

Consultation Stage Resource Assessment: Child Cruelty Offences

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services¹.

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In February 2008, the SGC published *Overarching Principles: Assaults on children and Cruelty to a child*, covering the offence of cruelty to a child². This guideline did not include guidelines for the offence of causing or allowing a child to die³. The Council is proposing new sentencing guidelines for both these offences.

2.2 The Council is also proposing guidelines for two new offences that have come into force in recent years:

- The offence of causing or allowing a child to suffer serious physical harm that came into force in July 2012 as part of the Domestic Violence, Crime and Victims (Amendment) Act 2012⁴;
- The offence of failing to protect a girl from the risk of female genital mutilation (FGM) which came into force in May 2015 as part of the Serious Crime Act 2015⁵.

2.3 The offences of cruelty to a child, causing or allowing a child to die or suffer serious physical harm, and failing to protect a girl from the risk of FGM, have been brought together to form a draft package of Child Cruelty Offences guidelines.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² An offence under section 1 of the Children and Young Persons Act 1933:
<http://www.legislation.gov.uk/ukpga/Geo5/23-24/12/section/1>

³ An offence under section 5 of the Domestic Violence and Crime Act 2004:
<http://www.legislation.gov.uk/ukpga/2004/28/part/1/crossheading/causing-or-allowing-the-death-of-a-child-or-vulnerable-adult>

⁴ <http://www.legislation.gov.uk/ukpga/2012/4/enacted>

⁵ <http://www.legislation.gov.uk/ukpga/2015/9/section/72>

3 SCOPE

3.1 This resource assessment covers the following offences:

- Cruelty to a child,
- Causing or allowing a child to die or suffer serious physical harm,
- Failing to protect a girl from the risk of female genital mutilation.

4 CURRENT SENTENCING PRACTICE⁶

4.1 The offences covered by the child cruelty guideline are relatively low in volume. There were 650 offenders sentenced for the offences of cruelty to a child and causing or allowing a child to die or suffer serious physical harm⁷ in 2016, with the majority (96 per cent) sentenced for the offence of cruelty to a child.

4.2 Suspended sentence orders (SSOs) are the most common sentencing outcome for the offence of cruelty to a child (47 per cent of offenders sentenced in 2016 received an SSO). Around 22 per cent of offenders were given an immediate custodial sentence, with an average (mean) custodial sentence length of 1 year 8 months. The maximum sentence for this offence is ten years' imprisonment.

4.3 The offences of causing or allowing a child to die or suffer serious physical harm are very low in volume, with 30 offenders sentenced in 2016. The majority of offenders (83 per cent) received immediate custodial sentences, with an average (mean) custodial sentence length of 3 years 2 months. The statutory maximum sentence for offences resulting in the death of the victim is 14 years' custody, for offences resulting in serious physical harm it is 10 years.

4.4 The offence of failure to protect a girl from the risk of female genital mutilation (FGM) came into force on 3rd May 2015, and there have not yet been any convictions for this offence. Therefore there is currently no sentencing data available for this offence. The maximum sentence for this offence is seven years' imprisonment.

⁶ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Further information about this data can be found in the accompanying statistical bulletin published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

⁷ The statistics in this document for causing or allowing a child to die or suffer serious physical harm include the offence of causing or allowing a vulnerable adult to die or suffer serious physical harm. It is not possible from the source data to separate out statistics for the offence where the victim was a child only. Analysis of sentencing remarks in 2014 suggests that all sentences passed in 2014 were for the offence where the victim is a child, however statistics for other years may include sentences passed for offences where the victim was a vulnerable adult.

5 RESOURCE IMPACTS

This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

5.1 The draft child cruelty guideline aims to improve consistency of sentencing but for the vast majority of sentences it is not intended to change sentencing practice.

5.2 The proposed sentencing ranges for the offences of cruelty to a child and causing or allowing a child to die or suffer serious physical harm have generally been set with current sentencing practice in mind.

5.3 For the offence of cruelty to a child, the starting point for the lowest level of seriousness is 12 weeks in the existing guideline. In the draft guideline, the starting point for the lowest level of culpability and the lowest level of harm is a high level community order. However, the starting point in the draft guideline has been set in line with current sentencing practice and the category range under both guidelines is a low level community order to 6 months' custody. It is therefore not anticipated to have an impact on prison or probation resources.

