

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 lack of control; inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; lack of understanding around consent, and coercion. All these circumstances have the potential to mitigate the young person's level of culpability for the offence.

Background factors may also be relevant to the sentencing decision. These include, but are not limited to the following:-

- 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 harmful effects that custody has upon a juvenile.

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, in those cases where it is available, the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

Presence of one or more of the following factors may lead the court to consider a **community penalty or an appropriate non custodial sentence is the most suitable disposal**

- 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
- Non coerced sexual activity

Presence of one of the following factors combined with one or more aggravating features may lead the court to conclude that the **custodial threshold* has been passed**

- Penetrative activity involving coercive behaviour
- 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

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)
- Recording of the offence or other actions designed to humiliate or degrade the victim
- 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
- Coercion through violence or threats of violence (where not considered above)

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Remorse
- 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 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)

If satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

When 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 adult sentence. 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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