

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 fact that no or lesser harm 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"> 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) Targeting of a particularly vulnerable child Commercial exploitation and/or motivation

<ul style="list-style-type: none"> • Soliciting images
<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 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 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)
- Offence involved sustained or persistent communication

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity *[see expanded explanation below]* ~~where it affects the responsibility of the offender~~
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- **Physical disability or serious medical condition requiring urgent, intensive or long-term treatment [see expanded explanation below]**
- 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.

Expanded Explanation: age and/or lack of maturity

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Expanded explanation: Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

- The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.
- However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
- There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending.
- A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).
- But, an offender's knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing judge when determining the sentence that it would be just to impose.

[Further steps]

Step 7 – Ancillary Orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may automatically apply.

- [Link: Ancillary orders – Crown Court Compendium, Part II Sentencing, s7](#)

Additional ancillary orders – sexual offences [drop down]

Sexual harm prevention orders (SHPOs)

Sexual Offences Act 2003, s103A

In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk.

The only prohibitions which can be imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the

offender. The order may include only negative prohibitions; there is no power to impose positive obligations.

The order may have effect for a fixed period (not less than five years) or until further order.

Slavery and trafficking prevention orders

Modern Slavery Act 2015, s14

A court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if satisfied that:

- there is a risk the offender may commit a slavery or human trafficking offence; and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

Automatic orders on conviction

The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

Requirement or provision

Statutory reference

Notification requirements

A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly.

Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003

The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.

Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006

Protection for children and vulnerable adults

A statutory scheme pursuant to which offenders will or may be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.

Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)