

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

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SC(21)JAN04 – Sexual Offences
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1 ISSUE

1.1 Seeking Council's agreement to two further issues relating to the current sex offences guideline revision:

- the wording of the sexual assault and sexual assault of a child under 13 guidelines, following the findings of the 2018 assessment;
- minor revisions to the guidance on sentencing historical sex offences to reflect Court of Appeal case law.

2 RECOMMENDATIONS

2.1 That Council:

- agrees to consult on additional explanations to sexual offences guidelines to clarify how to approach the factors of psychological harm and abuse of trust;
- considers whether to make this change to all other (non-sex) guidelines where those factors appear at step one; and
- agrees to consult on changes to the guidance on historic sexual offences to make youth at the time of commission of the offence a culpability factor rather than personal mitigation, and to alter the wording of how to follow the guideline to reflect the case law.

3 CONSIDERATION

Sexual assault and sexual assault of a child under 13

3.1 [The 2018 assessment of the sexual offences guidelines](#), conducted jointly with the University of Leicester, found that the guidelines published in 2013 did not appear to have had an impact on average sentencing severity for most offences. The two exceptions were sexual assault and sexual assault of a child under 13. The report concludes by saying "The Council ... is committed to revisiting areas of the guideline where issues were identified".

3.2 In the case of sexual assault, the assessment found that the increase was at the upper limit of expectations. This appeared to be caused by two factors: the category 1 harm

factor “violence or threats of violence” (cf the previous guideline which included physical harm, but not the threat of it), and the new harm factor “severe psychological harm”. Linked to this there appeared to be some uncertainty and inconsistency about what amounted to “severe psychological harm” and the report concluded that “additional guidance on psychological harm may be required”.

3.3 For sexual assault of an under-13, the assessment found that the guideline may have increased sentencing severity: after the guideline came into force this was towards the upper confidence limit of the forecast range, which was unanticipated in the resource assessment. This was found to be linked with the category 2 harm factor “prolonged detention/sustained incident” (cf “sustained assault/repeated assault on same victim” in the predecessor guideline); the new Culpability A factor “significant degree of planning”; and the Culpability A factor “abuse of trust” (which existed in the predecessor guideline but had a greater impact on sentencing severity after the guideline came into force). The report suggested that further guidance on the factor “abuse of trust” may be needed.

3.4 There is evidence to suggest that the new guidelines for both offences have continued to increase sentencing severity (see **Annex A**). However, since the guideline came into force there have only been small increases in the sentencing severity for both offences. For sexual assault the (immediate) custody rate in 2014 was 36% compared to 38% in 2019. The Average Custodial Sentence Length (ACSL) was 1.4 years in 2014, and was 1.5 years in 2019 (although the median ACSL remained at 1 year). Severity for sexual assault of an under-13 increased a little more in comparison: the custody rate in 2014 was 79% and that had increased to 82% in 2019. The ACSL was 3.2 years in 2014, and 3.7 years in 2019 (although the median in 2014 was 3 years, compared to 3.1 years in 2019).

3.5 The Council may take the view that, although at the upper end of what had been anticipated, the current levels of sentencing for these offences are not necessarily troubling and do not need addressing/reversing, particularly when the more pressing priorities of the current revisions are a) to ensure that there is clear guidance on other offences where no sexual activity take place and b) to produce a guideline for sexual communication with a child. We do not have any further evidence or representations to suggest that these factors are causing either unwarranted sentencing severity or confusion. We could, therefore, conclude that no further amendments are needed to the sexual assault and sexual assault of a child under 13 guidelines.

3.6 However, as it happens, in the last few years, the Court of Appeal has clarified two of the matters raised in the assessment: how to assess psychological harm (see *R v Chall*

[2019] EWCA Crim 865), and the parameters of “abuse of trust” (see *R v Forbes* [2016] EWCA Crim 1388).

