

## Section seven: Exploitation offences

This section deals with offences concerning the commercial sexual exploitation of both adults and children. The offences under consideration are:

### Sexual exploitation of adults

- Causing or inciting prostitution for gain
- Controlling prostitution for gain

### Keeping a brothel

### Sexual exploitation of children

- Paying for the sexual services of a child
- Causing or inciting child prostitution or pornography
- Controlling a child prostitute or a child involved in pornography
- Arranging or facilitating child prostitution or pornography

### Trafficking

- Trafficking into the UK for sexual exploitation
- Trafficking within the UK for sexual exploitation
- Trafficking out of the UK for sexual exploitation

These guidelines do not deal with wider prostitution offences such as soliciting but focus instead on offences where the victim has been sexually exploited by others for commercial gain.

There is a degree of overlap between the exploitation of prostitution offences and trafficking and the Council has been mindful of this when considering the factors involved in both.

### Causing or inciting prostitution for gain, Sexual Offences Act 2003 – section 52

and

### Controlling prostitution for gain, Sexual Offences Act 2003 – section 53

**Maximum sentence: 7 years' custody (full guidelines page 257)**

These offences involve an offender who causes or incites an individual to become a prostitute or controls the activities of a prostitute and in both cases does so with the expectation of gain for themselves or a third person. This legislation would ordinarily be applied to prostitutes aged 18 and over. A prostitute who is under 18 will be protected by the child prostitution offences, discussed at page 96, which have a higher statutory maximum.

The Council proposes to deal with causing or inciting prostitution and controlling prostitution in the same guideline as they have the same statutory maximum of 7 years and similar issues in relation to harm and culpability arise.

#### STEP ONE

#### Determining the offence category

The first step the court will take is to consider the principal factual elements of the offence. The harm factors which the Council has identified in these offences are:

Harm	
Category 1	<ul style="list-style-type: none"> <li>• Abduction/detention of prostitute(s)</li> <li>• Violence used against prostitute(s)</li> <li>• Sustained and systematic psychological abuse of prostitute(s)</li> <li>• Prostitute(s) coerced or forced to participate in unsafe/particularly degrading sexual activity</li> <li>• Prostitute(s) forced or coerced into seeing many 'customers'</li> <li>• Prostitute(s) tricked/deceived into prostitution</li> </ul>
Category 2	Factor(s) in category 1 not present

**Category 2** does not contain any factors but reflects the harm inherent in causing or inciting someone to enter into prostitution (effectively recruiting the individual) or controlling the victim. This harm will exist even in the absence of any other factors.

**Category 1** contains a number of factors which the Council believes will increase the harm already caused to the victim.

- 'Abduction/detention of prostitute(s)' will increase the harm suffered by the prostitute because they will be isolated from others and less able to seek help.
- 'Violence used against prostitute(s)'. The Council is aware that control and coercion can be exercised without violence being used; a lack of violence towards the prostitute would not be considered as reducing the seriousness of this offence but, as the CPS state:

"Female prostitutes are often at risk of violent crime in the course of their work which can include both physical and sexual attacks, including rape. Perpetrators of such offences include violent clients or pimps."<sup>82</sup>

The term 'violence' is intended to include physical violence and sexual violence or control such as rape cited above.

- 'Sustained and systematic psychological abuse of prostitute(s)' is another type of harm which the Council feels should be reflected. Even if there is no evidence of physical violence, psychological abuse may be a powerful weapon in controlling and exploiting the prostitute. Where there is evidence of such abuse being used by the offender, the Council recommends that this should place harm in the higher bracket as it can be as coercive and damaging as physical violence.
- 'Prostitute(s) coerced or forced to participate in unsafe/particularly degrading sexual activity' reflects situations where the offender may coerce or force the prostitute to have unprotected sex knowing that some clients will pay a premium for such activity. This increases the harm to the prostitute due to the exposure to the risk of sexually transmitted infections and pregnancy. A prostitute might also be coerced or forced by the offender to undertake sexual activity with clients which the prostitute finds degrading. The harm results from the prostitute's lack of choice or control over the activity engaged in and the risk or humiliation they are exposed to as a consequence of the activity.
- 'Prostitute(s) forced or coerced into seeing many 'customers'' again may increase the harm done to the prostitute as they will be coerced or forced into working in a way that they may not be comfortable with, have little control over and which increases their exposure to risk of physical and psychological harm.
- 'Prostitute(s) tricked/deceived into prostitution'. This offence will sometimes be charged in place of trafficking as there is a degree of overlap and so there may be instances where an individual is tricked or deceived into entering into prostitution. The victim may have willingly travelled to the country with the promise of a legitimate job and be deceived into prostitution upon

arrival. By this stage they may be isolated and without means of financially supporting themselves and effectively forced into prostitution. This increases harm because of the lack of control the individual has over the choices made.

### Culpability

It will be noted that for the exploitation offences there are two categories of harm, and three categories of culpability. This varies from the approach in other guidelines where there are three levels of harm and two of culpability. This has been done as a wide range of culpability is found in this offence arising from the definition of ‘control’ which applies if someone intentionally controls **any** of the activities of another person relating to prostitution. This means that control could range from an offender with links to organised crime controlling a network of prostitutes right through to a former prostitute, who has been exploited, looking after the diary of another prostitute and involved in this work as a means of moving away from having to see clients. The current Sentencing Guidelines Council (SGC) guidelines deal with the wide range of culpability by including “using employment as a route out of prostitution” and “coercion” as mitigating factors. The Council suggests that it is clearer and more transparent to set out clearly differing levels of culpability at step one. The Council proposes the following categories of culpability to reflect degrees of involvement:

#### Culpability

##### A

Causing/inciting or controlling prostitution on significant commercial basis

Expectation of substantial financial gain

Abuse of position of trust/responsibility

Exploitation of prostitute(s) known to be trafficked

Significant involvement in limiting the freedom of prostitutes

##### B

Close involvement with prostitute(s) e.g. control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)

##### C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

**Culpability C** ‘Performs limited function under direction’ and ‘Close involvement but engaged by pressure/intimidation/exploitation’ applies to the offender who plays a relatively peripheral role. As the legislation extends to control of any of the activities relating to prostitution someone who takes bookings on behalf of a prostitute or drives the prostitute around is likely to fall under this category. This category may also apply if an offender has close involvement but is engaged by exploitation or coercion himself or herself.

