• Serious detrimental effect on business (for robbery of small businesses and less sophisticated commercial robbery only)</li> <li>• High value goods or sums (for robbery of small businesses and less sophisticated commercial robbery only)</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Some physical and/ or psychological harm caused to the victim above the level of harm in this offence</li> <li>• Some detrimental effect on business (for robbery of small businesses and less sophisticated commercial robbery only)</li> <li>• Medium value goods or sums (for robbery of small businesses and less sophisticated commercial robbery only)</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Factors in categories 1 and 2 not present</li> </ul>

**STEP TWO**

**Starting point and category range**

Having determined the categories, the court should use the corresponding starting points to reach a sentence within the category range below. **The starting point applies to offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old.** Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years<sup>1</sup>.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

	<b>A</b>	<b>B</b>	<b>C</b>
<b>Category 1</b>	<b>Starting point</b> 7 years detention <b>Category range</b> 5 – 10 years detention	<b>Starting point</b> 5 years detention <b>Category range</b> 3 – 8 years detention	<b>Starting point</b> 3 years detention <b>Category range</b> 1 – 6 years detention
<b>Category 2</b>	<b>Starting point</b> 5 years detention <b>Category range</b> 3 – 8 years detention	<b>Starting point</b> 3 years detention <b>Category range</b> 1 – 6 years detention	<b>Starting point</b> 1 year detention <b>Category range</b> YRO - 3 years detention
<b>Category 3</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 1 – 6 years detention	<b>Starting point</b> 1 year detention <b>Category range</b> YRO - 3 years detention	<b>Starting point</b> YRO <b>Category range</b> YRO - 1 year detention

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court

<sup>1</sup> Powers of Criminal Courts (sentencing) Act 2000, s.100

must have particular regard to the welfare, maturity, sexual development and intelligence of the young person. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **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.

<b>Aggravating factors</b>
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<i>Statutory aggravating factors</i>
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- |                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• 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</li><li>• Offence committed whilst on bail</li></ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<i>Other aggravating factors</i>
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- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Specific targeting of a particularly vulnerable victim</li><li>• Blackmail or other threats made (where not taken into account at step one)</li><li>• Location of offence</li><li>• Timing of offence</li><li>• Use of weapon or other item to frighten or injure</li><li>• Failure to comply with current court orders</li><li>• Presence of others, especially children</li><li>• Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution</li><li>• Attempts to dispose of or conceal evidence</li><li>• Commission of offence whilst under the influence of alcohol or drugs</li></ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<b>Mitigating factors</b>
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- |                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• No previous convictions <b>or</b> no relevant/recent convictions</li><li>• Remorse</li><li>• Previous good character and/or exemplary conduct</li><li>• Mental disorder or learning disability, particularly where linked to the commission of the offence</li></ul> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

<b>Review of the sentence</b>
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Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the initial sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.
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**STEP THREE**

**Consider any factors which indicate a reduction, such as 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**

**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 a life sentence (section 226(2)) or an extended sentence (section 226B). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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 offending behaviour.

**STEP SEVEN**

**Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page XXXX.

**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**

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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# **Robbery – street and less sophisticated commercial**

**Theft Act 1968 (section 8(1))**

**This guideline applies only to offenders aged 17 and under**

**Street/ less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods.**

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**Triable only on indictment  
Maximum: Life imprisonment**

**Offence range: YRO – 6 years' detention**

**This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003**

**Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply**

**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.**

<p><b>Culpability</b> demonstrated by one or more of the following:</p> <p><b>A - High culpability:</b></p> <ul style="list-style-type: none"> <li>• Use of a weapon to inflict violence</li> <li>• Production of a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Use of very significant force in the commission of the offence</li> <li>• Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))</li> </ul>
<p><b>B - Medium culpability:</b></p> <ul style="list-style-type: none"> <li>• Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence</li> <li>• Threat of violence by any weapon (but which is not produced)</li> <li>• Other cases where characteristics for categories A or C are not present</li> </ul>
<p><b>C - Lesser culpability:</b></p> <ul style="list-style-type: none"> <li>• <del>Involved through coercion, intimidation or exploitation</del></li> <li>• Participated in offence due to bullying or peer pressure from others</li> <li>• Threat or use of minimal force</li> <li>• Mental disability where linked to the commission of the offence</li> </ul>



