

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

2 March 2018
SC(18)MAR05 – Child Cruelty
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1 ISSUE

1.1 This is the second consideration of the child cruelty guidelines following consultation. Further to the discussion of culpability factors at the Council’s January meeting, revised version of the guidelines for the Cruelty to a Child and Causing or Allowing offences are attached at Annexes A and B.

1.2 This paper considers the approach to harm for each of these offences, and aggravating and mitigating factors. Sentence levels and the FGM offence guideline will be considered at the meeting in April.

2 RECOMMENDATION

2.1 That the Council considers and agrees the amendments proposed to harm factors and aggravating and mitigating factors set out at **Annex A** (Cruelty to a Child) and **Annex B** (Causing or Allowing).

3 CONSIDERATION

Assessing long term and psychological/developmental/emotional harm

3.1 Consultation respondents to questions 3 and 4 (on Cruelty to a Child) and 14 and 15 (on Causing or Allowing) were broadly supportive of the approach to the assessment of harm. However, respondents asked questions about how to assess harm, what constitutes “serious” harm and, particularly, how to assess the likelihood of long-term psychological impact on the victim. Respondents also asked related questions about what constituted developmental or emotional harm. The current wording on Category 1 psychological harm in the draft guidelines is:

Cruelty to a Child: “Serious psychological and/or developmental harm”
Causing or Allowing: “Serious psychological harm”

3.2 As this will be a digital guideline, there can be links to additional information on how to assess harm. At the January meeting, you agreed to make some changes to guidance on

assessment of harm in the Seriousness guideline, including that relating to harm in cases of s18/s20 GBH or ABH, and in rape cases. Parts of that wording could be relevant to the child cruelty offences, in particular, the wording relating to “severe psychological harm” in rape cases could be amended slightly as follows:

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

Question One: Is the Council content to link to the proposed additional wording in the digital guideline to give further guidance on determining serious psychological harm?

3.3 Some respondents suggested that it would be helpful for the guideline to add the term “emotional harm” or to refer to the specific definitions of these terms as used by the family courts. As these terms are used for a different purpose in the civil context, with a different standard of proof, giving the specific definitions may not be helpful and some respondents suggested keeping the definitions separate. However, transcripts suggest that in family court proceedings the term “emotional harm” is commonly used in sentencing these offences, with judges often distinguishing between their uses in family and criminal proceedings. We therefore suggest that the term “emotional harm is added to the Category 1 factor as follows:

Serious psychological ~~and/or~~ developmental and/or emotional harm

3.4 Given the differing views on this we will discuss this factor further with district judges sitting in both the family and criminal courts to determine how information on emotional harm in family cases is used in criminal cases. Council may wish to postpone a decision on this factor until we have further information.

Question Two: Does the Council wish to add reference to “emotional harm” in the wording of the factor and additional wording?

3.5 On the Causing or Allowing offence, a number of respondents felt that Category 3 harm was too vague and there was a risk of sentencers being reluctant to use this category since all harm must be serious in order for the offender to have been convicted. To make this Category clearer, including making it clear that the harm caused in this category still needs to be serious, we propose the following wording change for Category 3 harm for this offence. This change also includes removing the word “caused” from the factor, as the offence covers “allowing”.

Current: "All other harm caused"

Proposed: "Serious physical harm that does not fall into Category 2"

Question Three: Is the Council content to use the above revised wording for Category 3 harm in the Causing or Allowing offence?

Risk of harm – Cruelty to a Child offence

Current wording for Category 2:

"A serious risk of category 1 harm being caused that any reasonable person should have foreseen"

3.6 It appeared that several respondents to consultation were not taking the word "serious" into account, and so were putting into this category cases where the risk of Category 1 harm was only very slight. "Serious" is not a word ordinarily used in relation to risk, and I propose using "high likelihood", to make it clear that sentencers should consider the likelihood of the situation as well as its impact. Revised wording would therefore be:

"A ~~serious~~ high likelihood risk of category 1 harm being caused that any reasonable person would have foreseen"

Question Four: Does the Council wish to amend the wording on risk in Category 2 harm?

