

Sexual Offences

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

Background factors may also play a part:-

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

The approach to sentencing a youth should always be individualistic. However, the starting point of sentencing will require the court to assess the seriousness of the offence. The tables below include offence – related factors that may indicate that the case is either below, or alternatively, has crossed, the custodial threshold. This threshold is likely to be higher for young persons than adults, due to the more punitive effects that custody has upon a young person.

If the custodial threshold has been passed the court should consider whether an alternative penalty is available and if so whether that penalty would be appropriate. In particular the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on issues including grave crime determination and reduction for guilty pleas.

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

- Any form of non penetrative sexual activity
- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Sexual activity (including penetrative activity) not obtained through coercion, exploitation or pressure

A custodial sentence* may be justified where one of the following factors is present along with at least one aggravating factor

- Penetrative activity involving coercion, exploitation or pressure
- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

*the court should consider whether a YRO with ISS could be justified before passing a custodial sentence.

*refer to the [Overarching Principles – Sentencing Youths definitive guideline](#), for details of the restrictions on imposing custodial sentences on offenders of different ages and the length of custodial sentences that are available.

The Court must also consider the aggravating and mitigating features before deciding upon a final sentence.

Aggravating factors (non exhaustive)

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/ drugs on victim to facilitate the offence
- Abuse of trust (e.g. where the offender is babysitting the victim or is an older relative of the victim)
- Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups
- Grooming
- Significant disparity of age between offender and victim
- Specific targeting of particularly vulnerable victim
- Any steps taken to prevent reporting the incident/ seeking assistance
- Pregnancy or STI as a consequence of offence
- Blackmail

The following aggravating factors are only to be considered where they have not already been taken into consideration at an earlier stage

- Penetrative activity involving exploitative behaviour

- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

Mitigating factors (non exhaustive)

- Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour, exposure by others to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour
- Participated in offence due to peer pressure/ bullying
- Genuine belief that activity was lawful
- Particularly young or immature offender (where not considered above)
- Mental disorder or learning disability, particularly where linked to the commission of the offence (where not considered above)
- Non coerced sexual activity (where not considered above)

Once satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate the court may want to consider the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

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

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