3.7 *Chall* confirmed that:

- expert evidence is not an essential precondition of a finding that a victim has suffered severe psychological harm;
- a judge may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), and may rely on his or her observation of the victim whilst giving evidence; and
- whether a VPS provides evidence which is sufficient for a finding of severe psychological harm depends on the circumstances of the particular case and the contents of the VPS.

Further, on the level of psychological harm experienced, the Court of Appeal pointed out at para 16 that:

“The assessment of whether the level of psychological harm can properly be regarded as severe may be a difficult one. The judge will, of course, approach the assessment with appropriate care, in the knowledge that the level of sentence will be significantly affected by it, and will not reach such an assessment unless satisfied that it is correct. But it is an assessment which the judge alone must make, even if there be expert evidence. It is the sort of assessment which judges are accustomed to making.”

3.8 To provide extra assistance on assessing psychological harm in sexual offence cases, we could summarise the above principles as follows in a drop down box, similar to an expanded explanation:

“The assessment of psychological harm experienced by the victim is for the sentencer. Whilst it may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), and may rely on his or her observation of the victim whilst giving evidence.”

3.9 On “abuse of trust”, *Forbes* has this to say at paras 17 and 18:

“...in the colloquial sense the children's parents would have trusted a cousin, other relation or a neighbour...to behave properly towards their young children, the phrase "abuse of trust", as used in the guideline, connotes something rather more than that. The mere fact of

association or the fact that one sibling is older than another does not necessarily amount to breach of trust in this context.

The phrase plainly includes a relationship such as that which exists between a pupil and a teacher...a priest and children in a school for those from disturbed backgrounds...or a scoutmaster and boys in his charge... It may also include parental or quasi-parental relationships or arise from an ad hoc situation, for example, where a late night taxi driver takes a lone female fare. What is necessary is a close examination of the facts and clear justification given if abuse of trust is to be found.”

3.10 The existing expanded explanations for aggravating factors include one for “abuse of trust” which is informed by *Forbes*:

- *A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.*
- *In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.*
- *Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.*
- *Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.*
- *Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.*

3.11 There would be a logic to including these expanded explanations not just in the guidelines for sexual assault and sexual assault of a child under 13, but for all sexual offence guidelines – indeed for all offence-specific guidelines where they occur. These factors can cause difficulties for sentencers across the board, and in principle the case law could be applied across a range of offences.

3.12 However, when introducing expanded explanations we deliberately decided not to include them at step one. This was primarily because it was felt that the factors could mean

different things in the context of different offences: for example, “abuse of trust” may mean something different in the context of fraud or funding terrorism than it would in the context of a sex offence. These factors were carefully drafted and calibrated, and consulted on, in the context of the offence-specific guidelines in which they occurred. Whilst aggravating and mitigating factors are also carefully drafted, it is more likely that aggravating and mitigating factors are generic and have a common meaning across offences, particularly if linked to personal mitigation or aggravation.

3.13 The factors appear at step one in the offence-specific guidelines at **Annex B**. Abuse of trust appears in, for example, the guidelines for drugs offences, benefit fraud, robbery, theft and funding terrorism. Psychological harm in various forms appears in, for example, guidelines on child cruelty, arson, robbery, assault and harassment.

3.14 This would be the first time we would be adding expanded explanations at Step One. Aside from the consideration above, this is not necessarily a problem: we should simply pause to consider whether we want to start to increase the use of expanded explanations in this way. We have not conducted a thorough examination of whether the expanded explanations would work in each instance. For the moment we could restrict these ones to sexual offences, given that is the scope of our consultation, with a view either to coming to a broader settled view on the scope of expanded explanations, or to making those changes at the next relevant opportunity. Alternatively, we could use this consultation to seek views on making the changes to all relevant guidelines where they may assist sentencers.

Question 1: does the Council agree to add expanded explanations to assist with the factors “severe psychological harm” and “abuse of trust”?

Question 2: does the Council wish to consult on them for sexual offences only, or more broadly?

