

Annex B: Revised draft guideline

Causing or allowing a child to suffer serious physical harm

Domestic Violence, Crime and Victims Act 2004 (section 5)

Indictable only

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

Causing or allowing a child to die

Domestic Violence, Crime and Victims Act 2004 (section 5)

Indictable only

Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

This guideline applies only to offenders aged 18 and older and when the victim of the offence is aged 17 or under.

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:

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

B - Medium culpability:

- Limited steps taken to protect victim in cases with Category A factors present
- 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:

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Victim of domestic abuse, *including coercion and/or intimidation* (when linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement
- Minimal force or failure to protect *the victim* from an incident involving minimal force
- Low level of neglect

Harm

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

Category 1	<ul style="list-style-type: none"> • Death
Category 2	<ul style="list-style-type: none"> • Physical harm which has a substantial and/or long term effect • Serious psychological, <u>developmental or emotional</u> harm • Significantly reduced life expectancy • A progressive, permanent or irreversible condition
Category 3	<ul style="list-style-type: none"> • <u>Serious physical harm that does not fall into Category 2</u> All other harm caused

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
Category 1	Starting point 9 years' custody Category range 7 – 14 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 2 years' custody Category range 1 year– 4 years' custody
Category 2	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 4 years' custody Category range 2 – 6 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 3 years' custody
Category 3	Starting point 4 years' custody Category range 2 – 6 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 3 years' custody	Starting point 9 months' custody Category range High level community order– 2 years' custody

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 (where not taken into account at step one)
- Prolonged suffering prior to death
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blamed others for the offence
- Victim particularly vulnerable
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders, including those made by the family court
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of other children

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- ~~Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities~~
- Steps taken to protect the victim (where not taken into account at Step 1)

- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (the more serious the offence, the less the weight which should normally be attributed to this factor).
- Serious medical condition requiring urgent, intensive or long-term treatment
- 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 for sole or primary carers

In the majority of 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 lesser culpability/harm cases, particularly “failure to protect” offences, 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.