**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.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Serious physical and/or psychological harm caused to the victim</li> <li>• Serious detrimental effect on the business</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Other cases where characteristics for categories 1 or 3 are not present</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• No/ minimal physical or psychological harm</li> <li>• No/ minimal detrimental effect on the business</li> </ul>

**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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

**Non Custodial Sentences**

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 6 years' detention  <b>Category range</b> 5 – 9 years' custody	<b>Starting point</b> 3 years' 6 months detention  <b>Category range</b> 24 months' DTO– 6 years' detention	<b>Starting point</b> 3 years' detention  <b>Category range</b> 12 months' DTO - 5 years' detention
<b>Category 2</b>	<b>Starting point</b> 3 years' 6 months detention  <b>Category range</b> 24 months' DTO– 6 years' detention	<b>Starting point</b> 3 years' detention  <b>Category range</b> 12 months' DTO - 5 years' detention	<b>Starting point</b> 18 months DTO  <b>Category range</b> YRO – 3 years' detention
<b>Category 3</b>	<b>Starting point</b> 3 years' detention  <b>Category range</b> 12 months DTO - 5 years' detention	<b>Starting point</b> 18 months DTO  <b>Category range</b> YRO – 3 years' detention	<b>Starting point</b> 6 months DTO  <b>Category range</b> YRO – 24 months' DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. **The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person.** The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **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:**

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event

- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- **Offence committed on licence**
- Failure to respond to warnings about behaviour
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods
- High value goods or sums (whether economic, personal or sentimental)
- Location of offence also victim's residence

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Little or no planning
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- **Peripheral involvement where offence involves a group or gang**

#### **STEP THREE**

##### **Review of the sentence**

Once the court has made an initial decision about the sentence it should "step back", review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

#### **STEP FOUR**

##### **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 FIVE**

**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 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 a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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.

**STEP EIGHT**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**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**

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

# Domestic Burglary

## Theft Act 1968 (section 9)

This guideline applies only to offenders aged 17 and under

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Triable either way

Maximum when tried summarily: 2 year's custody

Maximum when tried on indictment: 14 years' custody

Offence range: Discharge – 4 years' detention

**This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003**

**Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply**

**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 the **culpability** and **harm** caused or intended.

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.**

Category 1	Greater harm <b>and</b> higher culpability
Category 2	Greater harm <b>and</b> lower culpability <b>or</b> lesser harm <b>and</b> higher culpability
Category 3	Lesser harm <b>and</b> lesser culpability

<b>Factors indicating greater harm</b>
Theft of/ damage to property causing a significant degree of loss to the victim (whether economic, sentimental or personal value)
Soiling, ransacking or vandalism of property
Occupier at home (or returns home) while offender present
Trauma to the victim, beyond the normal inevitable consequence of intrusion and theft
Violence used or threatened against victim
Context of general public disorder
<b>Factors indicating lesser harm</b>
Nothing stolen or only property of very low value to the victim (whether economic, sentimental or personal)
Limited damage or disturbance to property

<b>Factors indicating higher culpability</b>
Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)
A significant degree of planning or organisation
Knife or other weapon carried (where not charged separately)
Equipped for burglary (for example, implements carried and/ or use of vehicle)
Members of a group or gang
<b>Factors indicating lower culpability</b>
Offence committed on impulse, with limited intrusion into property
Offender exploited by others
Mental disorder or learning disability, where linked to the commission of the offence

**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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

**Non Custodial Sentences**

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
Category 1	24 months DTO	18 months DTO – 4 years' detention
Category 2	6 months DTO	YRO – 18 months DTO
Category 3	YRO	Discharge – 4 months DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **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:**

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim
- A leading role where offending is part of a group activity
- Child or vulnerable person at home (or returns home) when offence committed
- Victim compelled to leave their home
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- ~~Offence committed on licence~~
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Sole or primary carer for dependant relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Participated in offence due to bullying or peer pressure from others
- Peripheral involvement where offence involves a group or gang



**STEP THREE**

**Review of the sentence**

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

**STEP FOUR**

**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 FIVE**

**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 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 a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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.

**STEP EIGHT**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**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**

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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# Sexual Assault

## Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

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Triable either way  
Maximum: 7 years' custody

Offence range:

**STEP ONE**

**Determining the offence category**

The court should determine which categories of harm and culpability the offence falls into by reference **only** to the tables below.