Historic sex offences principles

3.15 The guidelines published in 2013 included as an annex principles for the courts to follow when sentencing historic sexual offences. These were drawn from the case of *R v H [2011] EWCA Crim 2753*, and are set out at **Annex C**. The definitive version of this guidance is now published as a drop-down on the page on historic sexual offences:

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/sexual-offences-historic/>

The substance of the principles largely stands, but the Court of Appeal found the need to gloss them in the case of *Forbes*.

3.16 The Court of Appeal was explicit that it viewed Annex B as misworded on the question of immaturity/youth at the point of offending. The guidance says at paragraph 9: “If

the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may be regarded as personal mitigation”. Whereas para 20 of *Forbes* says “In *R v H*, at [47(c)] the view is expressed that immaturity goes to culpability. We consider that to be the approach that better accords with principle than the guidance given at paragraph 9 of annex B.”

3.17 To meet this point, we could amend paragraph 9 to say:

“If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may be regarded as personal mitigation have a considerable bearing on the offender's culpability.”

Question 3: do you agree to consult on this revised text in paragraph 9 of the guidance?

3.18 There is also some discussion in *Forbes* of how to apply existing guidelines to historic offences. *Forbes* rejects the idea that the court should simply look at the guidelines in force today and then apply them to an historic case, capped only by the maximum penalty available at the time (so, for example, coming to a sentence of five years by following the guidelines for today's offence, but automatically imposing a sentence of two years – without any further consideration - because that was the maximum available for the predecessor offence). The position, as established by *R v H* is more nuanced. That case said (at para 47(a)):

“Sentence will be imposed at the date of the sentencing hearing, on the basis of the legislative provisions then current, and by measured reference to any definitive sentencing guidelines relevant to the situation revealed by the established fact”.

This principle is reflected in the Council's guidance as:

“[1] The offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence.... [2] The sentence is limited to the maximum sentence available at the date of the commission of the offence. If the maximum sentence has been reduced, the lower maximum will be applicable...[3] The court should have regard to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003.”

3.19 As *Forbes* acknowledges the guidance's “have regard to” is meant to reflect *R v H*'s “measured reference to”. These are clearly very close in meaning, but given the questions which have arisen over how to use guidelines in such cases, there is scope to become closer to the authorities. We could amend the wording of principle 3 to:

“The court should impose a sentence by measured reference to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003.”

Question 4: do you agree to amend the guidance to more closely reflect the wording of *R v H*?

4 EQUALITIES

4.1 We do not expect that the changes outlined above will themselves raise equality issues.

4.2 In 2019, the vast majority of offenders sentenced for sexual assault were male (97%) and a higher proportion of males were sentenced to immediate custody than females (39% v 22%). Just over half of offenders were between the ages of 22 and 39, with 41% of those sentenced to immediate custody. When looking at ethnicity, 39% of White offenders received immediate custody compared to 48% of Black offenders but average custodial sentence lengths were broadly comparable across ethnic groups, (a mean of 1.4 years for White offenders, 1.5 years for Black offenders and Other ethnicity offenders and 1.2 years for Asian offenders).

4.3 Figures on sexual assault of a child have been based on five years (2015-2019) rather than for a single year, due to the small number of offenders sentenced in some demographic groups for these offences each year. As with sexual assault, nearly all offenders sentenced for sexual assault on a child were male (99%). Just over a third of offenders were between the ages of 22 and 39 and 25% were over the age of 60. Of those aged 22 to 39, 82% were sentenced to immediate custody compared to 85% of offenders over 60. The proportion of offenders receiving immediate custody was similar across all ethnicities (81% of White and Other ethnicity offenders and 81% of Black and Asian offenders). The average custodial sentence lengths were also broadly similar across ethnicities (3.7 years for White offenders, 3.3 years for Black offenders, 2.6 years for Asian offenders, and 3.1 for Other ethnicity offenders).

