

## **Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect**

### **Children and Young Persons Act 1933, s.1(1)**

#### **Culpability**

##### **A High culpability**

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

##### **B Medium culpability**

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect
- Limited steps taken to protect victim in cases with category A factors present
- 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**

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

## Harm

### Category 1

- Serious psychological, developmental, and/or emotional harm
- Serious physical harm (including illnesses contracted due to neglect)

### Category 2

- Cases falling between categories 1 and 3
- A high likelihood of category 1 harm being caused

### Category 3

- Little or no psychological, developmental, and/or emotional harm
- Little or no physical harm

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> High level community order – 2 years 6 months' custody
Category 2	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 6 months' custody

## **Causing or allowing a child to suffer serious physical harm/ Causing or allowing a child to die**

### **Domestic Violence, Crime and Victims Act 2004, s.5**

#### **Culpability**

##### **A High culpability**

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

##### **B Medium culpability**

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect
- Limited steps taken to protect victim in cases with category A factors present
- 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**

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

## Harm

### Category 1

- Death

### Category 2

- Serious physical harm which has a substantial and/or long term effect
- Serious psychological, developmental and/or emotional harm
- Significantly reduced life expectancy
- A progressive, permanent or irreversible condition

### Category 3

- Serious physical harm that does not fall into category 2

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 1 – 4 years' custody
Category 2	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody
	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 1 year 6 months – 6 years' custody	<b>Category range</b> 6 months – 3 years' custody
Category 3	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 9 months' custody
	<b>Category range</b> 1 year 6 months – 6 years' custody	<b>Category range</b> 6 months – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody

## **Assault occasioning actual bodily harm / Racially or religiously aggravated ABH**

### **Crime and Disorder Act 1998, s.29, Offences against the Person Act 1861, s.47**

#### **Culpability**

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

#### **A – High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent\*
- Strangulation/suffocation/asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

#### **B – Medium culpability**

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or 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**

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

#### **Harm**

##### **Category 1**

- Serious physical injury or serious psychological harm and/or substantial impact upon victim

**Category 2**

- Harm falling between categories 1 and 3

**Category 3**

- Some level of physical injury or psychological harm with limited impact upon victim

Harm	Culpability		
	A	B	C
	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 36 weeks' custody
<b>Harm 1</b>	<b>Category range</b> 1 year 6 months' – 4 years' custody	<b>Category range</b> 36 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year 6 months' custody
	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order
<b>Harm 2</b>	<b>Category range</b> 36 weeks' – 2 years 6 months' custody	<b>Category range</b> High level community order – 1 year 6 months' custody	<b>Category range</b> Low level community order – 36 weeks' custody
	<b>Starting point</b> 36 weeks' custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
<b>Harm 3</b>	<b>Category range</b> High level community order – 1 year 6 months' custody	<b>Category range</b> Low level community order – 36 weeks' custody	<b>Category range</b> Band B fine – 26 weeks' custody