

Child Cruelty Guideline

Response to consultation

September 2018

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Foreword

On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on the Child Cruelty sentencing guideline. I would particularly like to thank the members of the judiciary who gave their time to participate in the research exercises undertaken as part of the development of the guideline, as well as the groups who contributed to consultation events. As with all Sentencing Council consultations, we carefully considered all consultation responses, and the many views expressed, from respondents with a range of expertise, greatly contributed to informing the definitive guideline.

As a result of what we saw in consultation responses, we have made several changes to the guideline, including providing further guidance on balancing culpability factors, particularly in failure to protect cases, and additional clarity on levels of harm in the causing or allowing offence.

Offences of child cruelty are complex and can cover a wide range of behaviour; the new guideline seeks to provide structure and consistency when sentencing for these types of offences.

Lord Justice Holroyde
Chairman, Sentencing Council

Introduction

Summary of research and analysis

1. The Council has carried out several research exercises to inform the development of this guideline.
2. Prior to consultation, we carried out content analysis of Crown Court sentencing remarks from 2014. This included the sentencing remarks for 172 offenders sentenced for the cruelty to a child offence, and the sentencing remarks for all offenders sentenced for the causing or allowing offence¹. Following consultation, given the time which had elapsed since the original exercise, we analysed an additional, smaller, sample of transcripts from 2016 to provide a more up-to-date picture of sentencing practice. Taken as a whole, these provided us with valuable information on the factors that most influenced sentences and the ways in which judges used these factors.
3. During the consultation period, we carried out qualitative research with magistrates and judges to gauge how the draft guidelines for all three offences might be used in practice. This was done through in-depth interviews with 20 magistrates and judges, during which they used the draft guidelines to re-sentence a case they had sentenced, and to sentence test scenarios.
4. We also analysed sentencing data from magistrates' courts and the Crown Court to determine current sentence levels and distribution of types of sentence.
5. Analysis of this information, together with consultation responses, resulted in several significant changes to the culpability and harm factors, sentence levels and aggravating/mitigating factors, as well as to some of the wording in the guideline on how to apply those factors.
6. A statistical bulletin and draft resource assessment were published alongside the consultation, and updated data tables and a final resource assessment have been published alongside the definitive guideline and consultation response document.

Summary of responses

7. The consultation asked specific questions about the approach taken in each of the three guidelines and invited comment on the application of the guideline to case studies.

¹ As only a small number of offenders are sentenced each year for the causing or allowing offence, and all offenders are sentenced at the Crown Court, it was possible to analyse the sentencing remarks for all offenders sentenced in 2014 for this offence. For the offence of cruelty to a child, the number of offenders is much higher (710 offenders were sentenced in 2014) and many of these are sentenced in magistrates' courts, for which we are not able to obtain the sentencing remarks. Resources would not allow for all Crown Court sentencing remarks to be obtained for this offence, but the sample drawn was intended to be representative, covering offenders sentenced to each disposal and a range of custodial sentence lengths.

8. We received a total of 43 responses from a range of organisations/individuals as follows:

Category	Total	Organisations	Individuals
Magistrates (inc Bench responses)	9	8	1
Agencies in the criminal justice system (Youth Justice Board, CPS etc)	7	7	0
Voluntary sector	4	4	0
Local government (including three Safeguarding Children Partnerships)	4	4	0
Individual members of the public	4	0	4
NHS bodies	4	4	0
Barristers	3	2	1
Solicitors	3	3	0
Police	2	2	0
Crown Court judiciary	2	2	0
District Judges (Magistrates' Courts)	1	1	0
Totals	43	37	6

9. Most respondents answered questions on all three guidelines, though some commented only on either the cruelty to a child and the causing or allowing guidelines, or the FGM offence guideline. Responses highlighted similar concerns/views across both the cruelty to a child and causing or allowing offences, and some of these were considered together as the definitive guidelines were developed post-consultation.
10. On the cruelty to a child offence, responses were generally supportive of the proposed guideline. There was broad agreement on equality of culpability between cases where the offender had carried out the cruelty and where they had failed to protect, with some caveats. The majority of respondents also agreed with the culpability and harm factors, though suggested some changes to wording and some additional factors.
11. On the causing or allowing offence, responses were very similar to those for the cruelty to a child guideline but there were some significant differences, and there were two additional questions for this guideline relating to vulnerable adults.
12. In general, the FGM offence guideline attracted fewer responses than the other guidelines in this consultation, and several respondents said that it fell outside their area of expertise. One respondent questioned why the Council was devoting time to this as no cases have yet been prosecuted. However, there were several detailed responses from individuals and organisations with specialist knowledge in this area.