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Abduction</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> </ul>	<ul style="list-style-type: none"> <li>Significant degree of planning</li> <li>Offender acts together with others to commit the offence</li> <li>Use of alcohol/drugs on victim to facilitate the offence</li> <li>Abuse of trust</li> <li>Previous violence against victim</li> <li>Offence committed in course of burglary</li> <li>Recording of the offence</li> <li>Offence racially or religiously aggravated</li> <li>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)</li> <li>Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)</li> </ul>	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> <li>Touching of naked genitalia or naked breasts</li> <li>Prolonged detention/sustained incident</li> <li>Additional degradation/humiliation</li> <li>Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		
Category 3	Factor(s) in categories 1 and 2 not present		

**STEP TWO**

**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. **The starting point applies to offenders aged 17. Adjustment is to be made according to the chronological and emotional age of the offender relative to a 17 year old.** Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime'<sup>1</sup> warranting detention for a period in excess of 2 years<sup>2</sup>.

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 1 – 5 years detention	<b>Starting point</b> 18 months detention <b>Category range</b> Medium level YRO – 3 years detention
<b>Category 2</b>	<b>Starting point</b> 18 months detention <b>Category range</b> Medium level YRO – 3 years detention	<b>Starting point</b> 6 months detention <b>Category range</b> Low level YRO – 18 months detention
<b>Category 3</b>	<b>Starting point</b> High level YRO <b>Category range</b> Low level YRO – 10 months' detention	<b>Starting point</b> Low level YRO <b>Category range</b> Discharge - High level YRO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have particular regard to the welfare, maturity, sexual development and intelligence of the young person. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **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.

<b>Aggravating factors</b>
<i>Statutory aggravating factors</i>
<ul style="list-style-type: none"> <li>• 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</li> <li>• Offence committed whilst on bail</li> </ul>

<sup>1</sup> Rape is a grave crime

<sup>2</sup> Powers of Criminal Courts (sentencing) Act 2000, s.100

### *Other aggravating factors*

- Specific targeting of a particularly vulnerable victim
- Blackmail or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

### **Mitigating factors**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence

### **Review of the sentence**

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the initial sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

### **STEP THREE**

#### **Consider any factors which indicate a reduction, such as 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**

#### **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 a life sentence (section 226(2)) or an extended sentence (section 226B). When sentencing

offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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 offending behaviour.

**STEP SEVEN**

**Ancillary orders**

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may *automatically* apply. Further information is included at Annex A on page XXXX.

**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**

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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# Sexual Assault

## Sexual Offences Act 2003 (section 3)

This guideline applies only to offenders aged 17 and under

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Triable either way  
Maximum: 7 years' custody

Offence range: Discharge – 3 years' detention

This is a serious specified offence for the purposes of sections 224 and section 226 of the Criminal Justice Act 2003

Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply

**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.**

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> <li>• Severe psychological or physical harm</li> <li>• Abduction</li> <li>• Violence or threats of violence</li> <li>• Forced/uninvited entry into victim’s home</li> </ul>	<ul style="list-style-type: none"> <li>• Significant degree of planning</li> <li>• Offender acts together with others to commit the offence</li> <li>• Use of alcohol/drugs on victim to facilitate the offence</li> <li>• <b>Grooming behaviour used against victim*</b></li> <li>• Abuse of trust</li> <li>• Previous violence against victim</li> <li>• Offence committed in course of burglary</li> <li>• <b>Sexual images of victim recorded, solicited or shared*</b></li> <li>• <b>Deliberate isolation of victim*</b></li> <li>• <del>Commercial exploitation and/or motivation</del></li> <li>• Offence racially or religiously aggravated</li> </ul>	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> <li>• Touching of naked genitalia or naked breasts</li> <li>• Prolonged detention/ sustained incident</li> <li>• Additional degradation/ humiliation</li> <li>• <b>Substantial age gap between the parties</b></li> <li>• Victim is particularly vulnerable due to personal circumstances*</li> </ul> <p>*for sexual assault of a child under 13 please refer to the guideline on page xxxx</p>		

\* These factors are not in the adult version of the guideline, but do appear in the adult Sexual Assault of a child under 13, guideline. The factors appear relevant and I think should be added to this guideline.

Category 3	Factor(s) in categories 1 and 2 not present		<ul style="list-style-type: none"> <li>• Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)</li> <li>• Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)</li> </ul>	
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**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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions.