4.4 It is likely that offenders being prosecuted for committing historic sex offences will be older on average than offenders as a whole. Taking adults sentenced in 2019 under the 1956 Sexual Offences Act as a very rough proxy for “historic” sexual offences, over half (55%) were aged over 60 and more than three quarters (78%) were over 50. In some cases, the age of an elderly offender may become a factor for consideration in personal mitigation: the guidance does not address this explicitly but says “The court must consider the

relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence”.

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 March.

5.2 There is a risk that the Council is seen to be ignoring the increased sentencing severity for sexual assault and sexual assault of a child under 13 observed in the 2018 assessment. That could be mitigated to a degree by providing clarity on those factors which the report concluded were creating uncertainty. There would equally be handling issues were the Council to issue a consultation with the aim of decreasing sentences for these offences.

5.3 If the Council does not address the Court of Appeal’s gloss on the historic sex offence guidance there is a risk of continued uncertainty about how precisely to interpret the guidance. This may not have a significant impact in practice (particularly if advocates and sentencers are aware of the case law), although it would have the unfortunate result that live Sentencing Council guidance needed supplementary information, or caveating (for example in the CPS Rape and Sexual Offences guidance, currently out for consultation:

<https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-13-sentencing>) .

Figure 1: Sexual assault sentencing severity, January 2009 to December 2019

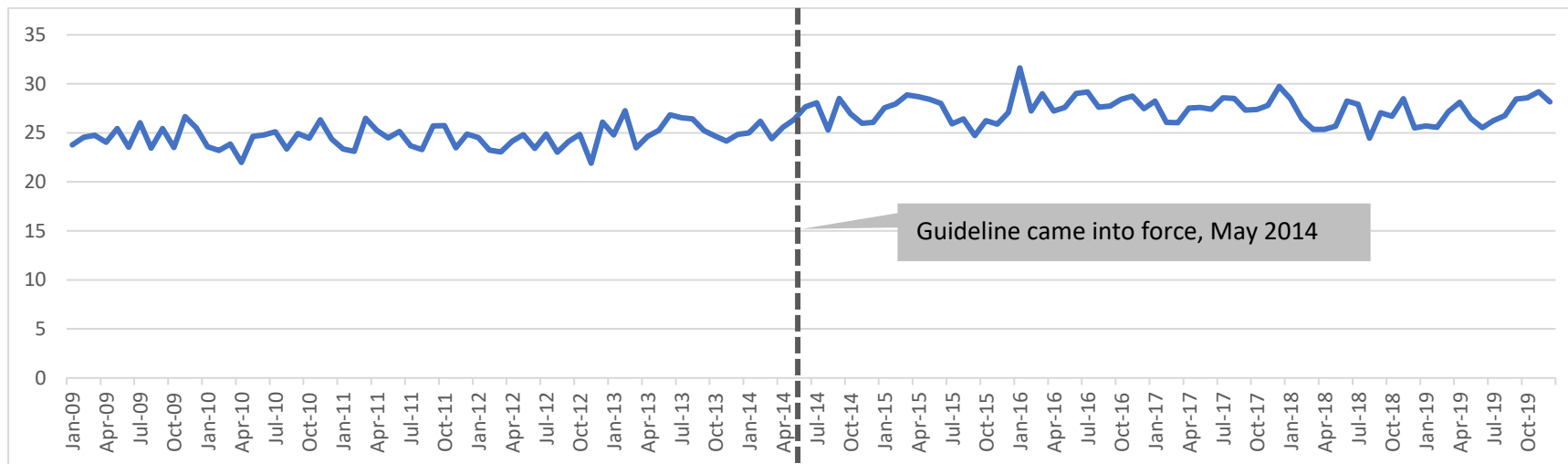


Figure 2: Sexual assault on a child (under 13) sentencing severity, January 2009 to December 2019

