

Final 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 services.¹

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 In February 2008, the Sentencing Guidelines Council (SGC) published '*Overarching Principles: Assaults on children and Cruelty to a child*', covering the offence of cruelty to a child.² This guideline did not include guidelines for the offence of causing or allowing a child to die.³ The Council is proposing new sentencing guidelines for both these offences.

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

- The offence of causing or allowing a child to suffer serious physical harm which 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 2015.⁵

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 the *Child Cruelty Definitive Guideline*.

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 Definitive Guideline* are relatively low in volume. There were 630 adult offenders sentenced for the offences of cruelty to a child and causing or allowing a child to die or suffer serious physical harm⁷ in 2017, 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 (45 per cent of adult offenders sentenced in 2017 received an SSO). Around 25 per cent of adult offenders were given an immediate custodial sentence, with an average (mean) custodial sentence length of 2 years 1 month. 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 low in volume, with 30 adult offenders sentenced in 2017. The majority of adult offenders (68 per cent) received immediate custodial sentences, with an average (mean) custodial sentence length of 5 years 5 months.⁸ 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

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 offences where the victim was a child. Analysis of sentencing remarks from 2014 and 2016 suggests that all sentences passed during this period were for offences where the victim was a child, apart from three of the six offenders sentenced for causing or allowing a child or vulnerable adult to die in 2016, where the victim was a vulnerable adult. Figures for these offences for other years may therefore also include sentences passed for offences where the victim was a vulnerable adult.

⁸ Further breakdowns of these statistics by the two different offences (causing or allowing a child to die and causing or allowing a child to suffer serious physical harm) can be found in the accompanying data tables published here: <https://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

for this offence. Therefore there is currently no sentencing data available for this offence. The maximum sentence for this offence is seven years' imprisonment.

5 KEY ASSUMPTIONS

5.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development. However, assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

5.3 The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

5.4 In developing sentence levels, data, where available, on current sentence levels has been considered. Current guidance, transcripts of cases and media reports of cases have also been reviewed.

5.5 However, while data exist on the number of offenders sentenced for some child cruelty offences, and the sentences imposed, it is difficult to establish how current child cruelty cases would be categorised across the levels of culpability and harm in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

5.6 It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. During the consultation process views were sought regarding the potential impact of the draft guideline. Findings from

consultation stage research were also considered in the development of the final guideline, to mitigate the risk of the guideline having an unintended impact.

5.7 The resource impacts presented in this document relate solely to the expected resource impact of the *Child Cruelty Definitive Guideline*. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

6 RESOURCE IMPACTS

This section should be read in conjunction with the guideline available at: <https://www.sentencingcouncil.org.uk/publications/?s&cat=definitive-guideline>.

Summary

6.1 The *Child Cruelty Definitive Guideline* aims to improve consistency of sentencing but for the vast majority of cases it is not intended to change sentencing practice.

6.2 For the offence of cruelty to a child, the guideline is anticipated to change sentencing practice for a small number of cases involving weapons, and therefore it is expected to have a small impact on correctional resources, with the requirement for up to 10 additional prison places per year.

6.3 For the offences of cruelty to a child and causing or allowing a child to die or suffer serious physical harm, there may be an increase to sentences for some cases involving defendants who fail to protect a child. However, the cases that the guideline would affect appear very infrequently, and therefore this is expected to have a small impact on correctional resources, with a requirement for around 15 additional prison places per year (around 10 prison places per year for the cruelty to a child offence, and around 5 prison places per year for causing or allowing a child to die or suffer serious physical harm).

6.4 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 any increases in the prison population are expected to be due to a gradual increase in the number of offenders sentenced under the new legislation and not due to the guideline.

Cruelty to a child

6.5 The Sentencing Guideline Council's existing guideline for cruelty to a child contains four categories of seriousness reflecting the 'nature of failure and harm'. The new guideline for cruelty to a child adopts the Sentencing Council's more usual approach by having three levels of culpability and three levels of harm.

6.6 The starting point for the lowest level of seriousness is 12 weeks in the existing guideline. In the new guideline, a community order is the starting point for the lowest levels of culpability and harm (categories C3, C2 and B2). However, the starting point in the new guideline has been set in line with current sentencing practice (22 per cent of adult offenders sentenced for cruelty to a child in 2017 were given a community order, after any reduction for guilty plea). This change is therefore not anticipated to have an impact on prison or probation resources.