5.4 In the existing cruelty to a child guideline, failing to protect a child is categorised at the same level of seriousness as actually inflicting the harm. There are no existing guidelines for the offences of causing or allowing a child to die or suffer serious physical harm. In cases involving co-defendants, the draft cruelty to a child guideline treats the person who failed to protect the child from harm, as equally culpable as the person who actually inflicted the harm. However, it is expected that in some cases there will be relevant lesser culpability factors or mitigating factors for the offender being sentenced for failure to protect, and so their final sentence may be different to that of their co-defendant. Similarly, for the offence of causing or allowing a child to die or suffer serious physical harm, the person who allowed the harm is treated as equally culpable as the person who inflicted the harm.

5.5 Analysis of sentencing remarks suggests that these principles are being followed in the vast majority of cases involving co-defendants. However, sometimes the offender sentenced for failing to protect (or allowing the harm) receives a lower sentence than the offender who caused the harm. This is often due to the offender being considered less culpable due to factors such as suffering from a mental illness or disorder, or being a victim of domestic abuse. In the rare scenario where there are no relevant lesser culpability factors or mitigating factors for the offender being sentenced

for failure to protect (or allowing the harm), and this offender currently receives a lower sentence than their counter-part, the guideline may increase their sentence to be in line with their co-defendant. However, these cases appear very infrequently and therefore the change is anticipated to have a minimal impact on correctional resources. Due to the low volume of these types of cases, this assessment is based on a small number of sentencing remarks and therefore may not be fully reflective of current sentencing levels.

5.6 There have not yet been any sentences passed for the new offence of failure to protect a girl from the risk of female genital mutilation. Therefore the guideline is expected to set sentencing practice. The statutory maximum for this offence is seven years' custody, and the starting point for all but the lowest level of offending is a custodial sentence. Any increases in the prison population are expected to be due to a gradual increase in the number of offenders sentenced under the new legislation⁸ and not due to the guideline.

5.7 In summary, the draft child cruelty guideline is anticipated to change sentencing practice only for cases which appear very infrequently, and therefore it is expected to have a minimal impact on correctional resources.

6 KEY ASSUMPTIONS

6.1 In order to assess the resource impact of the guideline, assumptions have been made based on analysis and on advice from Council members and policy makers.

6.2 Analytical and research work has been undertaken during guideline development, including analysis of data on current sentencing levels (where data is available), and analysis of sentencing remarks, news articles and current guidance.

6.3 However, while data exists on the number of offenders sentenced for some child cruelty offences, and the sentences imposed, there is a lack of data on the categories of seriousness of current cases. It is therefore difficult to establish how current cases would be categorised across the levels of harm and culpability in the draft guideline.

6.4 Assumptions have been agreed through consultation with Council members and policy makers, based on the intended and expected effect of the guideline on

⁸The estimated resource impact due to the creation of the new offence can be found in the joint Home Office / Ministry of Justice impact assessment published here: <http://www.parliament.uk/documents/impact-assessments/IA14-21J.pdf>

sentencing practice. However, it is difficult to foresee precisely how sentencers' behaviour may be affected across the full range of sentencing scenarios.

6.5 Any estimates of the impact of the new guidelines are therefore subject to uncertainty due to the limitations of the data, and uncertainty around how they will be implemented in practice.

6.6 To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, the definitive guideline and final resource assessment will take into account interviews undertaken with sentencers as part of the consultation.

6.7 The resource impacts presented in this document relate solely to the expected resource impact of the draft child cruelty guideline. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

7 RISKS

7.1 Two main risks have been identified:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

7.2 The Council uses an assessment of current sentencing practice as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect. This is a bigger risk for the newer offences (causing or allowing a child to suffer serious physical harm, and failing to protect a girl from the risk of FGM), where there is little or no information available on current sentencing practice.

7.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect, and inviting views on the guideline. Case scenarios are also provided to sentencers to test their understanding and use of the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

7.4 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result

from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

Risk 2: Sentencers do not interpret the new guidelines as intended

7.5 If sentencers do not interpret the guidelines as intended, this could cause a change in the average (mean) severity of sentencing, with associated resource effects.

7.6 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

7.7 Following the release of the guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.