

Sexual activity with a person with a mental disorder impeding choice

Sexual Offences Act (section 30)

Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

Sexual Offences Act (section 31)

Triable only on indictment (if penetration involved); otherwise

Triable either way

Maximum: Life imprisonment (if penetration involved); otherwise
14 years' custody

Offence range: Community order – 20 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- these are serious specified offences for the purposes of section 224 and, where the offence involves penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences involving penetration, committed on or after such date, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">• Extreme violence• The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none">• Pregnancy or STI as a consequence of sexual activity• Additional degradation/humiliation• Abduction/detention• Prolonged/sustained incident• Use of violence• Context of habitual sexual abuse• Forced entry into victim’s home or residence
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Recording of the offence
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Deliberate isolation of victim
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

Where offence involves penetration

	A	B
Category 1	Starting point 16 years' custody	Starting point 14 years' custody
	Category range 14 – 20 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 13 years' custody	Starting point 10 years' custody
	Category range 8 – 17 years' custody	Category range 5 – 13 years' custody
Category 3	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 6 – 13 years' custody	Category range 5 – 11 years' custody

Where offence did not involve penetration

	A	B
Category 1	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 4 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 1 – 5 years' custody	Category range High level community order – 3 years' custody
Category 3	Starting point 1 year's custody	Starting point High level community order
	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody

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 starting point. **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.

When appropriate, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

Victim compelled to leave their home or institution (including victims of domestic violence)

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

Presence of others, especially children

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

No previous convictions **or** 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

Offender intervenes to stop the sexual activity taking place

* In the context of these offences, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject..

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence of a person with mental disorder impeding choice

Sexual Offences Act 2003 (section 32)

Causing a person, with mental disorder impeding choice, to watch a sexual act

Sexual Offences Act 2003 (section 33)

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">Causing victim to view extreme pornographyCausing victim to view indecent/prohibited images of childrenEngaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none">Penetration of vagina or anus (using body or object)Penile penetration of the mouthMasturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

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 starting point.

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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

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

Commission of offence whilst under the influence of alcohol or drugs

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

STEP SIX**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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 34)

Causing a person with a mental disorder to engage in or agree to engage in a sexual activity by inducement, threat or deception

Sexual Offences Act 2003 (section 35)

Triable only on indictment (if penetration involved); otherwise
Triable either way

Maximum: Life imprisonment (if penetration involved); otherwise
14 years' custody

Offence range: Community order – 10 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- these are serious specified offences for the purposes of section 224 and, where the offence involves penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences involving penetration, committed on or after such date, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">Penetration of vagina or anus (using body or object)Penile penetration of the mouth In either case by, or of, the victim
Category 2	Masturbation by or of the victim
Category 3	Other sexual activity

Culpability
A
Significant planning
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Sexual images recorded, retained, solicited or shared
Member of group or gang during commission of the offence
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 5 years' custody	Starting point 1 year's custody
	Category range 4 – 10 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 3 years' custody	Starting point 26 weeks' custody
	Category range 2 – 6 years' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Low level community order – High level community order

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 starting point.

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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

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

Pregnancy or STI as a consequence of the offence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

No previous convictions **or** 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

Offender intervenes to stop sexual activity taking place

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

Sexual Offences Act 2003 (section 36)

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Sexual Offences Act 2003 (section 37)

Triable either way

Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">Causing victim to view extreme pornographyCausing victim to view indecent/prohibited images of childrenEngaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none">Penetration of vagina or anus (using body or object)Penile penetration of the mouthMasturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 year's custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

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 starting point.

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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

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

Commission of offence whilst under the influence of alcohol or drugs

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

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STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

STEP SIX**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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

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Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Care workers: sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 38)

Care workers: causing or inciting sexual activity

Sexual Offences Act 2003 (section 39)

Triable only on indictment (if penetration involved);

– otherwise, triable either way

Maximum: 14 years' custody (if penetration involved); otherwise
10 years' custody

Offence range: Community order – 5 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- or convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">Penetration of vagina or anus (using body or object)Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on the victim to facilitate the offence
Sexual images of victim recorded, retained, solicited or shared
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 2 – 5 years' custody	Category range 1 – 2 years' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range Medium level community order – 1 year's custody
Category 3	Starting point Medium level community order	Starting point Medium level community order
	Category range Low level community order – 26 weeks' custody	Category range Low level community order – High level community order

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 starting point. **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.

When appropriate sentencing **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

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

Pregnancy or STI as a consequence of sexual activity

Victim required to move care home, institution, hospital, etc as a result of offence

Failure of offender to respond to previous warnings about the activity

Commission of offence whilst under the influence of alcohol or drugs

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

Offender voluntarily stops the sexual activity taking place

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) 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 FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

STEP SIX**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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Care workers: sexual activity in the presence of a person with a mental disorder

Sexual Offences Act 2003 (section 40)

Care workers: causing a person with a mental disorder to watch a sexual act

Sexual Offences Act 2003 (section 41)

Triable either way
Maximum: 7 years' custody

Offence range: Community order – 2 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none">Causing victim to view extreme pornographyCausing victim to view indecent/prohibited images of childrenEngaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	<div>Engaging in or causing a victim to view images or view live sexual activity involving<ul style="list-style-type: none">Penetration of vagina or anus (using body or object)Penile penetration of the mouthMasturbation</div>
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 18 months' custody	Starting point 1 year's custody
	Category range 1 – 2 years' custody	Category range 26 weeks' – 18 months' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order

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 starting point.

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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors

Location of offence

Timing of offence

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

Commission of offence whilst under the influence of alcohol or drugs

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

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

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Notification requirements

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Protection for children and vulnerable adults

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STEP EIGHT**Reasons**

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STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.