**Culpability B** is ‘Close involvement with prostitute(s) e.g. control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)’. This would apply to cases where the offender has a close degree of control of the prostitute, and is, for example, exerting influence and making decisions on behalf of the prostitute e.g. controlling which clients they see. In this category there would be an absence of evidence that the offender was anyway coerced into involvement. An offender could be in this category if they controlled just one prostitute or if they controlled more than one prostitute. If, however, the activity was on a significant commercial scale this would be classed as culpability A discussed below.

**Culpability A** includes factors which show a very high degree of culpability.

- ‘Causing/inciting or controlling prostitution on significant commercial basis’ is intended to cover those offenders very deliberately engaged in a role causing harm to a large

number of people. Additionally, where that activity is conducted on a significant commercial basis it places the offender in category A to reflect the increased culpability of controlling a large number of individuals involved in prostitution.

- ‘Expectation of substantial financial gain’ results in increased culpability because the offender is motivated by the expectation of substantial financial gain for himself or herself. The previous SGC guideline placed a monetary value on “substantial gain” of £5,000. The Council does not wish to ascribe a specific monetary value to substantial gain as the definition of what is substantial will be subject to change over time and will be dependent on the circumstances of the offence.
- ‘Abuse of position of trust/responsibility’ will increase an offender’s culpability even in the absence of commercial scale or substantial financial gain because of the manipulation involved.
- ‘Exploitation of prostitute(s) known to be trafficked’ is recommended as a category 1 factor. The Council endorses the views of the CPS set out in their legal guidance for these offences.

“The increase in human trafficking for sexual exploitation is also fuelling the market for prostitution in the UK... This is a lucrative business and is often linked with other organised criminal activity such as immigration crime, violence, drug abuse and money laundering. Women may be vulnerable to exploitation because of their immigration status, economic situation or, more often, because they are subjected to abuse coercion and violence.”<sup>83</sup>

- ‘Significant involvement in limiting the freedom of prostitutes’ would increase an offender’s culpability because it is an extreme example of control over the prostitute.

Q45

**Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.**

## STEP TWO

### Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors not already considered at step one which would aggravate or mitigate the offence. This leads the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range.

These factors will allow the court to consider the wider context of the offence. The factors are not exhaustive and any factors not considered at step one but which the court considers relevant to the harm of the victim or the culpability of the offender can be taken into account here. In exceptional cases, having considered all the factors, the court may decide to move outside the category range identified at step one.

Although the list of factors is non-exhaustive, the Council’s intention is to highlight the most common factors to ensure that they are considered equally by the courts. The suggested factors are:

**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

*Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of prostitute(s)

Threats made to expose prostitute(s) to the authorities (immigration or police)

Threats of harm to the prostitute's family/friends

Prostitute(s) passport(s)/identity documents removed

Prostitute(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure prostitute's compliance

Food withheld

Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- 'Previous convictions' and 'offence committed whilst on bail' – see discussion at page 23.
- 'Failure to comply with current court orders' and 'offence committed whilst on licence' – see discussion at page 24.
- 'Deliberate isolation of prostitute(s)' would aggravate the offence as it means that the offender can exert a greater degree of control over them. This will be particularly relevant if the prostitute was from another country and had therefore been cut off from all social and family ties.
- 'Threats made to expose prostitute(s) to the authorities (immigration or police)' is frequently used to control and coerce

individuals involved in prostitution. This can include threats to expose their criminal activity to the police but is particularly effective as a method of control where the prostitute has been brought into the United Kingdom illegally and fears that they will be deported.

- 'Threats of harm to prostitute's family/friends' may be used by the offender as another means of controlling the victim. The victim's feelings of helplessness and fear are likely to increase where they know the offender has influence over or access to their family which could result in harm befalling family members.
- 'Prostitute(s) passport(s)/identity documents removed' is a direct way of limiting the physical movement and freedom of the prostitute thereby placing them under the control of the offender.
- 'Prostitute(s) prevented from seeking medical treatment' demonstrates the high level of control that impacts on the welfare and physical wellbeing of the individual.
- 'Use of drugs/alcohol or other substance to secure prostitute's compliance' is included as there is a very strong link between drug use and street prostitution. Where it is found that the offender has either assisted the prostitute to develop a dependency, or has exploited a pre-existing dependency in order to control and manipulate the prostitute, this should aggravate the offence.
- 'Food withheld' and 'earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates' are all specific examples of how control can be exercised over the prostitute.
- 'Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution' and 'attempts to dispose of or conceal evidence' – see discussion at page 24.

## Mitigation

The mitigating factors that are set out below have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions <b>or</b> no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

**Q46** Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

## Sentence levels for causing/inciting and controlling prostitution

The Council is recommending that in the most serious cases, where a high level of exploitation and harm have been demonstrated, the offender should receive a custodial sentence with the top of the sentencing range towards the statutory maximum of 7 years. In all category 1 cases where there is evidence of increased harm a custodial starting point and range is recommended.

In category 2 cases a custodial starting point and range is proposed for offenders who demonstrate the highest level of culpability.

When the offender is shown to have been exploited themselves or has very limited involvement, and there are none of the category 1 harm factors present, it is recommended that a starting point of a community order may be the most suitable way of dealing with the offender because it will deal with the underlying reasons as to why they have become involved and seek to avoid the offender returning to offending.

The suggested starting points and ranges are:

	A	B	C
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 3 – 6 years' custody	<b>Category range</b> 2 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
Category 2	<b>Starting point</b> 2 years 6 months' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> High level community order – 2 year's custody	<b>Category range</b> Low level community order – High level community order

**Q47** Please give your views on the proposed sentence levels (starting points and ranges) for these offences? If you disagree with the levels stated, please give reasons why.

## Keeping a brothel used for prostitution, Sexual Offences Act 1956 – section 33A

**Maximum sentence: 7 years' custody (full guideline page 263)**

This offence is concerned with keeping, managing, acting or assisting in the running of a brothel. Although different from the causing and inciting or controlling prostitution offences, there are commercial elements to the exploitative behaviour in common with the offences discussed above.

### STEP ONE

#### Determining the offence category

Where there has already been discussion of the factors set out below the relevant section is highlighted.

