

# **Child Cruelty – Failing to protect a girl from female genital mutilation**

## **Failure to protect a girl from risk of genital mutilation** Female Genital Mutilation Act 2003 (S3A)

Indictable only

Maximum: 7 years' custody

Offence range: Low level community order – 6 years' custody

This guideline applies only to offenders aged 18 and older

**STEP ONE**  
**Determining the offence category**

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

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

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

**Culpability** demonstrated by one or more of the following:

**A - High culpability:**

- Significant planning (where not charged as a separate offence)
- Leading role in the commission of the FGM offence (where not charged as a (separate offence)
- Child was subject to an FGM Protection Order
- Failure to respond to interventions or warnings e.g. from medical professionals/social services etc
- Involving others through coercion, intimidation or exploitation

**B - Medium culpability:**

- ~~Cases falling between A and C~~
- Other cases falling between A and C because:
  - Factors in both high and lesser categories are present which balance each other out and/or
  - The offender's culpability falls between the factors as described in high and lesser culpability

**C - Lesser culpability:**

- Steps taken to protect child but fell just short of what could reasonably be expected
- Offender victim of domestic abuse (where linked to commission of the offence)
- Subjected to coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

**Harm**

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

**For all cases of failing to protect a girl from female genital mutilation there will be serious physical and psychological harm (likely both immediately and long-term) but there are factors that may increase it further.**

<b>Category 1</b>	<ul style="list-style-type: none"> <li>Cases where the physical and/or psychological harm is particularly severe</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>All other cases</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 all offenders irrespective of plea or previous convictions. 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 on the next page.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category range</b> 3 – 6 years' custody</p>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 3 years' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 3 years' custody</p>	<p><b>Starting point</b> Medium level community order</p> <p><b>Category range</b> Low level community order – 1 year's custody</p>

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

### Factors increasing seriousness

#### **Statutory aggravating factors:**

- Previous convictions, having regard to a) the **nature** of the offence to which the

conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

- Offence committed whilst on bail

***Other aggravating factors:***

- Failure to seek medical help when necessary
- Deliberate concealment and/or covering up of the offence
- Blamed others for the offence
- Victim particularly vulnerable
- Threats to prevent reporting of the offence
- Failure to comply with current court orders (where not taken into account at step one)
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Offender particularly isolated with limited access to support
- Appropriate medical care sought for victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not taken into account at step one)
- Co-operation with the investigation

**STEP THREE**

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

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

**STEP FOUR**

**Reduction for guilty pleas**

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

#### **STEP FIVE**

##### **Parental responsibilities**

In the majority of failing to protect a child from female genital mutilation cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

#### **STEP SIX**

##### **Totality principle**

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

#### **STEP SEVEN**

##### **Ancillary orders**

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

#### **STEP EIGHT**

##### **Reasons**

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

#### **STEP NINE**

##### **Consideration for time spent on bail**

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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