

# Annex C: Draft guidelines

## Child Cruelty – Assault and ill treatment, abandonment, neglect and failure to protect

### Cruelty to a child

Children and Young Persons Act 1933 (section 1(1))

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Triable either way

Maximum: 10 years' custody

Offence range: Low level community order – 9 years' custody

This guideline applies only to offenders aged 18 and older

Please note this is a draft guideline and is not in force

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

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

**A – High culpability**

- Prolonged and/or multiple incidents of serious cruelty
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of significant force
- Use of a weapon
- Blatant and deliberate disregard to the welfare of the child
- Failure to protect a child from offences with the above factors present

**B – Medium culpability**

- All other cases that fall between categories A and C

**C – Lesser culpability**

- Minimal force or failure to protect a child from an incident involving minimal force
- Momentary or brief lapse in judgement
- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Victim of domestic abuse (when linked to the commission of the offence)

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

**Category 1**

- Serious psychological and/or developmental harm
- Serious physical harm (including illnesses contracted due to unsanitary surroundings)

**Category 2**

- Cases falling between category 1 and 3
- A serious risk of category 1 harm being caused that any reasonable person should have foreseen

**Category 3**

- Little or no psychological and/or developmental harm
- Little or no physical harm

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. 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 on the next page.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 6 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody
	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> High level community order – 2 years 6 months' custody
Category 2	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody
	<b>Category range</b> 2 – 6 year's custody	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year 6 months' custody
Category 3	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 6 months' custody	<b>Starting point</b> High level community order
	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year 6 months' custody	<b>Category range</b> Low level community order – 6 months' custody

The table on the next page 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 sentence arrived at so far. 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.

**Factors increasing seriousness****Statutory aggravating factors:**

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

Offence committed whilst on bail

**Other aggravating factors:**

Failure to seek medical help (where not taken into account at step one)

Commission of offence whilst under the influence of alcohol or drugs

Deliberate concealment and/or covering up of the offence

Blamed others for the offence

Victim particularly vulnerable

Failure to respond to interventions or warnings about behaviour

Threats to prevent reporting of the offence

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities

Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)

Good character and/or exemplary conduct (the more serious the offence, the less weight which should normally be attributed to this factor)

Serious medical condition requiring urgent, intensive or long-term treatment

Mental disorder or learning disability (where not taken into account at step one)

Co-operation with the investigation

**STEP THREE****Consider any factors which indicate a reduction for 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****Parental responsibilities for sole or primary carers**

In the majority of cruelty to a child cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lesser culpability/harm cases, particularly "failure to protect" offences, where the offender has otherwise been a loving and capable parent/carer.

**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP EIGHT****Reason**

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 time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Causing or allowing a child to suffer serious physical harm

Domestic Violence, Crime and Victims Act 2004 (section 5)

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Indictable only

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

# Causing or allowing a child to die

Domestic Violence, Crime and Victims Act 2004 (section 5)

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Indictable only

Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

Please note this is a draft guideline and is not in force

**This guideline applies only to offenders aged 18 and older and when the victim of the offence is aged 15 or under.**

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

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following

**A – High culpability**

- Prolonged and/or multiple incidents of serious cruelty
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of significant force
- Use of a weapon
- Blatant and deliberate disregard to the welfare of the child
- Failure to protect a child from offences with the above factors present

**B – Medium culpability**

- All other cases that fall between categories A and C

**C – Lesser culpability**

- Minimal force or failure to protect a child from an incident involving minimal force
- Momentary or brief lapse in judgement
- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Victim of domestic abuse (when linked to the commission of the offence)

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused to the victim.

**Category 1**

- Death

**Category 2**

- Physical harm which has a substantial and/or long term effect
- Serious psychological harm
- Significantly reduced life expectancy
- A progressive, permanent or irreversible condition

**Category 3**

- All other harm caused

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. 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 on the next page.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 year's custody	<b>Starting point</b> 2 years' custody
	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 3 – 8 years' custody	<b>Category range</b> 1 – 4 years' custody
Category 2	<b>Starting point</b> 7 year's custody	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year 6 months' custody
	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> 6 months – 3 years' custody
Category 3	<b>Starting point</b> 4 years' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 9 months' custody
	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> 6 months – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody

The table on the next page 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 sentence arrived at so far. 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.