When considering the offence of keeping a brothel the Council is focusing on factors which increase the harm to the prostitutes working within that brothel. The proposed harm factors are:

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Brothel uses prostitute(s) under 18</li> <li>• Abduction/detention of those working in brothel</li> <li>• Violence used against prostitute(s) working in brothel</li> <li>• Sustained and systematic psychological abuse of prostitute(s) working in brothel</li> <li>• Prostitute(s) working in brothel coerced or forced to participate in unsafe/particularly degrading sexual activity</li> <li>• Evidence prostitute(s) working in brothel forced or coerced into prostitution</li> <li>• Prostitute(s) working in brothel forced or coerced into seeing many 'customers'</li> <li>• Prostitute(s) working in brothel tricked/deceived into prostitution</li> <li>• Established evidence of community impact</li> </ul>
<b>Category 2</b>	Factor(s) in category 1 not present

**Category 2** has no additional features as the starting points and sentencing ranges are intended to reflect the inherent harm that is done to an individual by their sexual exploitation for someone else's financial gain.

**Category 1** lists factors that increase the level of harm. The factors identified are:

- 'Brothel uses prostitute(s) under 18'. If the offender keeps manages or assists with the running of a brothel which uses those under 18, they are complicit or positively encouraging the corruption and sexual exploitation of those under 18.
- 'Abduction/detention of those working in brothel' – see discussion at page 87.
- 'Violence used against prostitute(s) working in brothel' – see discussion at page 87.
- 'Sustained and systematic psychological abuse of prostitute(s) working in brothel' – see discussion at page 87.
- 'Prostitute(s) working in brothel coerced or forced to participate in unsafe/particularly degrading sexual activity' – see discussion at page 87.
- 'Evidence prostitute(s) working in brothel forced or coerced into prostitution' – see discussion on coercion at page 87.
- 'Prostitute(s) working in brothel forced or coerced into seeing many 'customers'' – see discussion at page 87.
- 'Prostitute(s) working in brothel tricked/deceived into prostitution' – see discussion at page 87.
- 'Established evidence of community impact' has been included to take account of cases where the brothel has an impact on the local area; for example, it is located near a school and there are clients going in and out

frequently or it is in a residential area and the presence of clients is intimidating for residents at night.

### Culpability

As with causing, inciting or controlling a prostitute, the Council believes that the main focus of this offence is the role played by the offender and the level of deliberate exploitation and corruption of those working in the brothel. As the definition in legislation for this offence is *to keep, or manage, or act or assist in the management of a brothel* (section 33A, Sexual Offences Act 1956) a wide range of involvement and a wide range of culpability is covered. As with the previous offences the focus is on distinguishing between those who have genuine power and influence through their involvement with the brothel and those who have a minor role or are coerced or exploited themselves. Many of the culpability factors have already been discussed above and the relevant discussion has been referenced.

#### Culpability

##### A

Keeping brothel on significant commercial basis

Involvement in keeping a number of brothels

Expectation of substantial financial gain

Abuse of position of trust/responsibility

Exploitation of prostitute(s) known to be trafficked

Significant involvement in limiting freedom of those working in brothel

##### B

Keeping/managing premises

Close involvement with prostitute(s) e.g. control of finances, choice of client, working conditions, etc (where offender's involvement is not as a result of coercion)

##### C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

**Culpability C** 'Performs limited function under direction' and 'close involvement but engaged by pressure/intimidation/exploitation' is discussed at page 88. In the context of brothel keeping this would apply to 'maids' who have a limited role and may help look after the other women in the brothel or have a limited role, for example, answering the door and letting clients in. This category may also apply to those helping run the brothel but who are undertaking their role due to coercion or exploitation.

### Culpability B

- 'Keeping/managing premises' has been included to reflect the culpability of those that undertake a management role with a degree of day to day responsibility for the running of the brothel.
- 'Close involvement with prostitute(s) e.g. control of finances, choice of client, working conditions, etc (where offender's involvement is not as a result of coercion)' is intended to reflect situations where the offender has a degree of control and autonomy in the running of the brothel.

**Culpability A** indicates factors that show a high degree of culpability.

- 'Keeping brothel on significant commercial basis' and 'involvement in keeping a number of brothels' are in the highest category to reflect the fact that the offender will be directing and involving a large number of people in the operation of brothels.
- 'Expectation of substantial financial gain' – see discussion at page 89.
- 'Abuse of position of trust/responsibility' – see discussion at page 89.
- 'Exploitation of prostitute(s) known to be trafficked' see discussion at page 89.
- 'Significant involvement in limiting freedom of those working in brothel' – see discussion at page 89.



Q48

**Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.**

**STEP TWO**

**Starting point and category range**

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any other additional factors which would aggravate or mitigate the offence.

Many of the factors below replicate those found under the causing inciting and controlling prostitution guideline and the relevant discussion is referenced.

**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

*Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Threats made to expose prostitute(s) to the authorities (immigration or police)

Threats of harm to prostitute’s family/friends

Prostitute(s) passed around by offender and moved to other brothels

Prostitute(s) passport(s)/identity documents removed

Prostitute(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure prostitute’s compliance

Food withheld

Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Threats made to expose prostitute(s) to the authorities (immigration or police)’ – see discussion at page 90.
- ‘Threats of harm to prostitute’s family/friends’ – see discussion at page 90.
- ‘Prostitute(s) passport(s)/identity documents removed’ – see discussion at page 90.
- ‘Prostitute(s) prevented from seeking medical treatment’ – see discussion at page 90.
- ‘Use of drugs/alcohol or other substance to secure prostitute’s compliance’ – see discussion at page 90.
- ‘Food withheld’ and ‘earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates’ – see discussion at page 90.
- ‘Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

## Mitigation

Most of the mitigating factors have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions <b>or</b> no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Prostitute(s) working in brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

- ‘Prostitute(s) working in a brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal’ is a new factor and the Council would be interested in views.

**Q49** Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify what you would add or remove and why.

## Sentence levels for keeping a brothel used for prostitution

The Council is proposing at the top end of the sentencing range a starting point and range that is higher than that suggested in the current SGC guidelines which has at its top level 2 years starting point with 1–4 years’ range. The highest category under the current SGC guidelines is for an offence where the offender is the keeper of the brothel and has made profits in region of £5,000 and upwards. In the top category proposed in this new guideline the Council is recommending a starting point of 5 years’ custody with a range of 3–6 years’ custody for category (1A) where the offender will have been involved in serious exploitation, or factors such as the brothel using prostitutes who are children. In addition, there will be a degree of larger scale management of the brothel or brothels and either abuse of a position of trust or an element of limiting the freedom of the prostitute.