A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a YRO with a sex offender treatment programme requirement under section 1(1)(d) of the Criminal Justice and Immigration Act 2008 can be a proper alternative to a short length custodial sentence.

**Comment [VH1]:** Awaiting info from YJB as to whether this is applicable – not sure if sex offender treatment programmes are widely available.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

(i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.

(ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.

(iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.

(iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

**Non Custodial Sentences**

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	A	B
<b>Category 1</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 24 months' DTO – 5 years detention	<b>Starting point</b> 18 months' DTO <b>Category range</b> 12 months' DTO – 3 years detention
<b>Category 2</b>	<b>Starting point</b> 12 months' DTO <b>Category range</b> 6 months' – 3 years detention	<b>Starting point</b> 6 months' DTO <b>Category range</b> YRO – 1 year detention
<b>Category 3</b>	<b>Starting point</b> 4 months DTO <b>Category range</b> YRO – 6 months' DTO	<b>Starting point</b> YRO <b>Category range</b> Discharge - 4 months' DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. **The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person.** The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **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:**

- Specific targeting of a particularly vulnerable victim
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

#### Factors reducing seriousness or reflecting personal mitigation

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

- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

**STEP THREE**

**Review of the sentence**

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

**STEP FOUR**

**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 FIVE**

**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 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 a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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.

**STEP EIGHT**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**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**

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

# Sexual Assault of a child under 13

## Sexual Offences Act 2003 (section 7)

This guideline applies only to offenders aged 17 and under

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Triable either way

Maximum: 14 years' custody

Offence range: YRO – 6 years' detention

**This is a serious specified offence for the purposes of sections 224 and 226 of the Criminal Justice Act 2003**

**Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply**

**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.**

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Abduction</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> </ul>	<ul style="list-style-type: none"> <li>Significant degree of planning</li> <li>Offender acts together with others to commit the offence</li> <li>Use of alcohol/drugs on victim to facilitate the offence</li> <li>Grooming behaviour used against victim</li> <li>Abuse of trust</li> <li>Previous violence against victim</li> <li>Offence committed in course of burglary</li> <li>Sexual images of victim recorded, retained, solicited or shared</li> <li>Deliberate isolation of victim</li> <li>Commercial exploitation and/ or</li> </ul>	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> <li>Touching of naked genitalia or naked breasts</li> <li>Prolonged detention/ sustained incident</li> <li>Additional degradation/ humiliation</li> <li>Substantial age gap between the parties</li> <li>Child is particularly vulnerable due to personal circumstances</li> </ul>		



Category 3	Factor(s) in categories 1 and 2 not present		<p><b>motivation</b></p> <ul style="list-style-type: none"> <li>• Offence racially or religiously aggravated</li> <li>• Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)</li> <li>• Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)</li> </ul>	
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**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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

**Specific provisions relating to sentencing young people:**

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

**Non Custodial Sentences**

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	<b>A</b>	<b>B</b>
<b>Category 1</b>	<b>Starting point</b> 4 years detention <b>Category range</b> 3 – 6 years detention	<b>Starting point</b> 3 years' detention <b>Category range</b> 24 months' DTO – 5 years' detention
<b>Category 2</b>	<b>Starting point</b> 3 years' detention <b>Category range</b> 24 months' DTO – 5 years' detention	<b>Starting point</b> 18 months' DTO <b>Category range</b> 6 months DTO - 3 years' detention
<b>Category 3</b>	<b>Starting point</b> 6 months DTO <b>Category range</b> 4 months DTO – 12 months' DTO	<b>Starting point</b> 4 months DTO <b>Category range</b> YRO - 6 months DTO

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. **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:***

- Specific targeting of a particularly vulnerable victim
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

### STEP THREE

#### Review of the sentence

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.

### STEP FOUR

#### 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 FIVE

#### 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 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 a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### 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.

