

Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXX

Triable either way

Maximum: 2 years' custody

Offence range: XXXXXXXXXX

This is a **specified offence** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

In cases of attempts where an offender tries to communicate with a child victim who does not exist, the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the lack of harm which has actually resulted. In such cases a small reduction within the category range will usually be appropriate.

Harm
Category 1 <ul style="list-style-type: none"> • Discussion of penetrative activity, oral sex, extreme sexual activity, sadism, or masturbation • Sexual images sent or received • Significant psychological harm or distress caused to victim
Category 2 <ul style="list-style-type: none"> • Factor(s) in category 1 not present

Culpability
Culpability A <ul style="list-style-type: none"> • Abuse of trust • Use of threats (including blackmail)

<ul style="list-style-type: none"> • Targeting of a particularly vulnerable child • Commercial exploitation and/or motivation
<p>Culpability B</p> <ul style="list-style-type: none"> • Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 18 months' custody</p> <p>Category range 9 – 24 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>
Category 2	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium 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 starting point. **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.

The court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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
- Offence racially or religiously aggravated
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Failure to comply with current court orders
- Offence committed whilst on licence
- Financial or other reward offered to victim
- Offender lied about age or used a false identity
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others
- Victim particularly vulnerable (where not taken into account at step one)
- **Sustained and persistent offending**

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- **Isolated offence**

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has

been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

[Further steps]