Cruelty to a child offence

Approach to assessing culpability and culpability factors

Question 1 – Do you agree that an offender who fails to protect a child from cruelty (absent any other relevant considerations) is classed as having the same level of culpability as an offender who actually inflicts the cruelty?

Question 2 – Do you agree with the proposed culpability factors? Are there any that should be added or removed?

13. Whilst 25 of the 34 respondents answering this question agreed with the approach of equal culpability for failure to protect offences, many respondents were keen to remind the Council of the need to take other factors into account which may lessen culpability, which is what the draft guideline intended. The Justice Select Committee disagreed with our approach saying, along with nine other respondents, that failure to protect was not as morally culpable as actually inflicting cruelty. Seven respondents felt that there could be different levels of culpability within failure to protect, depending on the role which the offender had played, for example in actively encouraging or supporting the offender rather than simply failing to protect the victim.

14. Secondly, although sentencers are expected to be familiar with the need to balance culpability and harm factors in different categories to arrive at an overall category of seriousness, some respondents expressed concern that further guidance on how to do this was needed, particularly in cases where there was serious harm, and some culpability category A factors were present but there were also several category C factors, such as the offender being themselves a victim of domestic abuse.

15. In developing the guideline post-consultation, the Council has retained the approach that, in some circumstances, failure to protect should be classed as having the same level of culpability as inflicting the cruelty. However, the Council has sought to provide further information to assist sentencers in determining the appropriate level of failure to protect by adding additional culpability factors to all three categories as follows:

Category A - Failure to take any steps to protect the victim from offences in which the above factors are present

Category B - Limited steps taken to protect victim in cases with category A factors present

Category C - Steps taken to protect victim but fell just short of what could reasonably be expected

16. In addition to consultation responses on the second point at paragraph 14 above, evidence in support of increasing the guidance on balancing factors came from our research looking at how factors are used across all guidelines (not just child cruelty). This research suggests that, in general, sentencers have some difficulty in balancing factors and are more likely to use the middle category if additional factors are present

there, and if there is guidance on how to balance the factors in the top and bottom categories.

17. To assist sentencers in balancing the factors across the categories of culpability, the Council has done two things. First, it has added in an explanation in category B to provide further guidance on when category B might be appropriate:

Other cases falling between A and C because:

- Factors in both high and lesser categories are present which balance each other out and/or
- The offender's culpability falls between the factors as described in high and lesser culpability

18. Secondly, the Council has replicated some factors across the categories to make clearer the level needed for each category of culpability. In terms of level of force used, at consultation there were specific factors only in categories A and C. There is now a corresponding factor in B, as follows:

Category A - Use of very significant force

Category B – Use of significant force

Category C – Use of some force or failure to protect the victim from an incident involving some force

19. The Council has taken the same approach to the prolonged or multiple incidents of cruelty, where the factors now read:

Category A – Prolonged and/or multiple incidents of serious cruelty, including serious neglect

Category B – Prolonged and/or multiple incidents of cruelty, including neglect

Category C – Momentary or brief lapse in judgement including in cases of neglect

20. A further change relating to the balancing of factors was made to the wording to be placed above the sentencing table, to remind sentencers that in a case which did not fit squarely within one category, they could consider moving up or down from the starting point for that category before considering aggravating or mitigating factors. This would apply, for example, in a case with several category B features and one category A feature, which a sentencer may wish to classify as a "high B" or a "low A" and adjust accordingly before considering the aggravating and mitigating factors.

21. Consultation respondents mentioned the importance of ensuring that neglect was clearly present on the face of the guideline and some gave examples of particular types of neglect which they wanted the guideline to cover. Whilst the Council did not wish to give examples that would risk narrowing the scope of factors, it did decide to add in specific reference to neglect to the relevant factors in culpability A, B and C, in order to make clear that the type of cruelty covered at any level of culpability could be neglect, as well as assault or ill-treatment.