### STEP EIGHT

#### Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**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**

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

# Causing or inciting a child under 13 to engage in sexual activity

**Sexual Offences Act 2003 (section 8)**

**This guideline applies only to offenders aged 17 and under**

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**Triable either way**

**Maximum: 14 years' custody**

**Offence range: 6 months' DTO – 12 years' detention**

**This is a serious specified offence for the purposes of sections 224 and 226 of the Criminal Justice Act 2003.**

**Grave crime provisions under section 24 Magistrates' Courts Act 1980 and section 91 of the Powers of the Criminal Courts (Sentencing) Act 2000 apply**

**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.**

HARM		CULPABILITY	
		A	B
Category 1	<ul style="list-style-type: none"> <li>The extreme nature of one or more category 2 factors or the extreme impact caused by a combination of category 2 factors <b>may</b> elevate to category 1</li> </ul>	<ul style="list-style-type: none"> <li>Significant degree of planning</li> <li>Offender acts together with others to commit the offence</li> <li>Use of alcohol/drugs on victim to facilitate the offence</li> <li>Grooming behaviour used against victim</li> <li>Abuse of trust</li> <li>Previous violence against victim</li> <li>Offence committed in course of burglary</li> <li>Sexual images of victim recorded, retained, solicited or shared</li> <li>Deliberate isolation of victim</li> <li><del>Commercial exploitation and/ or motivation</del></li> <li>Offence racially or religiously aggravated</li> <li>Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)</li> <li>Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)</li> </ul>	Factor(s) in category A not present
Category 2	<ul style="list-style-type: none"> <li>Severe psychological or physical harm</li> <li>Penetration of vagina or anus (using body or object) by, or of, the victim</li> <li>Penile penetration of mouth by, or of, the victim</li> <li>Additional degradation/humiliation</li> <li>Abduction</li> <li>Prolonged detention/sustained incident</li> <li>Violence or threats of violence</li> <li>Forced/uninvited entry into victim's home</li> <li>Child is particularly vulnerable due to extreme youth and/or personal circumstances</li> <li>Substantial age gap between the parties</li> </ul>		
Category 3	Factor(s) in categories 1 and 2 not present		

## 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 offenders aged 17. Adjustment is to be made according to the chronological and emotional age (including sexual maturity) of the offender relative to a 17 year old. The starting point applies irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

#### Specific provisions relating to sentencing young people:

Except where the dangerous offender provisions apply:

- (i) Where the young offender is aged 12, 13 or 14, a custodial sentence may only be imposed if the youth is a 'persistent offender' or has committed a 'grave crime' warranting detention for a period in excess of 2 years.
- (ii) Where a young offender is aged 10 or 11, no custodial sentence is available in the youth court.
- (iii) Where a custodial sentence is imposed in the youth court, it must be a Detention and Training Order (DTO), which can only be for 4/6/8/10/12/18 or 24 months.
- (iv) Where a custodial sentence is imposed in the Crown Court, it may be a DTO or it may be detention for a period up to the maximum for the offence.

#### Non Custodial Sentences

Where the compulsory referral order conditions apply the court **must** make a referral order unless the court proposes to give the offender a custodial sentence, an absolute or conditional discharge or a hospital order.

	A	B
<b>Category 1</b>	<b>Starting point</b> 9 years detention <b>Category range</b> 8 – 12 years detention	<b>Starting point</b> 8 years detention <b>Category range</b> 7 – 11 years detention
<b>Category 2</b>	<b>Starting point</b> 6 years detention <b>Category range</b> 3 – 7 years detention	<b>Starting point</b> 4 years detention <b>Category range</b> 24 months' DTO - 6 years detention
<b>Category 3</b>	<b>Starting point</b> 3 years detention <b>Category range</b> 24 months' DTO - 6 years detention	<b>Starting point</b> 12 months' DTO <b>Category range</b> 6 months' DTO - 3 years detention

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. The court must have regard to these factors as well as the welfare, maturity, sexual development and intelligence of the young person. The court must identify whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point.

**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:**

- Specific targeting of a particularly vulnerable victim
- Ejaculation (where not taken into account at step one)
- Blackmail, **bullying** or other threats made (where not taken into account at step one)
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Use of weapon or other item to frighten or injure
- Victim compelled to leave their home, school etc
- Failure to comply with current court orders
- Presence of others, especially children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Relationship of genuine affection
- Behaviour stems from sexual immaturity or confusion
- Participated in offence due to bullying or peer pressure from others

### **STEP THREE**

#### **Review of the sentence**

Once the court has made an initial decision about the sentence it should “step back”, review and, if necessary, adjust the sentence reached at step two to ensure that it fulfils the general principles of sentencing youths.



**STEP FOUR**

**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 FIVE**

**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 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 a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**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.

**STEP EIGHT**

**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

**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**

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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