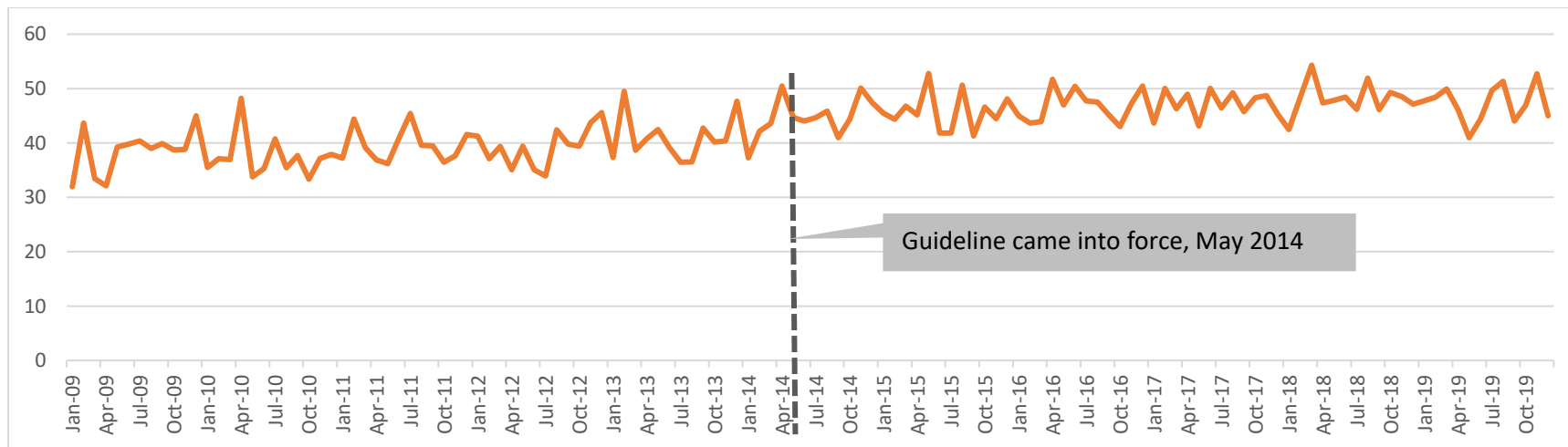


Table 3: Final average custodial sentence length for adult offenders sentenced for sexual assault and sexual assault of an under 13 under the Sexual Offences Act 2003, all courts, 2009-2019

	Sexual assault										
	ACSL (years)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Mean	1.3	1.1	1.2	1.1	1.2	1.4	1.4	1.5	1.4	1.4	1.5
Median	1.0	0.8	0.8	0.8	0.9	1.0	1.0	1.0	1.0	1.0	1.0

	Sexual assault of a child										
	ACSL (years)										
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Mean	2.4	2.2	2.5	2.7	2.6	3.2	3.5	3.5	3.6	3.6	3.7
Median	2.0	1.7	2.0	2.0	2.0	3.0	3.3	3.3	3.0	3.5	3.1

Notes:

- 1) Excludes 79 cases between 2009 and 2019 that were over the statutory maximum for this offence (10 years), although most of these occurred before 2012.
- 2) Excludes 77 cases between 2009 and 2019 that were over the statutory maximum for this offence (14 years), although most of these occurred before 2012.

Figure 3: Final average custodial sentence length for adult offenders sentenced for sexual assault and sexual assault of an under 13 under the Sexual Offences Act 2003, all courts, 2009-2019