At the other end of the range of this offending, where the offender is guilty of the offence but has minimal involvement and there are no signs of exploitation of prostitutes working in the brothel, a community order is proposed. Such a disposal would be designed to address the reasons the offender has become involved in the brothel.

The proposed starting points and sentence ranges are:

	A	B	C
Category 1	<b>Starting point</b> 5 years’ custody	<b>Starting point</b> 3 years’ custody	<b>Starting point</b> 1 year’s custody
	<b>Category range</b> 3 – 6 years’ custody	<b>Category range</b> 2 – 5 years’ custody	<b>Category range</b> High level community order – 18 months’ custody
Category 2	<b>Starting point</b> 3 years’ custody	<b>Starting point</b> 1 year’s custody	<b>Starting point</b> Medium level community order
	<b>Category range</b> 2 – 5 years’ custody	<b>Category range</b> 26 weeks’ – 2 years’ custody	<b>Category range</b> Low level community order – High level community order

Q50

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated please give reasons why.

**Sexual exploitation of children**  
**Causing or inciting child prostitution or pornography, Sexual Offences Act 2003 – section 48**  
**and**  
**Controlling a child prostitute or a child involved in pornography, Sexual Offences Act 2003 – section 49**  
**and**  
**Arranging or facilitating child prostitution or pornography, Sexual Offences Act 2003 – section 50**  
**Maximum sentence: 14 years’ custody**  
**(full guidelines page 267)**

As with the adult offences discussed at page 86, sections 48 to 50 are aimed at commercial sexual exploitation but these offences concern children. These offences have similarities with sections 8 and 10 of the Sexual Offences Act 2003 (SOA 2003) (causing or inciting a child under 13 and under 16 to engage in sexual activity) discussed at page 45. The difference is that the definition of ‘child’ for these offences extends to all those under 18, including 16 and 17 year olds.

These offences cover offenders involved in causing, inciting, controlling, arranging or facilitating a child involved in prostitution or pornography. The inclusion of pornography also makes this offence wider than the adult offence.

Perhaps due to the fact there are alternative charges for victims under 16, these cases are sentenced very rarely; between 2006 and 2010 there were only forty six section 48–50 cases sentenced.<sup>84</sup>

The Council is proposing to consider all these offences together in one guideline given there is commonality in the harm caused and the culpability of the offender and they all share a statutory maximum.

**STEP ONE**  
**Determining the offence category**

The first step the court will take is to consider the principal factual elements of the offence. The Council has identified what they believe would be the main harm and culpability factors for this offence; many of the factors are adapted from the adult exploitation of prostitution offences and where there has already been a relevant discussion this is highlighted. New factors are discussed below.

The harm factors that the Council has identified in these offences are:

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Abduction/detention of victim</li> <li>Prostitution or pornography involves penetrative sexual activity</li> <li>Violence used against victim</li> <li>Victim coerced or forced to participate in unsafe/particularly degrading sexual activity</li> <li>Victim passed around by the offender to other adults and/or moved to other brothels</li> <li>Victim forced/coerced into prostitution or pornography</li> <li>Victim tricked/deceived into prostitution or pornography</li> </ul>
<b>Category 2</b>	Factor(s) in category 1 not present

- ‘Abduction/detention of victim’ – see discussion at page 87.
- ‘Prostitution or pornography involves penetrative sexual activity’ has been included for these offences as, although the offender

may not have had any direct sexual contact with the child, their actions in committing this offence will have resulted in the child being exposed to a very high degree of harm.

- ‘Violence used against victim’ – see discussion at page 87 and is particularly harmful where the victim involved is under 18.
- ‘Victim coerced or forced to participate in unsafe/particularly degrading sexual activity’. The Council acknowledges that any sexual activity that commercially exploits a child is degrading. This harm factor is intended to cover situations where there is additional degradation. The Council would particularly welcome views as to whether this factor should be included and if so, whether the current formulation adequately reflects the harm.
- ‘Victim passed around by the offender to other adults and/or moved to other brothels’. Such ‘trading’ of victims and exposure to other offenders, whether in the context of a brothel or otherwise, significantly increases the harm to the child.
- ‘Victim forced/coerced into prostitution or pornography’ – see discussion at page 87.
- ‘Victim tricked/deceived into prostitution or pornography’ – see discussion at page 87.

### Culpability

As with the adult exploitation offences discussed at page 88, the role of the offender will be a key factor in determining culpability. A number of the factors are adapted from the adult offence above; where there has already been discussion this is referenced.

### Culpability

#### A

Role in directing or organising child prostitution or pornography with an expectation of substantial financial or other gain

Abuse of position of trust/responsibility/power

Exploitation of victims known to be trafficked

Significant involvement in limiting the freedom of the victim

#### B

Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion)

#### C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

**Culpability C** ‘Performs limited function under direction’ and ‘close involvement but engaged by pressure/intimidation/exploitation’ are intended to include the offender who plays a peripheral role or who is engaged because they are exploited or coerced themselves. Nonetheless, these offences concern the commercial sexual exploitation of children and even where a limited role is performed, a high level of culpability will exist which will be reflected in the sentencing levels; see discussion at page 100.

**Culpability B** ‘Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion)’ – see discussion at page 88.

**Culpability A** is a level of culpability that would cover offenders with a high degree of influence and control.

- ‘Role in directing or organising child prostitution or pornography with an expectation of substantial financial or other gain’ would apply to individuals who orchestrate activity for substantial commercial gain. The current SGC guideline includes *organised commercial exploitation* in the highest category but the Council is proposing to widen this to cover situations where the activity might not be formally organised. As with the adult offence, the Council is proposing a move away from a monetary value to ‘substantial financial or other gain’ as it will depend on the facts of the case.
- ‘Abuse of position of trust/responsibility’ will be particularly relevant in relation to an offender involved in the exploitation of children. Where an offender has exploited their position of trust or responsibility towards a child this demonstrates the highest level of culpability.
- ‘Exploitation of victims known to be trafficked’. Where an offender knows that a child has been trafficked this demonstrates the highest level of culpability due to the increased isolation and vulnerability of those children. This could apply equally to children trafficked into the UK from abroad or those trafficked internally within the UK.
- ‘Significant involvement in limiting freedom of the victim’ – see discussion at page 89.