**Factors increasing seriousness****Statutory aggravating factors:**

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

Offence committed whilst on bail

**Other aggravating factors:**

Failure to seek medical help (where not taken into account at step one)

Prolonged suffering prior to death

Commission of offence whilst under the influence of alcohol or drugs

Deliberate concealment and/or covering up of the offence

Blamed others for the offence

Victim particularly vulnerable

Failure to respond to interventions or warnings about behaviour

Threats to prevent reporting of the offence

Failure to comply with current court orders

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Attempts to address or rectify behaviour (either on own behalf or on behalf of somebody else in an attempt to protect the victim) e.g. seeking support from authorities

Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)

Good character and/or exemplary conduct (the more serious the offence, the less weight which should normally be attributed to this factor)

Serious medical condition requiring urgent, intensive or long-term treatment

Mental disorder or learning disability (where not taken into account at step one)

Co-operation with the investigation

**STEP THREE****Consider any factors which indicate a reduction for 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****Parental responsibilities for sole or primary carers**

In the majority of cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lesser culpability/harm cases, particularly "failure to protect" offences, where the offender has otherwise been a loving and capable parent/carer.

**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP EIGHT****Reason**

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 time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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# Child Cruelty – Failing to protect a girl from the risk of female genital mutilation

Failure to protect a girl from risk of genital mutilation

Female Genital Mutilation Act 2003 (section 3A)

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**Indictable only**

**Maximum: 7 years' custody**

**Offence range: Low level community order – 6 years' custody**

This guideline applies only to offenders aged 18 and older.

Please note this is a draft guideline and is not in force

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

The court should determine the offence category with reference **only** to the factors in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender’s culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender’s culpability.**

**Culpability** demonstrated by one or more of the following

<b>A – High culpability</b>	<ul style="list-style-type: none"> <li>• Significant planning (where not charged as a separate offence)</li> <li>• Child was subject to an FGM Protection Order</li> <li>• Failure to respond to interventions or warnings e.g. from medical professionals/ social services etc</li> <li>• Involving others through coercion, intimidation or exploitation</li> </ul>
<b>B – Medium culpability</b>	<ul style="list-style-type: none"> <li>• All other cases that fall between categories A and C</li> </ul>
<b>C – Lesser culpability</b>	<ul style="list-style-type: none"> <li>• Steps taken to protect child but fell just short of what could reasonably be expected</li> <li>• Offender victim of domestic abuse (where linked to commission of the offence)</li> <li>• Subjected to coercion, intimidation or exploitation</li> <li>• Offender’s responsibility substantially reduced by mental disorder or learning disability</li> </ul>

**Harm**

**The court should consider the factors set out below to determine the level of harm that has been caused to the victim.**

For all cases of failing to protect a girl from female genital mutilation there will be serious physical and psychological harm (likely both immediately and long-term) but there are factors that may increase it further.

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• Cases where the physical and/or psychological harm is particularly severe</li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## STEP TWO

### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. 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 on the next page.

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

The table on the next page 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 sentence arrived at so far. 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.

**Factors increasing seriousness****Statutory aggravating factors:**

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

Offence committed whilst on bail

**Other aggravating factors:**

Failure to seek medical help when necessary

Deliberate concealment and/or covering up of the offence

Blamed others for the offence

Victim particularly vulnerable

Threats to prevent reporting of the offence

Failure to comply with current court orders (where not taken into account at step one)

Offence committed on licence or post sentence supervision

Offences taken into consideration

**Factors reducing seriousness or reflecting personal mitigation**

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

Remorse

Offender particularly isolated with limited access to support

Appropriate medical care sought for victim

Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)

Good character and/or exemplary conduct

Serious medical condition requiring urgent, intensive or long-term treatment

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

Mental disorder or learning disability (where not taken into account at step one)

Co-operation with the investigation

**STEP THREE****Consider any factors which indicate a reduction for 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****Parental responsibilities for sole or primary carers**

In the majority of failing to protect a child from the risk of female genital mutilation cases the offender will have parental responsibility for the victim. When the case is on the cusp of custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children the offender may care for). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lesser culpability cases where the offender has otherwise been a loving and capable parent/carer.

**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 overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

**STEP SEVEN****Ancillary orders**

In all cases the court should consider whether to make ancillary orders.

**STEP EIGHT****Reason**

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 time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.