

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(22)APR02 – Child cruelty
N/A
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1 ISSUE

1.1 The approach to revision of child cruelty guidelines in light of the change to the maximum penalties.

2 RECOMMENDATIONS

2.1 That Council consults on revised sentence levels for child cruelty offences, proposing a new higher culpability level on top of the current levels.

3 CONSIDERATION

The offences

3.1 The Police, Crime, Sentencing and Courts Bill is raising the maximum penalties for two offences:

- section 1 of the Children and Young Persons Act 1933 (cruelty to persons under 16) – maximum raised from 10 to 14 years' imprisonment;
- section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious harm) – maximum for causing/allowing to die raised from 14 years to life imprisonment; maximum for causing/allowing to suffer serious harm raised from 10 to 14 years' imprisonment.

3.2 The section 1 offence covers a range of possible harms which could be relatively low. In practice this is charged more in everyday cases where inadequate parents or carers have been neglectful of the children in their care. The section 5 offence in contrast requires either death or the GBH standard of physical harm to have been caused (although the guidelines do also allow for psychological, developmental and emotional harm to be taken into account in sentencing).

3.3 The section 5 offence was created (at first for cases of death, but later broadened to capture cases of serious injury) to allow cases to be brought against defendants where it is unclear who has actually inflicted the injury. This may be because two defendants blame each other, or refuse to name the perpetrator. Under the terms of the offence, an offender has either caused the harm or knew there was a risk of serious harm and failed to take steps to prevent it. The prosecution does not have to prove which was which. At least in principle, no distinction is drawn in terms of seriousness between the alternatives.

3.4 Of the two offences there are far more section 1 sentences imposed (around 330 adults sentenced in 2020) than for section 5 (fewer than 10 in 2020).¹ Volumes have decreased for both in recent years. A large proportion of all sentences imposed for section 1 offences are suspended (33 per cent in 2020), with one in five receiving immediate custody. The average custodial sentence length (ACSL) post-guilty plea was 2 years 3 months in 2020. For section 5, in 2020 63 per cent of offenders received immediate custody and 25 per cent a suspended sentence. Combining the years 2019 and 2020 (due to low volumes) the ACSL for all section 5 offences was 5 years 1 month. For causing/allowing death it was 6 years 7 months, and for causing/allowing harm it was 3 years 9 months.

3.5 The Government has described the increase in maximum penalties as “Tony’s Law” following [the case of Tony Hudgell](#) whose parents’ abuse when he was a baby led to him having both legs amputated. The offenders in that case were sentenced in 2018 to ten years’ imprisonment, the maximum penalty available for causing or allowing a child to suffer serious physical injury. The judge said that he could not envisage a worse case than this, and gave the vague implication he would have wanted to exceed the maximum.

3.6 This led to a campaign by Tom Tugendhat MP for the maximum penalties for child cruelty cases to be raised, resulting in his [introduction of a Private Member’s Bill](#) in 2019. While that Bill did not progress, the Government made an amendment to the Police, Crime, Sentencing and Courts Bill at Lords Report to achieve the same end.

The current guidelines

3.7 The Council issued guidelines for these offences (insofar as they relate to victims under 16) in 2018 which came into force on 1 January 2019. These can be found at **Annexes A and B.**

3.8 The culpability factors for the two offences are identical. Notably for the section 5 offence, no distinction is drawn in culpability between the perpetrator of violence and the person who failed to prevent it. The harm levels are different between the two offences.

¹ This could include cases where the victim is a vulnerable adult, although it is most likely in relation to children.

Category 1 for the section 5 offence is reserved for death. Broadly speaking, category 2 for the section 5 offence equates to category 1 for the section 1 offence, category 3 to category 2 respectively, and category 3 for the section 1 offence captures cases of little or no harm.

3.9 Sentence levels reflect the different types of harm which can be covered by the offences. Obviously the top level of harm for section 5, where a child has died is higher than the top level for section 1, extending up to the existing 14 year maximum. Beyond that the starting points and ranges for section 1 are generally the same or a little lower than their section 5 equivalents. However, following consultation the range for the section 5 2B centre box was lowered meaning the lower ends of the ranges for the section 1, high harm medium culpability and medium harm high culpability are a bit higher than for their section 5 equivalents.

3.10 The aggravating and mitigating factors are identical aside from an additional aggravating factor for section 5 “prolonged suffering prior to death”.

Options

1. Do nothing

3.11 With the increase in maximum penalty we will, in the immediate term, provide the usual caveat on the guidelines that sentencers should bear in mind that the maximum penalty has increased. Given the nature of the increases, we may consider that this is sufficient to allow the guidelines to stand (which would not be the case, for example, with the more significant increases in maximum penalties for animal cruelty or causing death by driving whilst disqualified). However, given these are such difficult and sad cases there may be an expectation that we should provide more detailed guidance. The Council would face a reputational risk that it was not being responsive to Parliament’s clear intent.

