

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

**18 December 2020**  
**SC(20)DEC05 – Sexual Offences**  
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## **1 ISSUE**

1.1 Seeking Council's agreement to:

- a narrative guideline for offences under section 14 of the Sexual Offences Act 2003 (SOA) (facilitating or arranging the commission of a child sex offence) for situations where no sexual activity has occurred;
- additional text to be inserted into the guideline for section 10 SOA offences (causing or inciting a child to engage in sexual activity) for situations where no sexual activity has occurred, which could also apply to other causing/inciting offences;
- a new guideline for section 15A SOA offences (sexual communication with a child).

## **2 RECOMMENDATIONS**

2.1 That Council agrees the drafts at **Annexes A to C** for consultation.

## **3 CONSIDERATION**

### *Section 14*

3.1 This is the second meeting on the substance of revised guidelines for section 14 and section 10. In October, Council agreed not to overcomplicate a new section 14 guideline and that a narrative guideline would be capable of covering situations where a child sexual offence has been arranged or facilitated, but no offence under ss9-13 has taken place. A working group met last month to consider drafts in detail and I set out a proposed section 14 guideline following that discussion at **Annex A**.

3.2 The highlighted text is proposed in addition to what is there in the existing brief section 14 guideline (as well as some unhighlighted changes to account for the Sentencing Code coming into force).

3.3 The draft follows closely the guidance given in *Privett* to work from the harm that was intended by an offender and then applying a discount for the ultimate lack of sexual activity. Whilst not being overly prescriptive in the sort of discount to apply two general scenarios are proposed to represent the ends of a sliding scale:

*“In cases where an offender is only prevented by others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, a small reduction within the category range will usually be appropriate.*

*Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.”*

3.4 Although this leaves some degree of judicial discretion on the level of reduction, the guidance is fairly clear cut when one considers that category 1A offending for sexual activity with a child – the most likely offending intended – means a starting point of 5 years which can only be reduced to 4 within the range. Likewise for 2A offending this could mean 3 years remains the possibility of them using discretion to reduce further than we might intend.

3.5 This means a downward adjustment is made ahead of and separate to any further aggravating and mitigating factors. This disrupts the normal structure of a guideline, although there are already several guidelines that propose adjusting a starting point up or down before moving on to aggravating and mitigating factors. Given the uncertainty that has arisen, and the fact that sting operations account for the vast majority of section 14 cases, I think it is important to flag this reduction upfront to make sure sentencers are fully apprised of the approach to such cases, and then aggravate and mitigate following that.

**Question 1: do you have any comments on the proposed draft section 14 guideline?**

*Section 10 – Causing or inciting a child to engage in sexual activity*

3.6 Given the need for a coherent approach between a range of cases where no contact sexual activity ultimately takes place, Council agreed in October we should apply the above approach to the section 10 cases. My proposed additions to the existing guideline are in highlight at **Annex B**.

3.7 The working group concluded that a link to the revised section 14 guideline would be an efficient way of highlighting the approach to take where a judge is using the section 10 guideline to sentence a section 14 case. This avoids unnecessary repetition of the same principles, which in the section 10 guideline I propose putting before the Harm table as the best way to ensure they are not overlooked.

3.8 The draft removes the current mitigating feature *“Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it”*. This is now unnecessary if we are establishing a lower starting point in cases where activity is incited but does not occur, and an even lower starting point where that is because the offender has desisted.

3.9 Incitement cases in undercover police operations will be charged as attempts and the text has been drafted specifically to reflect this. However, we could add further clarificatory text if it was felt necessary to underscore that there should be no further discount because the offending has been charged as an attempt.

**Question 2: do you have any comments on the proposed additions to the section 10 guideline?**

3.10 These same additions could be made to all the causing/inciting sexual offence guidelines, i.e.:

- Causing or inciting a child under 13 to engage in sexual activity (s8)
- Abuse of position of trust: causing or inciting a child to engage in sexual activity (s17)
- Inciting a child family member to engage in sexual activity (s26)
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity (s31)
- Care workers: causing or inciting sexual activity (s39)
- Causing or inciting sexual exploitation of a child (s48)
- Causing or inciting prostitution for gain (s52)

3.11 Aside from section 8, with 168 offenders sentenced in 2019, these are very low volume offences. There is a question over whether the additional guidance would be relevant in practice for these offences. Nonetheless, even if instances of sting operations, or incitement without activity are rare for these offences, there should be no harm in including the principles to follow in such situations within those guidelines.