22. In addition to the above changes, and building on the findings of our research looking at how factors are interpreted across guidelines, the Council made some changes to the order in which the factors are presented in category C. The factors relating to mental health/learning disability and to being a victim of domestic abuse are not commonly found at step 1 in the guidelines so sentencers may not expect them. The Council wished to highlight them by moving them to the top of the list of factors in category C.
23. One final addition was made, following a suggestion from the Association of Youth Offending Team Managers, of a new culpability category A factor:

Offender with professional responsibility for the victim (where linked to the commission of the offence)

Approach to assessing harm and harm factors

Question 3 – Do you agree with the proposed approach to the assessment of harm?

Question 4 – Are there any harm factors that should be added or removed?

24. There was broad agreement on the proposed approach and on the factors but several respondents asked for further guidance on how to assess/interpret some factors, particularly those relating to psychological and developmental harm and the long-term harm caused by the offence. Some respondents felt that emotional harm, a term used by the family courts but used in a distinct way in criminal cases, should be included alongside psychological harm. Respondents also suggested several additional, often very specific, harm factors.
25. The Council agreed, particularly in light of the evidence of long-term emotional harm to some victims of these offences, to include emotional harm in these factors. The Council acknowledged that assessment of psychological, developmental and emotional harm could be very difficult but felt that sentencers are accustomed to making these assessments, with appropriate expert evidence where necessary, and the guideline had to have sufficient flexibility to deal with the wide range of harm caused by this offence. However, Council did agree that additional guidance on assessment of harm could be useful and has used wording similar to that used in the Sexual Offences guideline on how to assess psychological harm:

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

26. The medium category of harm at consultation included reference to “a serious risk of category 1 harm being caused”. In consultation responses and road testing, respondents and judges did not always take the word “serious” into account, and so

were putting into this category cases where the risk of category 1 harm was only very slight. “Serious” is not a word ordinarily used in relation to risk, and the Council changed this to “high likelihood” of category 1 harm, to make it clear that sentencers should consider the likelihood of the situation as well as its impact.

27. One further change to the harm factors was made in response to concerns expressed at consultation that the category 1 factor “Serious physical harm (including illnesses contracted due to unsanitary surroundings)” was both too narrow, in that other forms of neglect could lead to illness, and also was likely to capture cases involving unsanitary surroundings which were not the fault of the offender. The Council has therefore changed the factor so that it now reads:

Serious physical harm (including illnesses contracted due to neglect)

Sentence levels

Question 5 – do you have any comments on the starting points and ranges?

28. Several respondents felt that sentencing starting points and ranges, although based on current sentencing practice, were too low for the most serious (category 1A) offences, and compared them with other, not necessarily analogous, assault offences. However, two respondents also suggested that, at the other end of seriousness, the ranges for category 3C were too high. Many respondents made suggestions relating to statutory maximum penalties for these and other offences, which are beyond the scope of this consultation.
29. In developing starting points and ranges post-consultation, the Council has re-considered the range for category 1A offences. Whilst these are similar to the starting points and ranges for the most serious category in the former Sentencing Guidelines Council (SGC) guideline, direct comparison is difficult as that guideline is structured very differently. Looking again at sentencing data and transcripts, the Council decided to reduce the range of the most serious category very slightly in line with current practice as only 2% of final sentences in 2017 were within the range given for this category at consultation. The Council also decided to make some changes to the lower categories to include more community orders, again in line with current sentencing practice.

Aggravating and mitigating factors

Question 6 – Do you agree with the proposed aggravating factors? Please state which, if any, should be added or removed.

Question 7 – Do you agree with the proposed mitigating factors? Please state which, if any, should be added or removed.

30. Respondents generally agreed with the inclusion of most of the aggravating and mitigating factors but some asked for additional information on how to assess some of the factors, especially in relation to victims who are particularly vulnerable. Some

respondents asked for examples to be given in the aggravating factors. However, the Council felt that, in most cases, this would risk narrowing the scope of the factors and has left them broadly drafted. Respondents also suggested additional factors, including where the offender has a professional role in caring for the victim (such as in a Young Offender Institution or school), which the Council decided to include as a step 1 factor in category A culpability (see paragraph 23 above).