2. Amend sentence levels only

3.12 We could perform limited surgery on the sentencing levels in the current guidelines to reflect the changes, but there are options within this. Most straightforwardly, we could add a “very high culpability” level above the existing levels to reflect the very worst activity. As with manslaughter, this would include:

- the extreme character of one or more culpability B factors and/or
- a combination of culpability B factors

The rest of culpability and the sentencing tables would be unchanged, with an additional column added to the sentencing tables. Starting in the top left corner of section 5 with levels

from gross negligence manslaughter and applying some diagonals, sentencing levels could look like this:

Section 5 causing or allowing a child to die or suffer serious physical harm

	Culpability			
Harm	A	B	C	D
Category 1	Starting point 12 years' custody Category range 10 -18 years' custody	Starting point 9 years' custody Category range 7-14 years' custody	Starting point 5 years' custody Category range 3-8 years' custody	Starting point 2 years' custody Category range 1-4 years' custody
Category 2	Starting point 9 years' custody Category range 7 -14 years' custody	Starting point 7 years' custody Category range 5 – 9 years custody	Starting point 3 years' custody Category range 1 year 6 months – 6 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 3 years' custody
Category 3	Starting point 7 years' custody Category range 5 – 9 years' custody	Starting point 3 years' custody Category range 1 year 6 months – 6 years' custody	Starting point 1 year 6 months' custody Category range 6 months – 3 years' custody	Starting point 9 months' custody Category range High level community order – 2 years' custody

Section 1 child cruelty:

	Culpability			
Harm	A	B	C	D
Category 1	Starting point 9 years' custody Category range 7 -14 years' custody	Starting point 6 years' custody Category range 4- 8 years' custody	Starting point 3 years' custody Category range 2- 6 years' custody	Starting point 1 year's custody Category range High level community order – 2 years 6 months' custody
Category 2	Starting point 6 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2-6 years' custody	Starting point 1 year's custody Category range High level community order	Starting point High level community order Category range Medium level community order

			– 2 years 6 months' custody	– 1 year's custody
Category 3	Starting point 3 years' custody Category range 2 – 6 years' custody	Starting point 1 year's custody Category range High level community order – 2 years 6 months' custody	Starting point High level community order Category range Medium level community order – 1 year's custody	Starting point Medium level community order Category range Low level community order – 6 months' custody

3.13 An alternative approach could be to provide for a higher level of harm (to allow, for example, for severe cases of permanent disability). The judge in the Tony Hudgell case pointed to the “overwhelming degree of harm” associated with the victim’s injuries. This would, however, require some consideration about the relationship between such cases and cases where death has occurred. The current section 5 guideline has the benefit of clearly demarcating the latter.

3.14 The other option for changing sentencing levels would be to provide an uplift across the board. This would not need to be purely arithmetical. In particular, we may not want to increase significantly lower culpability cases where the offender has been coerced, has a mental disorder, took some steps to protect the child, or where the offence was a brief lapse of judgement. Such tables could look like this (with proposed amendments in red):

Section 5 causing or allowing a child to die or suffer serious physical harm

Harm	Culpability		
	A	B	C
Category 1	Starting point 9 12 years' custody Category range 7-14 8 – 18 years' custody	Starting point 5 8 years' custody Category range 3-8 4 – 10 years' custody	Starting point 2 3 years' custody Category range 1-4 5 years' custody
Category 2	Starting point 7 9 years' custody Category range 5-9 7 – 14 years' custody	Starting point 3 5 years' custody Category range 1 year 6 months – 6 3 – 8 years' custody	Starting point 1 year 6 months' 2 years' custody Category range 6 months – 3 4 years' custody
Category 3	Starting point 3 5 years' custody	Starting point 1 year 6 months' 3 years' custody	Starting point 9 months' 1 year's custody

	Category range 1 year 6 months – 6 3 – 8 years' custody	Category range 6 months – 3 1 – 4 years' custody	Category range High level community order – 2 years' custody
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Section 1 child cruelty:

Harm	Culpability		
	A	B	C
Category 1	Starting point 6 8 years' custody Category range 4 – 8 6 – 14 years' custody	Starting point 3 5 years' custody Category range 2 – 6 3 – 8 years' custody	Starting point 4 2 year's custody Category range High level community order – 2 years 6 months' 6 months – 4 years' custody
Category 2	Starting point 3 5 years' custody Category range 2 – 6 3 – 8 years' custody	Starting point 1 year's 2 years' custody Category range High level community order – 2 years 6 months' 6 months – 4 years' custody	Starting point High level community order 6 months' custody Category range Medium level community order – 4 year's 18 months' custody
Category 3	Starting point 1 year's 2 years' custody Category range High level community order – 2 years 6 months' 6 months – 4 years' custody	Starting point High level community order 6 months' custody Category range Medium level community order – 4 year's 18 months' custody	Starting point Medium High level community order Category range Low level community order – 6 months' custody

3. Conduct a more thorough revision

3.15 The other main option is to take the opportunity to undertake a full revision of the guidelines, recalibrating the harm and culpability elements to reflect the new maximums. However, the guidelines are relatively recent and we have no evidence that they are misunderstood or not fit for purpose. Subject to other priorities, an evaluation would be undertaken at some point in the next few years to see what impact the current guidelines have had.