Q51

**Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.**

**STEP TWO**  
**Starting points and category ranges**

Having identified the appropriate category at step one the court considers the starting point and identifies whether there are any additional factors that have not already been considered at step one which would aggravate or mitigate the offence and decide whether the sentence should be adjusted upwards or downwards within the relevant range.

Although the list of factors is non-exhaustive, the Council’s intention is to highlight the most common factors. Some of these factors will have been discussed previously and where this is the case it is indicated. The suggested factors are:

**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

*Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim

Vulnerability of victim

Threats made to expose victim to authorities, relatives or friends

Threats of harm to prostitute’s family/friends

Victim’s passport(s)/identity documents removed

Victim prevented from seeking medical treatment

Victim prevented from attending school

Use of drugs/alcohol/other substance to secure victims compliance

Food withheld

Earnings of victim withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses, etc

Victim manipulated into dependence on offender (e.g. physical, emotional, financial)
--

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
--

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Deliberate isolation of victim’. The deliberate isolation of the victim from family and friends will aggravate the offence as it ensures the victim is removed from any support network or the possibility of seeking assistance.
- ‘Vulnerability of victim’ is intended to deal with additional vulnerability other than the age of the child which is already factored into the sentencing starting points and ranges. For example, children in care or children who have been subject to sexual abuse may be particularly vulnerable and targeted by offenders for this very reason. This factor at step two will give the court the flexibility to take onto account any other vulnerability factors which they feel will aggravate the offence.
- ‘Threats made to expose victim to authorities, relatives or friends’ – see discussion at page 90.
- ‘Threats of harm to prostitute’s family/friends’ – see discussion at page 90.
- ‘Victim’s passport(s)/identity documents’ removed – see discussion at page 90.
- ‘Victim prevented from seeking medical treatment’ – see discussion at page 90.
- ‘Victim prevented from attending school’. If there is evidence that the offender has kept the child from attending school then this could be an aggravation to reflect the longer-term harm to the child.
- ‘Use of drugs/alcohol/other substance to secure victims compliance’ – see discussion at page 90.
- ‘Food withheld’ and ‘earnings of victim withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses, etc’ – see discussion at page 90.
- ‘Victim manipulated into dependence on offender (e.g. physical, emotional or financial)’ aggravates the seriousness of an offence because it involves additional exploitation and control of the victim.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

### Mitigation

The proposed mitigating factors have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions <b>or</b> no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

**Q52** Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

sentence levels to reflect the commercial element involved in these offences. This guideline would then only cover 16 and 17 year olds who would not be covered by causing or inciting sexual activity as it applies to children under 16.

**Sentence levels for causing, inciting, controlling, arranging or facilitating child prostitution or pornography**

The Council is proposing to include distinct starting points and ranges for victims under 13, those who are 13–15 and those who are 16–17 but is seeking views on this approach. An alternative to differing sentence levels would be to refer the court to the starting points and ranges for causing and inciting sexual activity with a child (see page 53) and increase those

**Q53** Do you prefer the approach below of starting points and ranges that distinguish between those aged under 13, 13–15 and 16 and over, or do you favour referring the sentencer to the guideline on causing and inciting sexual activity or an alternative approach?

The suggested starting points and ranges are:

		A	B	C
<b>Category 1</b>	<b>U13</b>	<b>Starting point</b> 10 years' custody	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody
		<b>Category range</b> 8 – 13 years' custody	<b>Category range</b> 6 – 11 years' custody	<b>Category range</b> 2 – 6 years' custody
	<b>13–15</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years 6 months' custody
		<b>Category range</b> 6 – 11 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 1 – 4 years' custody
	<b>16–17</b>	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody
		<b>Category range</b> 3 – 7 years' custody	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
<b>Category 2</b>	<b>U13</b>	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 2 years' custody
		<b>Category range</b> 6 – 11 years' custody	<b>Category range</b> 4 – 9 years' custody	<b>Category range</b> 1 – 4 years' custody
	<b>13–15</b>	<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 – 9 years' custody	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
	<b>16–17</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
		<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody

Q54

**Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated please give reasons why.**

### **Paying for the sexual services of a child, Sexual Offences Act 2003 – section 47**

**Maximum sentence:**

**If penetration and child under 13, life imprisonment**

**If the child is under 16, 14 years' custody**

**If the child is 16–17, 7 years' custody (full guideline page 273)**

The other exploitation offences discussed in this section concern the offender sexually exploiting others in order to profit in some way but do not involve sexual contact between the offender and the victim. This section 47 offence is different as it concerns offenders who obtain the sexual services of a child in return for payment to the child or to a third person.

Payment not only covers financial payment but also other forms of payment in kind, for example, providing drugs or alcohol to the child or writing off a debt. Rook and Ward on Sexual Offences also state that:

“It (payment) also covers the case where A obtains a child’s sexual services by providing other sexual services [to a third party] in return. This ensures that the s47 offence catches the activities of paedophile rings whose members provide each other on a reciprocal basis with access to children to exploit sexually.”<sup>85</sup>

For the purposes of this offence a child is defined as anyone under the age of 18.<sup>86</sup>

The legislation creates differing sentencing maxima depending on the age of the child but the activity can also be covered by other offences. For example, where the victim is under 13, any sexual activity would also be covered by sections 5–8 of the SOA 2003<sup>87</sup> regardless of whether payment was involved (for discussion of these offences see section five). Similarly, where the victim is between 13 and 15 a section 9 offence (sexual activity with a child) would also have been committed.

The current SGC guidelines were drafted on the basis that ordinarily those alternative charges would be used. Since 2006, section 47 has been sentenced on 13 occasions with four of these cases involving a child under 16. In the context of the low volume of these section 47 cases, the Council proposes that where victims are under 16 sentencers are directed to the guidelines for sections 5–8 and 9 where section 47 is charged. The starting points for those offences would be applied but commercial exploitation would increase the seriousness by becoming an additional factor at step one culpability. For example:

#### **Scenario A**

The offender is convicted of paying for penetrative sex with the victim a 15 year old under section 47. The sentencer is directed to the guideline on sexual activity with a child and would use the harm and culpability factors in that guideline to arrive at a category. The example given would fall into category 1A as the penetrative activity would place it in category 1 harm, and commercial exploitation would be added to that guideline as a higher culpability factor (A). This would attract a starting point of 5 years with a range of 3–10 years.