Neglect

3.7 A few consultation responses suggested changes in the way in which the guidelines deal with harm caused by neglect, particularly in relation to the category 1 factor in the Cruelty to a Child offence: "Serious physical harm (including illnesses contracted due to unsanitary surroundings)". Comments included suggestions that other aspects of neglect be covered, and that the current wording could potentially catch cases where illness was contracted due to unsanitary surroundings but those unsanitary surroundings were not the fault of the offender, for example, where poor housing conditions had led to children developing respiratory illnesses. I therefore propose amending this harm factor to cover illnesses contracted as a result of all types of neglect:

Serious physical harm (including illnesses contracted due to neglect ~~unsanitary surroundings~~)

Question Five: Is Council content to amend the wording of this Category 1 factor to cover all types of neglect?

Causing or Allowing offence – scope of Category 1

3.8 Three respondents suggested that Category 1 of the Causing or Allowing offence should not be restricted to death, but should also cover the most serious harm. However, given that the maximum sentence for the offence causing or allowing death is 14 years compared to 10 years for the serious injury offence, and that the harm must always be serious for the offence to be made out, I do not propose to change the categories in the draft guideline with Category 1 as death and serious physical harm split between the two other categories.

Question Six: Is the Council content to restrict Category 1 harm to circumstances where the child has died?

Causing or Allowing offence – harm factors in Category 2

3.9 There were several comments on the approach to serious physical harm in which long-term harm is separated from short term harm. Some of these were similar comments to those in relation to assessing psychological harm under the Cruelty to a Child offence, particularly where respondents asked how to deal with the fact that psychological harm may not be evident until some time, perhaps years, after the offence. There were no comments disagreeing with the overall approach of distinguishing between long and short-term harm, however, and the additional text suggested above at paragraph 3.2 should give some additional guidance on assessing psychological harm. I therefore do not propose making any changes beyond a digital link linking this additional material to the harm factors section of this guideline as well as that of the Cruelty to a Child guideline.

Question Seven: Is the Council content to include the above additional material at 3.2 in the Causing or Allowing guideline?

Aggravating Factors

3.10 With one exception, the aggravating and mitigating factors in the draft guidelines were the same for the Cruelty to a Child and Causing or Allowing offences. Respondents to consultation gave a wide range of comments on the factors, and suggested several new ones. Many comments included requests for additional information on a factor, which would go beyond the information which is usually given in guidelines. Some requests for additional guidance would be counter-productive as any additional information or examples would narrow the scope of the factor unnecessarily. For example, giving details or examples of the type of interventions covered by the “Failure to respond to interventions or warnings about behaviour” factor would risk narrowing the scope of the factor, which we intend to be capable of covering interventions of all types from all sources depending on the facts of the case. I am

therefore not proposing changes to any of the aggravating or mitigating factors other than those discussed below.

3.11 On the factor “Failure to comply with current court orders”, two respondents mentioned the need to include family court orders as well as criminal orders. Other respondents referred to family court proceedings at other places in their consultation responses, and reference to these proceedings, and compliance with orders, was frequently cited in transcripts. Whilst this may be unnecessary, I propose adding this to the current factor as follows:

Failure to comply with current court orders, <u>including those made by the Family Court</u>
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Question Eight: Does the Council agree to including this reference to orders made by the Family Court?

3.12 Six respondents to consultation mentioned the factor “Offence committed in the presence of other children” which is in the current SGC guideline but was omitted from the revised draft guideline. Some of these suggested the need to make clear that this would only apply where that was short of being a separate offence, since it is intended to capture the impact on other children who were not themselves victims but who saw another child, often a sibling, being abused. Two respondents suggested the inclusion of another factor from the SGC guidelines, “Targeting one child”. These two factors seem designed to separate the impact on the other children from the impact on the child who is the targeted victim. Transcripts suggest that it is the targeting, and the impact on the victim, which is more commonly taken into account in these cases, but this finding should be treated with caution as this was only taken from a small number of cases.

Question Nine: Does the Council wish to bring back into the revised guideline either or both of the above factors from the SGC guideline relating to “offences committed in the presence of other children” or “targeting one child”?

3.13 Many of the new factors suggested (such as “Repeated or prolonged acts of cruelty”) are already covered at step one, so I do not propose to include them. One suggested factor which is not covered at step one, however, is reference to planning of the offence and/or involving more than one other in the commission of the offence. This is not a common occurrence, but these were factors in a handful of serious cases seen in transcripts. Information about planning and involving others in these cases was more used as evidence of overall culpability, so they would not seem to fit as separate aggravating factors at step two. As they only occurred in a very small number of cases I do not propose to include them either here at step two or as factors within culpability.