31. Following concerns expressed in consultation responses that the factor “Victim particularly vulnerable” was not clear, particularly in the context of an offence against children, the Council decided to remove this factor. The Council felt that the factor did not add anything and, as this is a non-exhaustive list, where appropriate a sentencer could still consider particular circumstances of vulnerability.
32. Two respondents specifically asked for reference to be made to failure to comply with orders made by the family courts, and several other respondents mentioned family court orders elsewhere in their responses. The Council felt, considering evidence in transcripts of sentencing remarks, that many types of orders are generally considered by the court and specific reference to one particular type of order is not necessary.
33. Six respondents mentioned a factor which is in the SGC guideline but was not proposed for inclusion in the new guideline, relating to the offence being committed in the presence of another child. Given the potential impact of these offences on other children, the Council decided to bring this factor back into the new guideline.
34. The Council also decided to change the wording of the factor “Blamed others for the offence” to “Blame wrongly placed on others”, to make it clearer that this factor would apply not where the offender had used a legitimate defence but to cases where the investigation was hampered or others had been harmed (for example, having children taken away from their care) because the offender had wrongly blamed others.
35. The mitigating factor that caused most comment was “Good character and/or exemplary conduct”, which some felt should not be relevant to this offence. However, some of the arguments on this in consultation responses were against the idea of mitigation in general, rather than against the inclusion of this specific factor. The Justice Select Committee questioned the inclusion of the factor as drafted, particularly given that good character can sometimes be used to conceal offending. The Council understood these concerns and, whilst wanting to retain this important mitigating factor, felt that additional guidance relating to concealment of offending would be useful. It has therefore added some further guidance based on that used in the sexual offences guideline, as suggested by the Justice Select Committee.
36. Another mitigating factor of interest to consultation respondents was that relating to co-operation with authorities, including with social services and health services working with the family. This was a very important mitigating factor seen in case transcripts; where an offender had been, since the discovery of the offence, working with social services, attending medical appointments with the child and/or attending a parenting class, for example, judges often took this into account when deciding whether a community order was appropriate rather than a custodial sentence. To reflect the

importance of this mitigation, the Council decided to change the wording of the relevant factor, which now reads:

Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim

Parental responsibilities – new step five

Question 8 – Do you agree with the inclusion of step five? If yes, do you have any comments on its wording or placement within the sentencing process?

37. Most respondents supported the inclusion of step five, an additional step to be used in cases on the cusp of custody, to help sentencers in cases where the offender is the sole or primary carer for dependents². This is normally included as a mitigating factor, but it was felt that additional guidance was needed here as, in the majority of cases, the parent will be the primary carer for the victim(s) and/or other children. Several respondents questioned the need for the inclusion of the usual factor within the mitigating factors if step five is also included.

38. The Council considered this but felt that the mitigating factor should be retained in addition to step five, as in the consultation version of the guideline, since the mitigating factor is broader than carers of dependent children. The Council did make some changes to the wording of step five, to make it clear that it applies not only to cusp of custody cases but also to cases where the sentencer has decided to impose a custodial sentence and is considering the length of that sentence.

² Following the case of *R v Petherick* [2012] EWCA Crim 2214

Causing or allowing offence

Scope of guideline

Question 10 – Do you agree that the guideline should exclusively focus on child victims?

Question 11 – Should the Council consider producing separate guidelines for offences against vulnerable adults? If so, which offences should such guidelines cover?

39. Of the 31 respondents to question 10, 24 agreed with the proposal to exclusively focus on child victims and not cover vulnerable adults. Some of those who disagreed referred to the fact that the guideline should mirror the offence and cover vulnerable adults and that, in the absence of a guideline for vulnerable adults, judges would use the guideline for child victims anyway so it should be drafted to cover both. Following support for the approach during consultation, the Council has decided to continue developing a guideline for the offence against child victims only, rather than including vulnerable adult victims.

40. Most respondents to question 11 felt that the Council should at least consider developing separate guidelines for offences committed against vulnerable adults, but there were very few suggestions for other offences to be covered. The Council will consider proposals to develop these guidelines as part of the regular review of its workplan.

Approach to assessing culpability and culpability factors

Question 12 – Do you agree with the proposed approach to the assessment of culpability, particularly that allowing harm/death is treated as the same level of culpability as causing it?

