

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: 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:

- Child was subject to an FGM Protection Order
- Failure to respond to interventions or warnings including, but not limited to, those from medical professionals/social services
- Involving others through coercion, intimidation or exploitation
- Failure to take any steps to protect the victim from the FGM offence

B - Medium culpability:

- Limited steps taken to protect victim from the FGM offence
- 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.

Psychological, developmental or emotional harm

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 harm suffered by the victim is minor or trivial.

Annex C: Draft Guideline

For all cases of failing to protect a girl from the risk of female genital mutilation there will be serious physical and psychological harm (~~likely both immediately and long term~~) but some cases may involve more serious harm which has a substantial and/or long term effect ~~there are factors that may increase it further.~~

Category 1	<ul style="list-style-type: none"> Cases where the physical and/or psychological harm is particularly severe <u>Serious physical, psychological or developmental harm which has a substantial and/or long term effect</u>
Category 2	<ul style="list-style-type: none"> All other cases <u>Serious harm which does not fall into Category 2</u>

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 4 5 years' custody Category range 3 – 6 years' custody	Starting point 2 3 years' custody Category range <u>1 year 6 months</u> 2 – 5 years' custody	Starting point 1 year's custody Category range High level community order – 3 2 years' custody
Category 2	Starting point 2 3 years' custody Category range <u>1 year 6 months</u> 2 – 5 years' custody	Starting point 1 year's custody Category range High level community order – 3 2 years' custody	Starting point High Medium level community order Category range Low level community order – 1 year's 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:

1. 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
2. Offence committed whilst on bail

Other aggravating factors:

1. Failure to seek medical help when necessary
2. Deliberate concealment and/or covering up of the offence
3. Blame wrongly placed on others~~others for the offence~~
4. ~~Victim particularly vulnerable~~
5. Threats to prevent reporting of the offence
6. Failure to comply with current court orders (where not taken into account at step one)
7. Offence committed on licence or post sentence supervision
8. Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions **or** no relevant/recent convictions
2. Remorse
3. Offender particularly isolated with limited access to support
4. Appropriate medical care sought for victim
5. Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
6. Commission of the offence was a lapse in the offender's otherwise satisfactory standard of care.
7. ~~Good character and/or exemplary conduct~~
8. Serious medical condition requiring urgent, intensive or long-term treatment
9. Age and/or lack of maturity where it affects the responsibility of the offender
10. Mental disorder or learning disability (where not taken into account at step one)
11. 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.

Annex C: Draft Guideline