<sup>85</sup> Rook and Ward on Sexual Offences Law and Practice 4<sup>th</sup> edition para 10.15

<sup>86</sup> s.47(2)(c) Sexual Offences Act 2003

<sup>87</sup> s.5 Rape of a child under 13, s.6 Assault by penetration of a child under 13, s.7 sexual assault of a child under 13, s.8 causing a child under 13 to engage in sexual activity, *ibid*



This approach would result in the section 47 guideline applying only to victims aged 16 and 17.

Q55

**Do you agree that it would be appropriate to refer the sentencer to the guidelines for sections 5–9 SOA 2003 if the victim is under 16?**

### STEP ONE

#### Determining the offence category

The court will determine the principal harm and culpability factors at step one. Although a victim who is 16 or 17 is over the age of consent, the victim is a young person who has been commercially sexually exploited. As with sexual activity with a child (see discussion at page 47), the Council has articulated harm in a way that is correlated to the sexual activity that has taken place. The suggested categories of harm for victims aged 16 and 17 are:

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>Activity involving violence</li> <li>Victim subjected to unsafe/particularly degrading sexual activity</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>Penetrative sexual activity</li> <li>Masturbation by, or of, the victim</li> </ul>
<b>Category 3</b>	Other sexual activity

**Category 3** would be sexual activity that did not include any of the elements of categories 1 and 2.

**Category 2** ‘Penetrative sexual activity’ and ‘masturbation’. In other guidelines relating to sexual activity with children penetrative activity has been placed in the highest category of harm. In those guidelines the definition of child is someone under 16 and so under the age of consent. In this offence, as discussed above, we are proposing that the guideline only applies to victims aged 16 and 17. Ordinarily it would be legal for 16 and 17 year olds to engage in penetrative activity; it is the fact that

the offender is paying for sexual services that makes this an offence. The Council is interested in views on whether it is right to place this in the second category of harm due to the fact the victim is over the age of consent or whether the commercial exploitation outweighs this fact.

**Category 1** includes any activity that involves violence and unsafe or particularly degrading activity. The Council is consulting on the basis that, even if over the age of consent, being subjected to violent and/or degrading and unsafe activity will be high harm as it will expose the victim to increased risk.

#### Culpability

There will be an inherently high degree of culpability involved where an offender has paid for the sexual services of a child and this is reflected in culpability B. The Council has identified additional factors that increase this culpability which are included in culpability A. A number of these factors have been discussed already in relation to child sex offences and where this is the case the relevant discussion has been highlighted.

Culpability
<b>A</b>
Abduction/detention of victim
Sexual images of victim recorded, retained, solicited or shared
Part of group or gang during commission of offence
Threats made to victim (including to expose victim to authorities, relatives or friends)
Offender aware that he is suffering from a sexually transmitted disease
Offender aware victim has been trafficked
<b>B</b>
Factor(s) in category A not present

**Culpability B** has no factors listed but a high degree of culpability is already inherent because the offender has paid for the sexual services of a child.

**Culpability A**

- ‘Abduction/detention of victim’. If there is any element of abduction or detention involved limiting the child’s freedom then this will increase culpability. See discussion at page 87. This applies whether the offender has been directly involved in the abduction and detention or was aware that the victim had been detained or abducted but paid for the sexual services of that child.
- ‘Sexual images of victim recorded, retained, solicited or shared’ – see discussion at page 48.
- ‘Part of group or gang during commission of offence’ – see discussion at page 20.
- ‘Threats made to victim (including to expose victim to authorities, relatives or friends)’ – see discussion at page 90.
- ‘Offender aware that he is suffering from a sexually transmitted disease’ increases culpability because the offender deliberately exposes the victim to the risk of contracting that disease.
- ‘Offender aware victim has been trafficked’ is included as there may be an overlap between trafficking and a child who is being sexually exploited for commercial purposes; if this is known to the offender it should increase culpability.

Q56

**Do you agree with the harm and culpability factors proposed at step one for paying for the sexual services of a child? If not, please specify which you would add or remove and why.**

**STEP TWO****Starting points and category ranges**

Having identified the appropriate category at step one, the court considers the starting points and identifies whether there are any additional factors that have not already been considered that will adjust the sentence upwards or downwards from the starting point. The list of factors is non-exhaustive and where the factors have already been discussed reference to the relevant discussion is given.

**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

*Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

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

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ – see discussion at page 24.
- ‘Attempts to dispose of or conceal evidence’ – see discussion at page 24.

## Mitigation

The mitigating factors are the same factors that have been previously discussed for other child sex offences so please see discussion at page 24.

### Mitigating factors

No previous convictions **or** no relevant/recent convictions

Remorse

Previous good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address sexual behaviour

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability, where linked to the commission of the offence

## Sentence levels for paying for the sexual services of a child (victim 16 or 17 years old)

The statutory maximum for victims aged 16 or 17 is 7 years' custody. The Council proposes starting points and sentence ranges designed to reflect the degree of harm, culpability and exploitation. The proposed starting points and ranges are given below.

Q57

**Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify what you would add or remove and why.**

Q58

**Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.**

	A	B
Category 1	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 2 – 5 years' custody	<b>Category range</b> 1 – 4 years' custody
Category 2	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 1 – 4 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 26 weeks' custody
	<b>Category range</b> 26 weeks' – 2 years' custody	<b>Category range</b> High level community order – 1 year's custody

**Trafficking into the UK for sexual exploitation, Sexual Offences Act 2003 – section 57**

and

**Trafficking within the UK for sexual exploitation, Sexual Offences Act 2003 – section 58**

and

**Trafficking out of the UK for sexual exploitation, Sexual Offences Act 2003 – section 59**

**Maximum sentence: 14 years’ custody (full guidelines page 279)**

The activity involved can be much wider than trafficking for the purpose of sexual exploitation and can also cover trafficking for the purposes of labour exploitation and domestic servitude. This consultation is, however, only concerned with trafficking offences dealt with in the Sexual Offences Act 2003. These are trafficking into, trafficking out of or trafficking within the UK for the purpose of sexual exploitation.