Question 13 – Are there any culpability factors that should be added or removed?

41. Comments on culpability for this guideline were very similar to those for the cruelty to a child guideline. The differences mainly related to the particular problem in this offence of failure to protect cases where it could not be proved whether the offender had caused or allowed the harm, and the implications for assessing the level of culpability. This exacerbated the problems mentioned above relating to different types of failure to protect, and how to balance culpability factors. The Council felt that the changes discussed at paragraphs 15 to 23 in relation to the cruelty to a child guideline would also ensure that the approach and factors would be appropriate for this offence.

Approach to assessing harm and harm factors

Question 14 – Do you agree with the proposed approach to the assessment of harm?

Question 15 – are there any harm factors that should be added or removed?

42. Most consultation respondents agreed with the approach to the assessment of harm, which is different from that used in cruelty to a child as the level of harm is very different. Three respondents suggested that some serious injury should be included in category one, but most agreed that this category should be reserved for cases resulting in death. As the statutory maximum penalties for the causing or allowing death and causing or allowing serious physical harm offences are different (14 and 10 years respectively) the two levels of harm cannot be put into the same category.
43. The Council has changed the wording of categories two and three for this offence and has included the word “serious” in both categories to mitigate the risk that sentencers would put lower levels of harm into category two, because the harm was still serious. For this offence to be charged, the physical harm has to be serious (equivalent to GBH), but this change was to remind sentencers that some serious harm could nevertheless be at the lower end of seriousness for this offence, for example, several broken bones from which the child makes a full physical recovery, with no long-term psychological, developmental or emotional harm (which would go into category three), as opposed to permanently disabling injuries (in category two).
44. As with cruelty to a child, there were several questions about how to assess harm, particularly long-term psychological or emotional harm, which may be more serious with this offence, and the Council has included the same text as in the Cruelty to a Child guideline to provide more information on this.

Sentence levels

Question 16 – Do you have any comments on the sentence ranges and starting points?

45. Nine respondents felt that sentencing levels were too low, either in general or for the most serious offences, particularly those at the upper end of culpability. As with cruelty to a child there were a few comments relating to statutory maximum penalties which are not part of this consultation. Some comments referred to sentence levels for other offences, including manslaughter and the cruelty to a child offence and these have been considered in developing the definitive guideline.
46. Further consideration of case transcripts, including those from 2016, suggested that some of the sentence levels proposed were too high when compared with current sentencing practice, particularly for cases in category B2, where there were several culpability category C factors present alongside some in category A. Custodial sentences were shorter than the draft guideline ranges in many of these cases, and were sometimes suspended. The Council therefore decided to reduce the starting point

and lower end of the range for this category, but to keep the upper end at six years, to allow for the highest level of seriousness covered by this category.

Aggravating and mitigating factors

Question 17 – Do you agree with the proposed aggravating and mitigating factors? Please state which, if any, should be added or removed.

47. Consultation responses here were similar to those on aggravating and mitigating factors for the cruelty to a child guideline, and the Council decided to replicate the factors in that guideline, including changes made post-consultation, with the exception of the factor which is relevant only to the causing or allowing offence, “Prolonged suffering prior to death”, which has been retained.

Failing to protect girl from risk of FGM offence

General

48. Although there was not a specific question on this, most respondents were supportive of the development of a guideline for this offence, though some asked whether there would be guidelines for other FGM offences. The Bar Council was opposed to the development of this guideline, particularly in light of the limited resources available to the Sentencing Council and the fact that there have as yet been no convictions for this offence. Given the level of support for this guideline, the Council decided to continue with the development of this guideline, as the FGM offence is a form of child abuse and this offence applies solely to child victims. There have to date been no convictions for this offence, so there are no sentencing data on which to base sentence levels in this guideline.

Approach to assessing culpability and culpability factors

Question 19 – Do you agree with the proposed approach to the assessment of culpability, particularly the higher culpability factors?

Question 20 – Are there any culpability factors that should be added or removed?

49. The majority of respondents agreed with the approach to assessing culpability and to most of the culpability factors. Specific comments included the need for more information on medium culpability, questions about what constitutes a warning or intervention, and how failure to respond to warnings, and other aspects of commission of the offence, may be linked with coercion and intimidation. There were also comments that some factors (such as significant planning and involving others) do not seem relevant to a failure to protect offence, however, other respondents supported the inclusion of these factors. Some respondents to this question and others appeared to be considering other FGM offences, rather than solely this failure to protect offence.