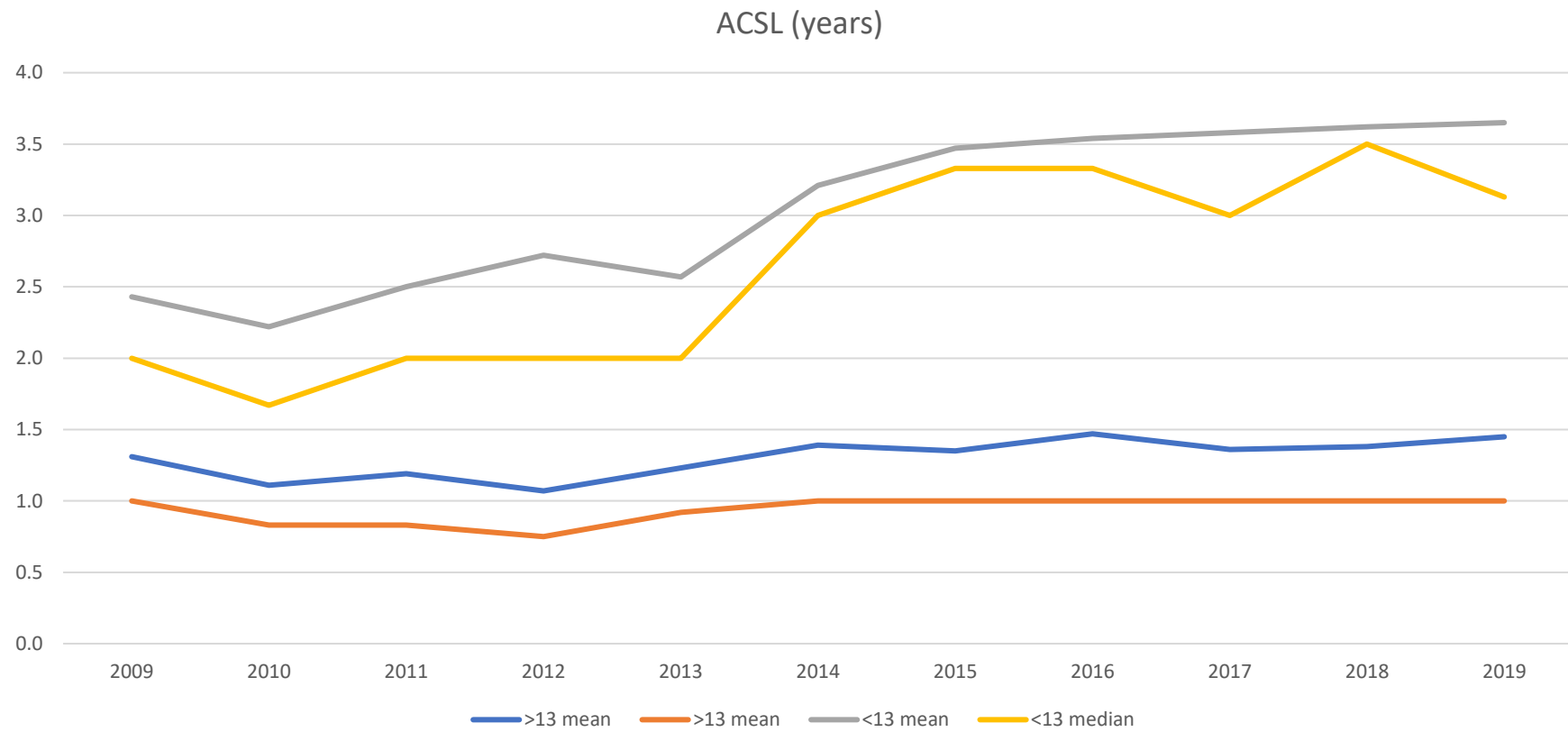


Table 4: Outcomes by demographic group, for adult offenders sentenced for sexual assault under the Sexual Offences Act 2003, all courts, 2019

Sex	Outcome						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
Male	21	353	17	168	392	56	1007
Female	3	7	2	0	4	2	18
Not recorded/not known	0	8	1	1	1	0	11

Sex	Proportion						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
Male	2%	35%	2%	17%	39%	6%	100%
Female	17%	39%	11%	0%	22%	11%	100%
Not recorded/not known	0%	73%	9%	9%	9%	0%	100%

Age group	Outcome						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
18 to 21	4	31	1	9	19	2	66
22 to 29	6	84	4	36	103	12	245
30 to 39	3	104	5	46	116	17	291
40 to 49	4	61	3	29	91	13	201
50 to 59	0	55	4	31	49	10	149
60 and over	7	33	3	18	19	4	84

Age group	Proportion						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
18 to 21	6%	47%	2%	14%	29%	3%	100%