**Question 3: do you want to make the same amendments to the other causing/inciting guidelines?**

3.12 The anti-slavery charity International Justice Mission recently published a report about sentencing in England and Wales for those convicted of online child sex abuse and exploitation (available here: <https://www.ijmuk.org/falling-short>). It makes the argument that sentences for those who direct the abuse of children remotely (usually in the Philippines) are disproportionately low compared to a) the people who facilitate that abuse in-country and are prosecuted and sentenced there; and b) offenders sentenced here for offences committed online against children in this country.

3.13 It is hard to draw robust conclusions from the report's data (the report is based on just 15 case studies, with only four of these being examples of E&W-based offenders

abusing Philippines-based victims). However, there may be merit in ruling out any suggestion that offending against victims in other parts of the world be treated less seriously by E&W courts than offending against victims here.

3.14 Some (but not all) child sex offence guidelines do come with the short preface “This guideline also applies to offences committed remotely/online.” This could be read to suggest an instruction to the court to treat online offending as on a par with contact offending. But it could also be read as a basic technical instruction that the guideline can be applied in both cases.

3.15 I propose we take this opportunity to provide a clearer steer and have included a form of words in step one of the draft section 10 guideline to achieve this:

*“Sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world”*

**Question 4: do you agree with this addition to the section 10 guideline and to any other relevant child sexual offence guidelines?**

*Section 15A guideline – sexual communication with a child.*

3.16 Following discussion in the working group, I present a draft guideline for section 15A offences at **Annex C**.

3.17 The offence is triable either way, with a maximum penalty of two years. It was introduced in the Serious Crime Act 2015 to plug a perceived gap: existing offences relating to malicious communications required the offender to be seeking to cause distress to the victim, and the communications in question often fell short of the requirements for other child sex offences, with no intention to meet or incite further sexual acts.

3.18 There were 284 sentences imposed for s15A offences in 2019, a significant increase from 34 in 2018 and five in 2017. Just over half of sentences imposed in 2019 were custodial (36% were suspended, 15% immediate custody). 42% were community orders and 6% otherwise dealt with.

3.19 Of those that did get immediate custody in 2019, estimated pre-guilty plea sentence lengths appear skewed towards the top half of the range: only 3% of sentences were 6 months or under; 36% were between 6 months and 1 year; nearly half (46%) were between 1 year and 18 months; and 15% were between 18 months and 24 months.

3.20 Based on a selection of 2019 transcripts, the majority of s15A cases involve sting operations, whether conducted by the Police or vigilante groups. The text set out above is

therefore also included here (which could also be bolstered with further clarification to avoid double discounting for the fact these would be charged as attempts).

3.21 The working group concluded that, given the limited variation in facts in these cases there should be two tiers each of harm and culpability, with the upper tiers comprising elements indicating raised harm/culpability, and lower tiers for any other case.

3.22 The raised harm elements as drafted are:

- 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.

3.23 There is a question over whether the first bullet is helpful here. A focus on the content of communications is in line with other sex guidelines with their focus on the activity perpetrated, and may be useful for this offence, where the impact of receiving a sexual communication on victims (in the minority of cases where they are real) may vary, be difficult to measure, or may not manifest itself by the time of sentencing.

3.24 However, with this element it is hard to see any substantial number of s15A cases falling into the lower category of harm. Most involve discussion of penetrative or oral sex or masturbation (although generally not more extreme topics) and we may consider it to be inherent in the offending. The sentencing remarks we have seen do not particularly use the content to determine the seriousness of the offending. Of the cases seen in transcripts, around a third involved some sending or exchange of images.

3.25 Usually, psychological harm is considered separately to distress and considered a higher level of harm. Arguably, significant distress caused to the victim is enough to warrant being placed in the higher category of harm, so we may wish to omit the words in square brackets above.

**Question 5: should the higher harm category include descriptions of the nature of the communications, as drafted?**

3.26 The working group rejected the usual child sex offence culpability split between standard grooming elements in the higher tier, on the basis again that this was inherent in the offending. In the vast majority of cases, for example, there would be a “significant disparity in age”, putting the offender automatically into higher culpability. These elements remain in the draft:

- Abuse of trust;

- Use of threats (including blackmail);
- Targeting of a particularly vulnerable child;
- Commercial exploitation and/or motivation.

