

Child Cruelty Offences Guidelines

Response to consultation

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March 2023

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Foreword



From 13 August to 27 October 2022 the Sentencing Council consulted on revisions to the guidelines for child cruelty offences. This followed a change to the maximum penalties for the offences of causing or allowing a child to die or suffer serious physical harm, and cruelty to a child.

I would like to thank all those who responded to this consultation. Consultation and research are always a vital part of the process of producing sentencing guidelines. There was very strong support for our proposed amendments and, as always, we have considered in detail all the points raised with us.

Lord Justice Davis
Chairman, Sentencing Council

Introduction

The Sentencing Council has consulted on proposals to amend the existing sentencing guidelines for child cruelty offences to reflect recent changes to the statutory maximum penalties. The offences in scope of the change are:

- Causing or allowing a child to die or suffer serious physical harm (contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004); and
- Cruelty to a child (contrary to section 1(1) of the Children and Young Persons Act 1933).

Background

The Police, Crime, Sentencing and Courts Act 2022 raised the maximum penalties for these offences.

The maximum penalty for cruelty to a child under section 1 of the Children and Young Persons Act 1933 has been raised from 10 to 14 years' custody. The maximum penalty for causing or allowing a child to suffer serious harm under section 5 of the Domestic Violence, Crime and Victims Act 2004 was also raised from 10 to 14 years' custody. The maximum penalty for causing or allowing a child to die has been raised from 14 years to life imprisonment.

The Sentencing Council issued guidelines for these offences in 2018 which came into force on 1 January 2019. The Council believed that the guidelines should be revised to reflect the changes in maximum penalties brought in by Parliament.

In the consultation, the Council sought views on its proposed approach, which was to provide for a new very high level of culpability to capture the very worst cases. These would attract starting points and ranges going beyond what had previously been available to the courts.

Summary of analysis and research

Sentencing data from the Court Proceedings Database were analysed in conjunction with a content analysis and resentencing exercise of Crown Court judges' sentencing remarks to gain valuable information about the key factors involved in these offences and to understand the likely impact of the revised guidelines on future sentencing practice.

A total of 22 transcripts covering all the offenders sentenced for causing or allowing a child to die or suffer serious physical harm in 2019 and 2020 were initially analysed. From these, eight cases where the offender fell into the existing highest culpability category were resentenced to understand how the new culpability level might be applied in practice, and the estimated impact of the revised guideline on prison and probation services.

For the offence of cruelty to a child, a sample of 21 transcripts of Crown Court sentencing remarks covering 28 offenders sentenced in 2019 and 2020 were initially analysed. Of these, seven cases where the offender was assessed as being in the highest culpability category under the existing guideline were resentenced.

A statistics 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 this consultation response document.

Summary of responses

There were 16 responses to the consultation. A breakdown of responses is as follows:

Breakdown of respondents	
Charity / not for profit organisations	2
Government	1
Members of Parliament or Parliamentary bodies	1
Judges	3
Legal professional	1
Magistrate	5
Other	3

Overview

Details of the responses to proposals for the draft guideline and suggestions made are detailed below.

Culpability

In its consultation, the Council proposed a new very high tier of culpability in addition to those which exist in the current guidelines. The new culpability table, identical across the offences, would therefore be as follows:

Culpability demonstrated by one or more of the following
<p>A – Very high culpability</p>
<ul style="list-style-type: none"> • Very high culpability may be indicated by: <ul style="list-style-type: none"> ○ the extreme character of one or more culpability B factors and/or ○ a combination of culpability B factors
<p>B – High culpability</p>
<ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty, including serious neglect • Gratuitous degradation of victim and/or sadistic behaviour • Use of very significant force • Use of a weapon • Deliberate disregard for the welfare of the victim • Failure to take any steps to protect the victim from offences in which the above factors are present • Offender with professional responsibility for the victim (where linked to the commission of the offence)
<p>C – Medium culpability</p>
<ul style="list-style-type: none"> • Use of significant force • Prolonged and/or multiple incidents of cruelty, including neglect • Limited steps taken to protect victim in cases with category B factors present • Other cases falling between B and D because: <ul style="list-style-type: none"> ○ 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
<p>D – Lesser culpability</p>
<ul style="list-style-type: none"> • Offender’s responsibility substantially reduced by mental disorder or learning disability or lack of maturity • Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence) • Steps taken to protect victim but fell just short of what could reasonably be expected • Momentary or brief lapse in judgement including in cases of neglect

- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

Of the responses that the Council received, the vast majority were either supportive without qualification, or in broad agreement with the approach whilst making some observations and detailed suggestions.