22 to 29	2%	34%	2%	15%	42%	5%	100%
30 to 39	1%	36%	2%	16%	40%	6%	100%
40 to 49	2%	30%	1%	14%	45%	6%	100%
50 to 59	0%	37%	3%	21%	33%	7%	100%
60 and over	8%	39%	4%	21%	23%	5%	100%

Perceived ethnicity	Outcome						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
White	11	199	11	79	207	29	536
Black	3	35	2	13	52	4	109
Asian	3	26	1	18	31	8	87
Other	0	11	1	4	8	3	27
Not recorded/not known	7	97	5	55	99	14	277

Perceived ethnicity	Proportion						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
White	2%	37%	2%	15%	39%	5%	100%
Black	3%	32%	2%	12%	48%	4%	100%
Asian	3%	30%	1%	21%	36%	9%	100%
Other	0%	41%	4%	15%	30%	11%	100%
Not recorded/not known	3%	5%	2%	20%	36%	5%	100%

Note:

For a proportion of adults sentenced (28%), their perceived ethnicity was either not recorded or it was not known.

Table 5: Outcomes by demographic group, for adult offenders sentenced for sexual assault of a child under the Sexual Offences Act 2003, all courts, 2015-2019¹

Sex	Outcome						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
Male	21	353	17	168	392	56	1007
Female	3	7	2	0	4	2	18
Not recorded/not known	0	8	1	1	1	0	11

Sex	Proportion						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
Male	2%	35%	2%	17%	39%	6%	100%
Female	17%	39%	11%	0%	22%	11%	100%
Not recorded/not known	0%	73%	9%	9%	9%	0%	100%

Age group	Outcome						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	
18 to 21	4	31	1	9	19	2	66
22 to 29	6	84	4	36	103	12	245
30 to 39	3	104	5	46	116	17	291
40 to 49	4	61	3	29	91	13	201
50 to 59	0	55	4	31	49	10	149
60 and over	7	33	3	18	19	4	84

Age group	Proportion						Total
	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	

18 to 21	6%	47%	2%	14%	29%	3%	100%
22 to 29	2%	34%	2%	15%	42%	5%	100%
30 to 39	1%	36%	2%	16%	40%	6%	100%
40 to 49	2%	30%	1%	14%	45%	6%	100%
50 to 59	0%	37%	3%	21%	33%	7%	100%
60 and over	8%	39%	4%	21%	23%	5%	100%

Outcome

Perceived ethnicity	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	Total
White	11	199	11	79	207	29	536
Black	3	35	2	13	52	4	109
Asian	3	26	1	18	31	8	87
Other	0	11	1	4	8	3	27
Not recorded/not known	7	97	5	55	99	14	277

Proportion

Perceived ethnicity	Discharge	Community sentence	Fine	Suspended sentence	Immediate custody	Otherwise dealt with	Total
White	2%	37%	2%	15%	39%	5%	100%
Black	3%	32%	2%	12%	48%	4%	100%
Asian	3%	30%	1%	21%	36%	9%	100%
Other	0%	41%	4%	15%	30%	11%	100%
Not recorded/not known	3%	35%	2%	20%	36%	5%	100%

Note:

- 1) These statistics are provided for the period 2015-2019, rather than for a single year, due to the small number of offenders sentenced in some demographic groups for these offences each year.
- 2) For a proportion of offenders (20%), their perceived ethnicity was either not recorded or it was not known.