3.27 Based on the transcripts, this reverses the position, making it rare for an offence to be categorised as high culpability. Abuse of trust is most likely to make the difference here, although deliberate targeting of a particularly young child would presumably count as vulnerable.

3.28 Sharing of images is proposed as a harm factor, and soliciting images has been removed from the standard list of raised culpability factors. It could be argued that soliciting of images also indicates raised culpability given the serious problems created by the proliferation of sexual images on the internet, but we have been mindful to avoid any double counting of harm and culpability factors.

3.29 We could add to higher culpability the element of lying about one's age and/or identity (at present it is an aggravating factor in the draft). This is not uncommon in grooming offences generally, although it is only mentioned explicitly in a couple of the cases for which we have transcripts.

3.30 The culpability here would reflect using an alter ego to gain the trust of a victim and also potentially to avoid detection. Lying about one's age is central to that: to go further, we might reinstate "significant disparity in age" to distinguish the case of the young man in his early to mid 20s seeking out a 15 year old, from (say) the man over 30 seeking out a child of any age. Or we can simply leave the issue of age/lying about age as an aggravating factor.

**Question 6: do you think that 'Offender lied about age or used a false identity' should be a culpability factor at step one or an aggravating factor at step two?**

3.31 The proposed sentencing levels attempt to reflect the outcomes seen in 2019. Each of the four ranges has a custodial starting point. In practice we would expect to see most sentences being either A2 or B1 (with a starting point of 1 year) or B2 (with a starting point of six months). The working group specifically rejected leaving "headroom" in the most serious cases in an offence with a relatively low maximum, so the A1 range extends to up to two years. An early resentencing exercise does not suggest an obvious trend in terms of increased or decreased sentencing severity, although we will return to Council with an analysis of expected impacts in January (incorporating any changes to the guideline made after this meeting).

3.32 The aggravating and mitigating factors are standard for child sex offences, although some of the aggravating factors (location of offence; timing of offence; presence of others,

especially other children; exploiting contact arrangements with a child to commit an offence) are omitted as not being relevant to this offending.

3.33 The working group wanted to reflect somehow duration and persistence of offending here. This is difficult because one-off offending can be incredibly serious, whilst a series of communications over a period of time could be relatively less harmful. We wanted to resist placing a figure on the lengths of time involved. So “sustained and persistent offending” is included as an aggravating factor and “isolated offence” is included as the opposing mitigating factor.

3.34 Finally, there is standard text in the draft about the circumstances where an offence may be taken outside of the category range (aggravation for various reasons, particularly recent relevant convictions). Given the small number of category ranges and the relatively low maximum, this might be unnecessary. On balance, I believe these may still be useful in some circumstances.

**Question 7: do you have any further comments on the draft section 15A guideline?**

#### **4 EQUALITIES**

4.1 By way of reminder, in 2019, generally, a lower proportion of younger offenders received immediate custody; about 40% of 18 to 21 year olds received an immediate custodial sentence, compared to about 60% of offenders over 30 years old.

4.2 Males account for the majority of offenders in every offence, accounting for 98% of offenders sentenced in total for the sexual offences in question. Given the low number of female offenders, it is difficult to accurately determine if there are differences between sentencing outcomes for males and females but generally the proportion of offenders receiving each sentencing outcome is similar.

4.3 90% of the offenders sentenced for these sexual offences in 2019 were White. In general, the distribution of sentencing outcomes was similar across the ethnicities for each offence, with the most common outcome being immediate custody. However, again, due to the small number of Black, Asian and Other ethnicity offenders, it is difficult to determine trends or disparities within the immediate custodial sentence lengths.

**Question 8: Are there any particular issues relating to equality and diversity that should be addressed in the consultation?**

#### **5 IMPACT AND RISKS**

5.1 An impact and risk assessment will be conducted prior to consultation and we will come back to Council with a resource assessment in January. In principle we are simply codifying the approach that the courts should be taking currently. Following *Privett*, we would expect section 14 “sting” operations to start resulting in longer custodial sentences. If that approach is extended to all cases where there is not a real child victim, then we should expect more severe sentences in these cases.