However, Restore Justice felt that the guidelines should retain three categories of culpability, but see sentence levels raised across the board:

“We disagree with the creation of 'very high culpability' category. We do not believe such a category was intended by the PCSC Act 2022 to capture the worst cases, but that the intention was to increase the statutory maximum sentence to life and for the custodial lengths to be reflected in the existing categories...” **Restore Justice**

In terms of Parliament’s intent, the Sentencing Council does believe that the original intent behind the change, linked explicitly with the case of Tony Smith and Jody Simpson who caused lifelong injury to their baby son, was to ensure that the courts would have appropriate sentencing powers for the more extreme examples of offending. In support of the proposals, the West London Magistrates’ Bench provided several examples of parliamentary statements linking the rise in maximum penalty to the case of Smith and Simpson, confirming that the rise was intended to capture only the very worst cases – for example:

[24 June 2021 Debate on a new clause 56 to the PCSC Bill]

“I respectfully contend that the current maximum sentence of 10 years does not adequately reflect the gravity of cases at the upper end of seriousness.”

[12 February 2019 Debate from Hansard]

“The purpose of this Bill...is to ensure that individuals who commit the most serious acts of cruelty against children face appropriate punishment when convicted of this crime.”

The response received from Rachel Maclean MP, Minister of State for Justice, again linked the changes being proposed with the case of Smith and Simpson, welcoming them in “reflect[ing] Parliament’s clear intent to address the sentencing levels for the most serious cases which fall under these offences”.

Taking all the above into account, the Council confirmed its view that this approach is correct in seeking to provide for appropriate and proportionate sentence levels within the new statutory maximum for the very worst cases of this sort of offending.

While it agreed with the Council’s approach, the Prison Reform Trust questioned why the Sentencing Council does not take this approach to revising guidelines on other occasions when a statutory maximum is increased:

“This is a different approach to the council’s draft motoring offences guidelines. Our response to that consultation, highlighted our concern that increases to the maximum penalty were being used as justification to also increase sentence lengths for offences with

lower levels of culpability, as well as offences where Parliament hadn't revised legislation. These two different approaches appear at odds with each other." **Prison Reform Trust**

The Justice Select Committee also sought clarity from the Council on how it decides how to revise guidelines following an increase in the maximum penalty for a given offence.

The answer will depend on the offence in question, current sentencing practice (which the Council is obliged to consider), and the extent to which current sentencing powers are deemed insufficient across different levels of seriousness of offending. It may be the case (though likely very rarely) that the courts are regularly sentencing offenders at the upper limit of their powers; alternatively, it may be that particularly serious offences (as in this instance) argue for greater powers being needed only for the very worst cases. The view of Parliament as expressed in explanatory notes, ministerial statements in debates and the like, will carry a great deal of weight, but will be considered alongside the factors mentioned above.

In its consultation document, the Council set out the question of whether the factor "prolonged and/or multiple incidents of serious cruelty, including serious neglect" should be considered as high or very high culpability. The proposal was that it should remain at high, but the Council acknowledged the argument that such cases should be regarded as very high culpability.

Most respondents agreed, either explicitly or by way of general agreement with the proposals, that we should retain this factor at high culpability rather than include it as a very high culpability factor. One respondent disagreed, though:

"Prolonged and/or multiple incidents of serious cruelty, including serious neglect" should be in the very high culpability level. Even if the multiple incidents are a low level of abuse, the fact that this is done on a regular basis brings this into the highest category of culpability. The sentencing council members may not be able to relate to this situation, but low level abuse committed regularly over a period of weeks, months or even years is torture. It is one of the most grievous forms of cruelty which can be done to a child. Objectively, this sickening behaviour, irrespective of the level of abuse, would be categorised as very high culpability by the majority of society." **Member of the public**

Considering the balance of responses in favour of the proposed approach, the Council was content to keep "prolonged and/or multiple incidents of serious cruelty, including serious neglect" as a high culpability factor. It maintained its view that it would be possible to envisage repeated examples of serious cruelty that nonetheless fell below the very worst.