Those offences require an offender to:

- i) facilitate or arrange the travel of a victim either into, out of or within the UK; and
- ii) intend to do, or believe that someone else will do, something to the victim that constitutes an offence.

The sentencing statistics show that these are low volume offences; between 2006 and 2010 the number of sentences recorded ranged from 10 cases a year to 24 cases a year.<sup>88</sup> However, these are offences where the statistics do not necessarily reflect the full picture; for example, trafficking is often charged alongside other offences and as the MoJ statistics record only the principal offence, the volume of offences may be masked. As the first annual report of the inter-departmental ministerial group on human trafficking states:

“Traffickers are often prosecuted for one of a number of possible offences and not just human trafficking offences.... These prosecutions and convictions will not appear on national statistics as convictions for human trafficking offences. So, whilst the number of prosecutions and convictions for trafficking offences may appear low, compared to the number of potential victims identified, there are many more convictions of persons involved in trafficking for other related offences...”<sup>89</sup>

Trafficking is therefore an important part of the wider picture of exploitation; there may be overlap with offences already considered in this section such as controlling prostitution or other sexual offences related to the exploitation of the victim.

Since the original SGC guidelines came into force, much work has been done within the UK to further understand the mechanics and behaviours associated with trafficking and the first prosecutions for internal trafficking within the UK have taken place.<sup>90</sup>

The UK Human Trafficking Centre states:

“Someone becomes a victim of trafficking not only because of the journey they are forced to make but because of the exploitation to which they are exposed at the end of that journey, and to which they have not consented. Any consent they do give to make the journey in the first place is likely to have been gained fraudulently, for example with the promise of a job or a better standard of living... human trafficking is about three elements: movement, control and exploitation.”<sup>91</sup>

<sup>88</sup> Ministry of Justice Court Proceedings Database

<sup>89</sup> First annual report of the inter-departmental ministerial group on human trafficking October 2012

<sup>90</sup> [http://www.cps.gov.uk/legal/h\\_to\\_k/human\\_trafficking\\_and\\_smuggling/](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/)

<sup>91</sup> <http://www.soca.gov.uk/about-soca/about-the-ukhtc/an-overview-of-human-trafficking/common-myths>

The Council is proposing to deal with trafficking into, out of and within the UK under the same guideline as all three offences share the same harm to the victims and culpability of offenders.

### STEP ONE

#### Determining the offence category

The first step that the court will take is to consider the principal factual elements of the offence. The Council has decided to use the same general approach applied to exploitation of prostitution offences at page 86. There are differences which are discussed below but there are also factors in relation to the sexual exploitation of the victim that are shared between the trafficking offence and the exploitation of prostitution offences.

The list of harm factors below is exhaustive and is intended to contain the principal harm factors that a court should take into account:

Harm	
<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Abduction/detention of victim</li> <li>• Violence used against victim</li> <li>• Sustained and systematic psychological abuse of victim</li> <li>• Victim under 18</li> <li>• Victim coerced or forced to participate in unsafe/particularly degrading sexual activity</li> <li>• Victim forced or coerced into prostitution</li> <li>• Victim tricked/deceived as to purpose of visit</li> </ul>
<b>Category 2</b>	Factor(s) in category 1 not present

**Category 2** does not contain any factors as the starting points and ranges for this category will reflect the inherent harm caused to victims of trafficking even in the absence of any other harm factors.

**Category 1** contains a number of factors the Council believes indicate an increased level of harm suffered by the victim.

- ‘Abduction/detention of victim’ is included. The Council has considered the various ways in which victims may have come to be trafficked; not every victim of trafficking will have been abducted or forced into travel but may have willingly agreed to be transported, unaware of the offender’s intention to control and sexually exploit them. It is recommending that where abduction or detention has occurred at any stage of the offence it increases the harm because of the fear and loss of control the victim will have experienced.
- ‘Violence used against victim’ – see discussion at page 87.
- ‘Sustained and systematic psychological abuse of victim’ – see discussion at page 87.
- ‘Victim under 18’. Where the victim is under 18 the harm is increased because of the corrupting effect on their emotional development.
- ‘Victim coerced or forced to participate in unsafe/particularly degrading sexual activity’ – see discussion at page 87.
- ‘Victim forced or coerced into prostitution’. The Serious Organised Crime Agency cites, as a ‘myth’ surrounding trafficking, that many trafficked women are already prostitutes:

“The majority of trafficking victims working as prostitutes will have been forced into this against their will, having already been trafficked without their consent, deceived into consenting to the journey, or deceived about the kind

of work they would be doing at the end of the journey.”<sup>92</sup>

The Council recommends that where the victim is subsequently forced to engage in such activity it increases the harm flowing from the offence.

- ‘Victim tricked/deceived as to purpose of visit’ would increase the harm caused by the offender. As set out above, not all those trafficked will have been forced to travel but many will have been deceived into the purpose of their transportation. Where this is the case the Council is recommending that this is included in the increased harm category.

### Culpability

As with a number of the exploitation offences discussed earlier in this section, the Council is recommending two harm categories but three levels of culpability. This is to reflect the fact that the court may be faced with offenders who have played various roles from directing and organising a trafficking chain to limited involvement through pressure, exploitation or coercion.

The SGC guideline currently determines category level as either:

- involvement at any level in any stage of the trafficking operation where the victim was coerced (starting point 6 years, range 4–9 years); or
- involvement at any level in any stage of the trafficking operation where there was no coercion of the victim (starting point 2 years’ custody, range 1–4 years).

The Council is proposing to move away from this categorisation to better reflect the culpability of the offender and to recognise that there may be harm even where coercion is not obvious (see discussion of harm factors at page 106).

The levels of culpability proposed are:

#### Culpability

##### A

Directing or organising trafficking on commercial scale and/or substantial influence on others in trafficking organisation/chain

Expectation of substantial financial gain

Abuse of position of trust/responsibility

##### B

Operational or management function within chain

Involves others in operation whether by pressure/influence/intimidation or reward (and offender’s involvement is not as a result of coercion)

##### C

Performs limited function under direction

Engaged by pressure/intimidation/exploitation

**Culpability C** ‘Performs limited function under direction’ and ‘engaged by pressure intimidation/exploitation’. Anyone who has played a role in the trafficking of others will be culpable but this category is intended to cover those who have played a peripheral role and have not directed, controlled or managed any activity along with those whose involvement is as a result of their own exploitation or trafficked status.