Table 6: Final average custodial sentence length for adult offenders sentenced for sexual assault and sexual assault of an under 13 under the Sexual Offences Act 2003, all courts, various years

Sexual assault, 2019			Sexual assault of a child (under 13), 2015-2019¹		
Sex	ACSL (years)		Sex	ACSL (years)	
	Mean	Median		Mean	Median
Male	1.5	1.0	Male	3.6	3.3
Female	*	*	Female	5.5	5.0

Age group	ACSL (years)		Age group	ACSL (years)	
	Mean	Median		Mean	Median
18 to 21	2.0	1.3	18 to 21	2.7	2.3
22 to 29	1.5	1.0	22 to 29	3.4	3.0
30 to 39	1.4	1.0	30 to 39	3.7	3.5
40 to 49	1.4	1.0	40 to 49	3.7	3.5
50 to 59	1.5	1.3	50 to 59	3.7	3.3
60 and over	1.5	1.3	60 and over	3.5	3.3

Perceived ethnicity	ACSL (years)		Perceived ethnicity	ACSL (years)	
	Mean	Median		Mean	Median
White	1.4	1.0	White	3.7	3.3
Black	1.5	1.0	Black	3.3	3.8
Asian	1.2	1.0	Asian	2.6	2.5
Other	1.5	1.2	Other	3.1	3.0
Not recorded/not known	1.6	1.3	Not recorded/not known	3.6	3.5

* = ACSL suppressed as less than 5 offenders sentenced to immediate custody

Notes:

1) These statistics are provided for the period 2015-2019, rather than for a single year, due to the small number of offenders sentenced in some demographic groups for these offences each year.

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Appearance of ‘Abuse of Trust’ and Psychological Harm as Step one factors in guidelines (non-sexual)

Abuse of Trust	Psychological Harm
<ul style="list-style-type: none"> • Production of a controlled drug/ Cultivation of cannabis plant • Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug • Possession of a controlled drug with intent to supply it to another • Benefit Fraud • Bribery • Fraud • Making or supplying articles for use in frauds • Money laundering • Revenue fraud • Robbery - Dwelling • Robbery - Professionally planned commercial • Administering a substance with intent • Funding terrorism: fundraising • Funding terrorism: use and possession • Funding terrorism: funding arrangements • Funding terrorism: money laundering • Abstracting electricity • Handling stolen goods • Theft - general • Causing or allowing a child to suffer serious physical harm • Vehicle taking, without consent 	“Psychological harm” <ul style="list-style-type: none"> • Actual Bodily Harm • Grievous Bodily Harm with intent (s18) • GBH s20 • Dangerous dog – injury to assistance dog
	“Severe psychological harm” <ul style="list-style-type: none"> • Firearms – Possession with intent to cause fear of violence • Firearms – Possession with intent to endanger life • Firearms – Possession with intent – other offences
	“Serious psychological harm” <ul style="list-style-type: none"> • Causing or allowing a child to suffer serious physical harm – NB there is some wording on the evidence needed for this in the guideline • Cruelty to a child – NB there is some wording on the evidence needed for this in the guideline • Failing to protect a child from risk of genital mutilation – NB there is some wording on the evidence needed for this in the guideline • Arson • Owner or person in charge of a dog dangerously out of control where person is injured • Robbery – Dwelling • Robbery professional planned • Robbery street
	“Significant psychological harm” <ul style="list-style-type: none"> • Controlling or coercive behaviour • Disclosing private images • Harassment/stalking (fear of violence) • Harassment/stalking • Threats to kill • Robbery (Children & Young People)
	“Very serious psychological harm” <ul style="list-style-type: none"> • Arson with intent to endanger life

	“Significant psychological injury”
	<ul style="list-style-type: none">• Aggravated burglary

Approach to sentencing historic sexual offences

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:¹

1. The offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. Under sections 57 and 63 of the Sentencing Code the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.
2. The sentence is limited to the maximum sentence available at the date of the commission of the offence. If the maximum sentence has been reduced, the lower maximum will be applicable.
3. The court should have regard to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Where the offence, if committed on the day on which the offender was convicted, would have constituted an offence contrary to section 5 or section 6 of the Sexual Offences Act 2003, sections 265 and 278 of the Sentencing Code (special custodial sentence for certain offenders of particular concern) apply.
4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.
5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.
6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.
7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.
8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, 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.

9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may be regarded as personal mitigation.
 10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.
 11. A reduction for an early guilty plea should be made in the usual manner.
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Notes

1 R v H and others [2011] EWCA Crim 2753