50. In line with the approach taken in the other two guidelines, the Council decided to give more information on medium culpability, including a specific factor on failure to protect (using wording consistent with that used in the other guidelines) and some guidance on how to balance the factors in the higher and lower categories. The Council also decided to remove the factor relating to significant planning, agreeing with those consultation respondents who felt that this was outside the scope of this particular offence.

Approach to assessing harm and harm factors

Question 21 – Do you agree with the proposed approach to the assessment of harm?

Question 22 – Are there any harm factors that should be added or removed?

51. The approach to the assessment of harm was the most controversial part of the draft FGM offence guideline. Respondents were divided, with several saying that only one category was necessary, while a smaller number of others suggested that additional categories were necessary to take account of the World Health Organisation (WHO) definitions of FGM. The majority, however, agreed with the approach. Several respondents asked for guidance on, or offered suggestions for, the definition of “particularly severe” harm, especially in relation to psychological harm.

52. The Council has kept the overall approach of using two categories of harm but has changed the wording for both categories to be consistent with the other two guidelines, and to give further explanation of the type of harm that would be in category 1, which now reads:

Serious physical or psychological harm which has a substantial or long-term effect

53. This wording is likely to capture the WHO Types 3 and 4 of FGM, which several respondents wanted to put into the more serious category. To assist sentencers in the assessment of psychological harm, the Council has also included the text used in the other two guidelines.

Sentence levels

Question 23 – Do you have any comments on the sentence ranges and starting points?

54. Several respondents were concerned that the levels appeared too low and made comparisons with other offences. Some of these have been considered in development of the definitive guideline. However, several of the other offences, such as GBH, are more akin to other FGM offences (those relating to actually carrying out the FGM) than to the failure to protect offence in this guideline.

55. As there have not been any convictions for this offence to date, no data were available to assist in determining the sentence levels. However, the Council made some small changes to sentence levels following consultation and consideration of sentence levels for the other offences in this guideline, particularly the causing or allowing offence.

Aggravating and mitigating factors

Question 24 – Do you agree with the proposed aggravating and mitigating factors? Please state which, if any, should be removed or added.

56. When considering aggravating and mitigating factors, several respondents felt that the standard factors were not really applicable to this offence as it is a unique offence often committed by otherwise law-abiding people, and by parents who are otherwise loving and caring. However, given that this would apply in the majority of cases, the Council decided that the fact that someone is an otherwise caring parent should not, as a matter of course, be used in mitigation. This factor is linked with the standard factor on good character, which the Council changed in this offence guideline for consistency with the changes made to the factor in the other two guidelines. The Council also made changes to step five in line with the changes made in the other two guidelines (see paragraph 37).

Equality and diversity

Question 26 – Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.

57. Only six respondents said that there were equality or diversity matters that the Council should consider. However, several responses raised these matters in answers to other questions. In relation to the FGM offence, one respondent stressed the need to take into account the offender's cultural background and cultural pressures that might have been imposed on the offender. The Council felt that this has been considered through the inclusion of the low culpability factor "Offender subjected to coercion, intimidation or exploitation".
58. More broadly, the Prison Reform Trust (PRT), NSPCC and others were concerned about the impact of the guideline on women. A higher proportion of those sentenced for child cruelty offences are women, compared with the average across all offences, and the PRT in particular were concerned about the impact on women who had themselves suffered exploitation and abuse, or in particular those who were struggling on low incomes. They expressed particular concern about the approach of equating culpability between the person inflicting cruelty (in many cases a man) and the person failing to protect (in many cases a woman).
59. The Council took these concerns seriously, and looked in detail at all transcripts for this type of co-defendant case of the causing or allowing offence in detail. This informed our approach to changing culpability factors to give more emphasis to different levels of failure to protect. It also led to our changing the low culpability factor relating to the offender being a victim of domestic abuse, where linked to the commission of the offence, including the words "coercion and intimidation" to ensure that a wide range of circumstances could be covered.

Conclusion and next steps

60. The consultation has been an important part of the Council's consideration of this guideline, and responses informed the changes made to the definitive guideline.