**Culpability B** ‘Operational or management function within chain’ and ‘involves others in operation whether by pressure/influence/intimidation or reward (and offender’s involvement is not as a result of coercion)’ would apply to an offender who has more than a peripheral role and is responsible for engaging others in the trafficking operation or has a degree of oversight or control over the trafficking activity.

**Culpability A** are intended to deal with those offenders with very high levels of culpability.

92 <http://www.soca.gov.uk/about-soca/about-the-ukhtc/an-overview-of-human-trafficking/common-myths>

- ‘Directing or organising trafficking on commercial scale and/or substantial influence on others in trafficking organisation/chain’ would encompass an offender who was at the top of an organised trafficking chain. These offenders have high levels of influence and control and therefore their lack of interaction with individual victims should not decrease their culpability. It is the power and influence they exert in directing the operation that are significant. When the SGC originally consulted on exploitation in April 2004 it stated:

“Those at the top of an organised trafficking chain may have very little personal involvement with the day to day operations and may have no knowledge at all of individual victims. However, we take the view that being in control of a money making operation that is based on the degradation, exploitation and abuse of vulnerable people may be equally, if not far more, serious than the actions of an individual who is personally involved in an operational part of the chain.”<sup>93</sup>

The Council agrees with this reasoning and that lack of knowledge and awareness of individual victims should not in any way lessen the offence as the offender is prepared to commercially sexually exploit others and to control this exploitation.

- ‘Expectation of substantial financial gain’ – see discussion at page 89.
- ‘Abuse of position of trust/responsibility’ – see discussion at page 89.

Q59

**Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.**

## STEP TWO

### Starting point and category ranges

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional aggravating and mitigating factors and adjust the sentence up or down accordingly.

These factors will allow the court to consider the wider context of the offence. The list of factors is non-exhaustive but the Council’s intention is to highlight the most common. The suggested factors are:

#### 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

##### *Other aggravating factors*

Failure to comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim(s)

Victim(s) children left in home country due to trafficking

Exploitation of victim(s) from particularly vulnerable backgrounds

Threats made to expose victim(s) to the authorities (immigration or police)

Threats of harm to the victim’s family/friends

Victim(s) previously trafficked/sold/passed around

Victim(s) passport(s)/identity documents removed

Victim(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure victim’s compliance

Food withheld

Earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses, unreasonable interest rates

Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- ‘Previous conviction’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Deliberate isolation of victim(s)’. A degree of isolation will be an inevitable consequence of the fact a victim is in a different country or area of the UK. However, the Council is recommending that the seriousness of the offence is increased where the victim is then denied access to any form of communication with family/friends or is deliberately separated from people they have travelled with.
- ‘Victim(s) children left in home country due to trafficking’. Such a situation is likely to cause considerable further anguish to the victim and additional harm to the children left behind. The report of the Inter Departmental Ministerial Group on Trafficking states:

“To entice victims traffickers often approach individuals promising to help them to find a better life through education or higher paid employment in the UK. Individuals may accept an offer of help without knowing the full consequences of the situation they may find themselves in once they arrive in the UK.”<sup>94</sup>

The motivation of improved prospects for the victim’s family may make them

susceptible to being trafficked as the victim has the expectation that they will be able to help or improve the prospects and situation of other members of their family including their children; the consequences for such victims is also greater.

- ‘Exploitation of victim(s) from particularly vulnerable backgrounds’. Whilst all victims of trafficking are likely to be vulnerable in some way the Council believes that the exploitation of particularly vulnerable groups increases the severity of the offence. In recent cases of internal trafficking it was seen that children in care and from dysfunctional backgrounds were at increased risk of grooming and being trafficked internally for the purposes of sexual exploitation.<sup>95</sup>
- ‘Threats made to expose victim(s) to the authorities (immigration or police) – see discussion at page 90.
- ‘Threats of harm to the victim’s family/friends’ may be deployed by the offender as another means of controlling the victim. The victim’s feelings of helplessness and fear are likely to increase where they know the offender has influence over or access to their family which could result in harm befalling family members.
- ‘Victim(s) previously trafficked/sold/passed around’ would increase the seriousness of the offence as there is continuing damage and harm to the victim.
- ‘Victim’s passport(s)/identity documents removed’, ‘victim(s) prevented from seeking medical treatment’, ‘use of drugs/alcohol or other substance to secure victim’s compliance’, ‘food withheld’ and ‘earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses,

94 <http://www.homeoffice.gov.uk/publications/crime/human-trafficking-report>

95 See footnote 32



unreasonable interest rates’ are all common means of control by the offender and have been discussed previously at page 90.

- ‘Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

**Mitigation**

The mitigating factors that are set out below have already been discussed in some detail at page 24. The Council is proposing that is someone who is involved in trafficking but has previously been exploited or trafficked themselves, this should be dealt with by placing that offender in the lowest category of offending rather than treating previous exploitation as mitigation (see discussion at page 88).

Mitigating factors
No previous convictions <b>or</b> no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Victims willingly travelled to/out of/within the country and engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

**Sentence levels for trafficking**

The Council has taken a different approach to categories of offending from the previous SGC guidelines which recommends in the top category a starting point of 6 years’ custody with a range of 4–9 years. The Council proposes to revise this to a starting point of 8 years’ custody with a range of 6–10 years. Although this is higher than the existing SGC guidelines it reflects sentencing practice; between 2007–2011, around 30 per cent of people received a sentence of more than 6 years and 6 per cent of people over 9 years.<sup>96</sup>

The current SGC guidelines do not distinguish between types of offender; this means that the head of a trafficking operation where victims have been coerced would be faced with a 6 years’ custody starting point but an offender who has been coerced or exploited themselves and involved in a very limited way would also face the same starting point. The Council believes there should be a greater acknowledgment of differences in types of offenders and is therefore recommending that the range of sentence starting points and ranges is more nuanced and wider than under the current guidelines.

**Q60** Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

The proposed sentence levels are:

	A	B	C
Category 1	<b>Starting point</b> 8 years' custody	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 18 months' custody
	<b>Category range</b> 6 – 10 years' custody	<b>Category range</b> 4 – 8 years' custody	<b>Category range</b> 26 weeks' – 2 years' custody
Category 2	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 26 weeks' 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 – 18 months' custody

Q61

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.