

Overarching issues and the context of the guidelines

Why Child Cruelty?

There is an existing Child Cruelty guideline published by our predecessor body, the Sentencing Guidelines Council (SGC) in 2008. The Council has committed to revising all SGC guidelines in due course to bring them into the newer format used by the Sentencing Council which takes the user through steps to assess the seriousness of the offence.

In 2016 there were 623 sentenced for this offence, approximately 42 per cent were dealt with in the magistrates' court, and 58 per cent in the Crown Court.

The existing guideline is made up of a guideline for the offence of cruelty to a child and overarching principles on assaults on children. The Council made the decision to remove the overarching principles section when revising this guideline. This is because the existing definitive Assault guideline already considers some of the factors detailed, such as when a victim is particularly vulnerable. Furthermore, the Council is planning to review the Assault guideline, following the assessment that was published in October 2015. The SGC Overarching Principles on assaults on children will be carefully considered throughout this revision to ensure that all necessary factors are captured.

The Council also decided to extend the scope of the existing Child Cruelty guideline, to include two further offences; causing or allowing a child to die or suffer serious physical harm and failing to protect a child from the risk of female genital mutilation (FGM). Causing or allowing a child to die or suffer serious physical harm is an offence that is similar in its nature to the offence of cruelty to a child and so the Council felt it was appropriate to include such a guideline. In 2016 there were 6 offenders sentenced for causing or allowing death and 23 for causing or allowing serious harm offenders sentenced for this offence.[2] This offence is indictable only.

The Council has included the guideline for failing to protect a girl from the risk of FGM as FGM is a form of child abuse and this is an offence that applies solely to child victims (the other relevant FGM offences apply to victims of any age). This legislation was announced at the Girl Summit 2014, along with other measures designed to tackle FGM and FGM remains a key topic across Parliament and Government. Due to the currency of such issues the Council felt it was appropriate to consult on such a guideline, despite there being no convictions to date.

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues these draft guidelines. Following consultation, when the definitive guidelines are produced they will apply to all offenders aged 18 and older, who are sentenced on or after the implementation date, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the adult guidelines specify offence ranges – the range of sentences appropriate for each type of offence. For each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence-based starting point. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision-making process, after the appropriate sentence has been identified.

The guideline in relation to current practice and existing guidelines

In preparing the guidelines the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice’s Court Proceedings Database for the offences covered in the guideline to get a picture of current sentencing levels, where possible (there is no sentencing data available for the offence of failing to protect a girl from the risk of FGM).

The aim of the draft guidelines is to ensure that sentence levels reflect the seriousness of the offences and to ensure consistency across sentences but the Council is not intending to change sentencing practice. As there have been no convictions to date for the offence of failing to protect a girl from the offence of FGM the Council can ensure that sentences are determined consistently from the outset.

Approach to victims

The Council is required to consider the impact of sentencing decisions on victims of offences. The harm caused by an offence is considered at step one of the guidelines, as a principle factor of the offence. The Council was conscious when drafting the guideline of the unique nature of these offences as the vast majority of the offenders

are parents of the victim. This adds a further dimension to the consideration of victims, as some sentences are likely to cause further suffering to the child, especially if they will be taken into care. The Council has sought to balance the seriousness of the offences with such considerations and has incorporated an additional step to ensure that sentencers consider the impact a custodial sentence can have on children.

Data analysis and research

To support the development of the guideline the following research was undertaken:

- an initial online form was created for sentencers to offer their views on the existing guideline and what the key factors in child cruelty cases are;
- a small number of follow up phone interviews were conducted with two magistrates and one Crown Court judge to further explore the issues raised in the survey;
- analysis of 178 sentencing remarks from the Crown Court was completed (166 for cruelty to a child and 12 for causing or allowing a child to die or suffer serious physical harm) to indicate what the key factors in such cases are; and
- sentencing data was obtained where available to determine current sentencing practice.

Meetings were also held with interested and relevant organisations throughout the process, such as the NSPCC, the FGM Centre and the Home Office.

Research has also begun with the judiciary to determine how these draft guidelines would be used; the outcomes will be analysed alongside consultation responses to inform the definitive guideline.