6.7 The starting points for the highest levels of seriousness are the same under the existing guideline and under the new guideline, at 6 years' custody for the highest level of seriousness (category A1 in the new guideline) and 3 years' custody for the second highest level of seriousness (categories A2 and B1 in the new guideline). However, findings from the consultation research and a review of transcripts have identified that the new factor 'Use of a weapon' (which did not appear in the *SGC Cruelty to a Child* guideline) may cause some cases of cruelty to a child to be sentenced more severely under the new guideline, because they may now be categorised as high culpability (category A), resulting in sentences which are higher than current sentencing practice. Nevertheless, not all cases involving weapons will be categorised at the highest level of seriousness, because there may be other lesser culpability factors that lead the offence to be placed at a lower level.

6.8 Analysis of Crown Court Sentencing Survey (CCSS)⁹ data suggests that the factor 'Threatened/actual use of weapon/equivalent' was present on six per cent¹⁰ of the CCSS forms in 2014. The review of a sample of transcripts of sentencing remarks identified 17 offenders sentenced in 2014 where use of a weapon was a factor in the case.¹¹ For six of these offenders, it was identified that the guideline may lead to an

⁹ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

¹⁰ N=303

¹¹ In total, transcripts representing 172 offenders sentenced in 2014 were reviewed, where cruelty to a child was the principal offence. The cases selected generally represent more severe cases because transcripts are only available from the Crown Court (where more serious cases are heard) – as an indication, in 34% of the transcripts, offenders were sentenced to immediate custodial sentences, compared to a rate of 23% for all adult offenders sentenced in 2014. They may however be more

increase in sentences. Based on the CCSS data and analysis of transcripts it is therefore estimated that the uplift may result in the requirement for up to 10 additional prison places per year.¹²

6.9 It has also been identified that the new cruelty to a child guideline may increase sentences for a small number of cases where an offender fails to protect a child. For example, in cases where two defendants are convicted for cruelty to a child, but where one of them is sentenced for inflicting the harm and the other is sentenced for failure to protect, there are often relevant lesser culpability factors or mitigating factors for the offender being sentenced for failure to protect (for example, because the defendant who fails to protect suffers from a mental illness or disorder, or is a victim of domestic abuse), and so their sentence may be lower than that of the person inflicting the harm. However, there may be some instances where the offender who fails to protect the child from harm currently receives a lower sentence than the offender who caused the harm, despite there being no relevant lesser culpability or mitigating factors.¹³ Under the new guideline the sentence for the offender who fails to protect may increase to be in line with the offender who inflicted the harm.

6.10 There may also be other instances where the new guideline results in an increase to sentences for offenders who fail to protect a child, for example in cases where one defendant is sentenced for committing a violent offence against the child, and the other defendant is sentenced for failure to protect the child. In these cases, the sentence for the offender who fails to protect the child may increase under the new guideline, although their sentence is still likely to be lower than that of the offender convicted for committing the violent offence against the child, due to the higher statutory maximum sentence for many offences involving violence.

6.11 An analysis of the sample of sentencing remarks from 2014 suggests that the instances where immediate custodial sentences might increase for these reasons under the new guideline occur very infrequently, with around 2 per cent of offenders in the sample potentially affected. Therefore the change is anticipated to have a very

representative of cases heard in the Crown Court, where 32% of offenders sentenced in 2014 received an immediate custodial sentence.

¹² This analysis is based on offenders sentenced in 2014, when average sentences were lower than in 2017 (the ACSL for cruelty to a child was 17 months in 2014 and 25 months in 2017). It is therefore possible that the sentence levels in the guideline are more reflective of the current, higher, sentencing levels and therefore the impact may be lower than 10 additional prison places per year.

¹³ An analysis of sentencing remarks suggests that this may occur in a small number of cases where, for example, the sentencer currently gives a lower sentence to the individual who fails to protect because they did not actually inflict the harm.

small impact on the prison population (with a requirement for an additional 10 prison places per year).

Causing or allowing a child to die or suffer serious physical harm

6.12 There are no existing guidelines for the offences of causing or allowing a child to die or suffer serious physical harm. In general, the sentencing ranges have been set with current sentencing practice in mind, and therefore in the vast majority of cases the guideline is not anticipated to have an impact on correctional resources.

6.13 As with the offence of cruelty to a child, there may be a small number of cases where sentences for offenders convicted for failure to protect may increase under the new guideline. However, these cases again appear very infrequently, with an analysis of transcripts of sentencing remarks for all offenders sentenced in 2014 and 2016 suggesting that fewer than 5 offenders per year might have been affected by this change. Therefore the change is anticipated to have a minimal impact on correctional resources (around five prison places per year).

Failing to protect a girl from the risk of female genital mutilation

6.14 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 legislation¹⁴ and not due to the guideline.

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

¹⁴The 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>

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 new guideline.

7.5 Finally, the number of offenders sentenced for some of the offences in the child cruelty guideline is very low, and therefore the impact of any unintended changes in sentencing practice on correctional resources would be relatively small.

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

7.6 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.

7.7 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. Research with judges carried out during the consultation period also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

7.8 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.