5.2 There may be some continued confusion or concern about the concept of moving away from the position that any sexual activity which is incited but does not take place should automatically be considered less harmful than any activity which does take place. The rationale for this, though, is set out in the *Privett* judgment and is inherent in the fact that the assessment of harm under section 63(b) of the Sentencing Code includes “any harm which the offence [not only] caused, [but also] was intended to cause, or might foreseeably have caused”.

5.3 As set out above, there is no clear assessment yet of whether the new section 15A guideline as drafted would increase sentencing severity, decrease it, or leave it broadly the same. We will provide further detail in January.



# Arranging or facilitating the commission of a child sex offence

Sexual Offences Act 2003, s.14

**Effective from:** 1 April 2014

Triable either way

Maximum: 14 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

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

When sentencing a section 14 offence, sentencers should refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12:

- [Sexual activity with a child](#), Sexual Offences Act 2003, s.9
- [Causing or inciting a child to engage in sexual activity](#), Sexual Offences Act 2003, s.10
- [Engaging in sexual activity in the presence of a child](#), Sexual Offences Act 2003, s.11
- [Causing a child to watch a sexual act](#), Sexual Offences Act 2003, s.12

The level of harm should be determined by reference to the type of activity arranged or facilitated. Sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed, including in instances where no child victim exists. In such cases 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.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

For offences involving significant commercial exploitation and/or an international element, it may, in the interests of justice, be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the starting point and range may be appropriate.

# Sexual activity with a child/ Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003, s.10, Sexual Offences Act 2003, s.9

Effective from: 1 April 2014

Sexual activity with a child, Sexual Offences Act 2003, s.9

Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003, s.10

Triable only on indictment (if penetration involved), otherwise, triable either way

Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

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

Arranging or facilitating the commission of a child offence (section 14 of the Sexual Offences Act 2003)

[\[Insert link to revised section 14 guideline\]](#)

## 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.

This guideline also applies to offences committed remotely/online. **Sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world.**

**In section 10 cases where activity is incited but does not take place 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.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by others from carrying out the offence at a late stage, or in attempts where a child victim does not exist and, but for this fact, the offender would have carried out the offence, a small reduction within the category range will usually be appropriate.

Where for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features.

Harm
Category 1 <ul style="list-style-type: none"><li>• Penetration of vagina or anus (using body or object)</li><li>• Penile penetration of mouth</li></ul> In either case by, or of, the victim.
Category 2 <ul style="list-style-type: none"><li>• Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim</li></ul>
Category 3 <ul style="list-style-type: none"><li>• Other sexual activity</li></ul>

Culpability
Culpability A <ul style="list-style-type: none"><li>• Significant degree of planning</li><li>• Offender acts together with others to commit the offence</li><li>• Use of alcohol/drugs on victim to facilitate the offence</li><li>• Grooming behaviour used against victim</li><li>• Abuse of trust</li><li>• Use of threats (including blackmail)</li><li>• Sexual images of victim recorded, retained, solicited or shared</li></ul>

- Specific targeting of a particularly vulnerable child
- Offender lied about age
- Significant disparity in age
- Commercial exploitation and/or motivation
- Offence racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
- Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

#### Culpability B

- 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.

	<b>A</b>	<b>B</b>
Category 1	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category range</b> 4 – 10 years' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 2 years' custody</p>
Category 2	<p><b>Starting point</b> 3 years' custody</p> <p><b>Category range</b> 2 – 6 years' custody</p>	<p><b>Starting point</b> 26 weeks' custody</p> <p><b>Category range</b> High level community order – 1 year's custody</p>
Category 3	<p><b>Starting point</b> 26 weeks' custody</p>	<p><b>Starting point</b> Medium level community order</p>

	<b>Category range</b> High level community order – 3 years' custody	<b>Category range</b> Low level community order – High level community order
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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.

When sentencing appropriate **category 2 or 3 offences**, 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

##### Other aggravating factors

- Severe psychological or physical harm
- Ejaculation
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Victim compelled to leave their home, school, etc
- Failure to comply with current court orders
- Offence committed whilst on licence
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially other children
- 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
- Period over which offence committed

### Mitigating factors

#### Statutory aggravating 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
- ~~Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it~~

\* 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.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

*[Further steps]*

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

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

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

## 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.

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