61. The guideline will apply to all offenders aged 18 or over sentenced on or after 1 January 2019 regardless of the date of the offence.

62. Following the implementation of the definitive guideline, the Council will monitor its impact.

Annex A: Consultation questions

- 1 – Do you agree that an offender who fails to protect a child from cruelty (absent any other relevant considerations) is classed as having the same level of culpability as an offender who actually inflicts the cruelty?
- 2 – Do you agree with the proposed culpability factors? Are there any that should be added or removed?
- 3 – Do you agree with the proposed approach to the assessment of harm?
- 4 – Are there any harm factors that should be added or removed?
- 5 – do you have any comments on the starting points and ranges?
- 6 – Do you agree with the proposed aggravating factors? Please state which, if any, should be added or removed.
- 7 – Do you agree with the proposed mitigating factors? Please state which, if any, should be added or removed.
- 8 – Do you agree with the inclusion of step five? If yes, do you have any comments on its wording or placement within the sentencing process
- 9 – What would your final sentence be for case study A and why? Please detail the relevant culpability, harm, aggravating and mitigating factors.
- 10 – Do you agree that the guideline should exclusively focus on child victims?
- 11 – Should the Council consider producing separate guidelines for offences against vulnerable adults? If so, which offences should such guidelines cover?
- 12 – Do you agree with the proposed approach to the assessment of culpability, particularly that allowing harm/death is treated as the same level of culpability as causing it?
- 13 – Are there any culpability factors that should be added or removed?
- 14 – Do you agree with the proposed approach to the assessment of harm?
- 15 – are there any harm factors that should be added or removed?
- 16 – Do you have any comments on the sentence ranges and starting points?
- 17 – Do you agree with the proposed aggravating and mitigating factors? Please state which, if any, should be added or removed.

18 – What would your final sentence be for case study B and why? Please detail the relevant culpability, harm, aggravating and mitigating factors.

19 – Do you agree with the proposed approach to the assessment of culpability, particularly the higher culpability factors?

20 – Are there any culpability factors that should be added or removed?

21 – Do you agree with the proposed approach to the assessment of harm?

22 – Are there any harm factors that should be added or removed?

23 – Do you have any comments on the sentence ranges and starting points?

24 – Do you agree with the proposed aggravating and mitigating factors? Please state which, if any, should be removed or added.

25 – What would your final sentence be for case study C and why? Please detail the relevant culpability, harm, aggravating and mitigating factors.

26 – Are there any equality or diversity matters that the Council should consider for the guidelines discussed? Please provide evidence of any issues where possible.

Annex B: List of respondents

Michael Brown
 Jane Black
 Susan Bryant
 Woman's Trust
 London Borough of Waltham Forest
 Lucy Kazandjian
 Kim Jones - unknown NHS Clinical Commissioning Group
 West Sussex Bench
 College of Policing
 Judges at Kingston Crown Court
 Vivian McCarthy JP
 NHS England
 Vera Lustig
 Southern Derbyshire Bench
 Public Health Wales
 FORWARD
 Commander Balhatchet, National Police Chief's Council (NPCC) lead on FGM
 Youth Justice Board (YJB)
 National Crime Agency (NCA)
 Oxfordshire Bench
 Cornwall and Isles of Scilly Safeguarding Children Partnership
 North London Bench
 Lancashire Safeguarding Children Board
 The Association of Youth Offending Team Managers (AYM)
 Manchester Safeguarding Children's Board (MSCB)
 Criminal Sub-Committee of the Council of HM Circuit Judges
 NHS Chorley and South Ribble CCG, NHS Greater Preston CCG and NHS West
 Lancashire CCG
 NSPCC
 Magistrates' Leadership Executive (formerly National Bench Chairmen's Forum (NBCF))
 The Criminal Law Solicitors' Association (CLSA)
 District Judge (Magistrates' Courts) Legal Committee
 Bar Council
 Law Society
 Prison Reform Trust
 Magistrates Association (MA)
 London Criminal Courts Solicitors' Association (LCCSA)
 Criminal Bar Association
 The Chief Magistrate
 South Essex Bench
 Crown Prosecution Service (CPS)
 The Lord Chancellor and Secretary of State for Justice
 Victims' Commissioner
 Justice Select Committee