Question Ten: Is the Council content not to include reference to additional aggravating factors on planning and involvement of others?

Mitigating Factors

3.14 Some respondents suggested removal of several mitigating factors, such as “Good character” and “Remorse” which they felt should never be used for offences as serious as these. However, the argument was more against the idea of mitigation in general than against the factors themselves, and sentencers are familiar with how and when these factors are relevant.

3.15 There were some more significant comments on the following factors (as currently drafted):

- 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.
- Cooperation with the investigation

3.16 Several respondents suggested a separate mitigating factor relating to steps taken by the offender (following the discovery of the offence) to address their behaviour by, for example, cooperating with social services and attending drug/alcohol addiction programmes. Many case transcripts showed that this was a very important mitigating factor; in many cases the fact that the offender was now working with social services and addressing problems which had contributed to offending, often with a view to regaining contact with their child, was the most important factor which led to the sentencer suspending the sentence or deciding on a community rather than custodial sentence. This is a somewhat separate factor from either cooperation with the investigation or taking steps address behaviour or to protect the victim before the offence came to light. Steps taken to protect the victim (before discovery of the offence) are covered by the revised lower culpability factor agreed at the January meeting:

Steps taken to protect victim but fell just short of what could reasonably be expected

3.17 As this culpability factor does not cover the circumstances above, where the offender has taken action after the offence was discovered, I propose adding a new mitigating factor, based on a similar factor in the Theft guideline. In addition, since the first mitigating factor at 3.15 above (which appears to relate to action taken before the discovery of the offence) is to a large extent covered by the above culpability factor, I propose a simpler mitigating factor covering steps taken to protect the victim where this has not already been taken into account, so the mitigating factors would be:

~~Attempts to address or rectify the situation 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

Cooperation with the investigation

Question Eleven: Is the Council content with these proposed changes to mitigating factors?

Step Five and mitigating factor on “sole carers”

3.18 Respondents to consultation, apart from those who misunderstood how the step was to work, also were in general strongly supportive of the new step five. This was clear from both the questions on this step, and its use in the scenarios. Reference was also made to this step in responses relation to the mitigating factor “Sole or primary carer for dependent relatives”. Whilst there was some misunderstanding of this factor, respondents also suggested that this factor duplicated the new step five and could therefore be removed. However, given that the mitigating factor is wider than step five in that it includes all dependents and not just children, I propose retaining both step five and the mitigating factor as currently worded.

Question Twelve: Is the Council content to retain both Step 5 and the mitigating factor as currently worded?

4 RISKS AND IMPACT

4.1 Prior to consideration of sentencing levels (scheduled for the April Council meeting) we are not in a position to consider the impact of the guidelines in detail. We will consider any potential for inflationary impacts as we consider sentence levels, and have ordered some additional transcripts for 2016 to supplement our analysis.

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Annex A: revised draft guideline

Child Cruelty – Assault and ill treatment, abandonment, neglect and failure to protect.

Cruelty to a child

Children and Young Persons Act 1933 (S1(1))

Triable either way

Maximum: 10 years' custody

Offence range: Low level community order – 9 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:

- 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
- Blatant and deliberate disregard to 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, *including in cases of neglect*
- 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 or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious psychological, and/or developmental, <u>and/or</u> emotional harm • Serious physical harm (including illnesses contracted due to <u>neglect</u> unsanitary surroundings)
Category 2	<ul style="list-style-type: none"> • Cases falling between category 1 and 3 • A serious risk <u>high likelihood</u> of category 1 harm being caused that any reasonable person should have foreseen
Category 3	<ul style="list-style-type: none"> • Little or no psychological, and/or developmental, <u>and/or</u> emotional harm • Little or no physical harm

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	<p>Starting point 6 years' custody</p> <p>Category range 5 – 9 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years 6 months' custody</p>
Category 2	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years 6 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium level community order – 1 year 6 months' custody</p>
Category 3	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years 6 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium level community order -1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order – 6 months' 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 (where not taken into account at step one)
- 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 one)
- 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 cruelty to a child 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 involving a momentary lapse in judgement 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.

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.

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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.

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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.

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

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