3.16 If limited only to sentencing levels, we could launch a relatively quick consultation before the summer, consider responses and publish a response by the end of the year, which would demonstrate responsiveness to the change in the law. A more far-reaching revision would be likely to result in a more in-depth consultation later in the year, with definitive guidelines being issued in mid 2023.

Question 1: would Council like to:

- i) do nothing (beyond a message on the guideline about the revised maximums);**
- ii) consult on changes to the sentence levels only (recommended);**
- iii) consult on a full revision to the guidelines?**

Question 2: if consulting on sentence levels, which of the above options would you prefer? (creating a new upper band and leaving the rest is recommended);

Question 3: do you agree with the proposed sentence levels for that option?

4 IMPACT AND RISKS

4.1 Subject to your decisions above, we will consider recent transcripts and consider what the impact of the changes would be. If you do agree to consult on sentence levels only we will present a consultation stage resource assessment alongside draft revisions to the guidelines at June's meeting

4.2 There have been several high-profile cases recently of incidents of child cruelty resulting in death. Whilst we can show responsiveness to the change in the maximum penalties, we may need to explain carefully why offenders at the lower end of culpability are not deserving of significantly higher sentences.

4.3 Arguably, an anomaly remains whereby the worst cases of GBH with intent committed against an adult will be sentenced more severely than cases prosecuted under child cruelty legislation where a child has been killed or left with serious permanent disabilities. At root, this is reflective of the different maximum penalties available for different offences and charging decisions will determine the penalty available. Revised sentencing levels as above will mitigate this to some extent.

4.4 In terms of equalities, both offences have a high proportion of female offenders, relative to other offences. In most years, women represent the majority of those sentenced, and in some years this proportion is nearly as high as two thirds of total adults sentenced. Given the subject matter, some questions may be aired generally about the extent to which

women receive more severe sentences because they are perceived to have more greatly abused a position of trust than male offenders. There are also issues about the role of coercion and control, which are inherently linked with these offences, in particular section 5. For the lower level cases, this offending also raises interesting questions about the extent to which being a primary carer (either for the victim or for other children) acts as a mitigating factor.

4.5 In terms of data for the first of these questions, for section 1 offences there is some evidence that female offenders are less likely to get immediate custody and more likely to receive a community order than male offenders. There is no evidence of any particular difference between the average custodial sentence length (ACSL) given to men or women for section 1 offences; in 2020 the ACSL for male adult offenders was 2 years 3 months compared with 2 years 2 months for females.

4.6 For section 5, low volumes mean we should approach any figures with caution. The majority of both male and female offenders receive immediate custody (around two thirds of sentencing outcomes for male and female offenders in 2019 and 2020), although after combining data for 2019 and 2020, we can observe that the mean ACSL after any reduction for guilty plea for female adult offenders was slightly higher at 5 years 6 months, compared to 4 years 8 months for males. To reiterate, the low volumes of section 5 cases may limit the extent to which we can do a meaningful comparison between male and female offenders.

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

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

Effective from: 01 January 2019

Triable either way

Maximum: 10 years' custody

Offence range: Community order – 8 years' custody

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

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated

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

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is

important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim

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

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

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

	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community order
Category 2	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody
	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
Category 3	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 6 months' custody

Community orders

Custodial sentences

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 sentence arrived at so far. 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.

Factors increasing seriousness

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

- Failure to seek medical help (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct
 - (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability
 - or
 - lack of maturity
 - (where not taken into account at step one)
- Co-operation with the investigation

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

Step 6 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Magistrates' Court](#)

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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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

Effective from: 01 January 2019

Causing or allowing a child to suffer serious physical harm

Indictable only

Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

Causing or allowing a child to die

Indictable only Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

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

This guideline applies only when the victim of the offence is aged 15 or under.

[User guide for this offence](#)

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Applicability

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category, the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated

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

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Psychological, developmental or emotional harm A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

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

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Harm	Culpability		
	A	B	C
	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 2 years' custody

Category 1	Category range 7 – 14 years' custody	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 7 years' custody	Starting point 3 years' custody	Starting point 1 year 6 months' custody
	Category range 5 – 9 years' custody	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 3 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody	Category range High level community order – 2 years' custody

Community orders

Custodial sentences

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 sentence arrived at so far. 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.

Factors increasing seriousness

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

- Failure to seek medical help (where not taken into account at step one)

- Prolonged suffering prior to death
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability or lack of maturity (where not taken into account at step one)
- Co-operation with the investigation

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 5 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

Step 6 – Dangerousness

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

Step 7 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 8 – Ancillary orders

In all cases the court should consider whether to make ancillary orders.

- [Ancillary orders – Crown Court Compendium](#)

Step 9 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 10 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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