Some respondents commented that they believed the word "extreme" was too subjective. One respondent also thought that the scope of the top culpability category should be more narrowly focussed:

"It would make more sense for the very high culpability bracket to be reserved for cases where a combination of high culpability factors is present as we cannot envisage an "extreme" case where no more than one high culpability factor would be present." **London Criminal Courts Solicitors' Association**

Various existing guidelines make use of the descriptor "extreme" to denote cases of particularly high harm and culpability, for example in modern slavery and manslaughter, and the Council believed that sentencers are used to assessing whether particular cases

are counted as extreme. The Council considered the point raised by the London Criminal Courts Solicitors' Association. Whilst acknowledging that it may be very rare in the context of this offending for just one high culpability factor to be present in an extreme case, there may be some occasions where it is. For example, where an offender is shown to be the bystander in an exceptionally horrific case and they are shown to have "failed to take steps" to prevent death or serious injury, it should be open to the courts to place them in the highest culpability. Or this factor might cover a one-off event, that nonetheless involved the use of particularly brutal force.

The culpability table will therefore be amended as proposed in the consultation.

Sentence levels

The Council proposed sentence levels which utilised the levels now available under the new statutory maximums for very high culpability offences:

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

	Very high culpability	High culpability	Medium culpability	Lesser culpability
Harm 1	<p>Starting point: 14 years' custody</p> <p>Category range: 12 – 18 years' custody</p>	<p>Starting point: 9 years' custody</p> <p>Category range: 7 – 14 years' custody</p>	<p>Starting point: 5 years' custody</p> <p>Category range: 3 – 8 years' custody</p>	<p>Starting point: 2 years' custody</p> <p>Category range: 1 – 4 years' custody</p>
Harm 2	<p>Starting point: 9 years' custody</p> <p>Category range: 7 – 12 years' custody</p>	<p>Starting point: 7 years' custody</p> <p>Category range: 5 – 9 years' custody</p>	<p>Starting point: 3 years' custody</p> <p>Category range: 1 year 6 months - 6 years' custody</p>	<p>Starting point: 1 year 6 months' custody</p> <p>Category range: 26 weeks – 3 years' custody</p>
Harm 3	<p>Starting point: 7 years' custody</p> <p>Category range: 5 – 9 years' custody</p>	<p>Starting point: 3 years' custody</p> <p>Category range: 1 year 6 months – 6 years' custody</p>	<p>Starting point: 1 year 6 months' custody</p> <p>Category range: 26 weeks – 3 years' custody</p>	<p>Starting point: 9 months' custody</p> <p>Category range: High level community order – 2 years' custody</p>

Cruelty to a child

	Very high culpability	High culpability	Medium culpability	Lesser culpability
Harm 1	<p>Starting point: 9 years' custody</p> <p>Category range: 7 – 12 years' custody</p>	<p>Starting point: 6 years' custody</p> <p>Category range: 4 – 8 years' custody</p>	<p>Starting point: 3 years' custody</p> <p>Category range: 2 – 6 years' custody</p>	<p>Starting point: 1 year's custody</p> <p>Category range: High level community order – 2 years 6 months' custody</p>
Harm 2	<p>Starting point: 6 years' custody</p> <p>Category range: 4 – 8 years' custody</p>	<p>Starting point: 3 years' custody</p> <p>Category range: 2 – 6 years' custody</p>	<p>Starting point: 1 year's custody</p> <p>Category range: High level community order – 2 years 6 months' custody</p>	<p>Starting point: High level community order</p> <p>Category range: Medium level community order – 1 year's custody</p>
Harm 3	<p>Starting point: 3 years' custody</p> <p>Category range: 2 – 6 years' custody</p>	<p>Starting point: 1 year's custody</p> <p>Category range: High level community order – 2 years 6 months' custody</p>	<p>Starting point: High level community order</p> <p>Category range: Medium level community order – 1 year's custody</p>	<p>Starting point: Medium level community</p> <p>Category range: Low level community order – 6 months' custody</p>

Most respondents agreed with the revised sentence levels. A few, however, thought that the levels proposed were too low:

“We believe that the statutory maximum as set out in the PCSC Act 2022 reflects the seriousness of such a crime but the proposed sentence levels do not, and that it was the intention of Parliament to increase the minimum tariffs for the offenders to serve in prison when a life sentence for that offence is imposed by the courts. The starting point for causing or allowing a child to die should be 30 years' custody and category range 28 years to 40 years, as the maximum statutory level is life imprisonment.

“In relation to the causing or allowing a child to suffer serious physical harm and for cruelty to a child the sentence levels are also low for the highest harm & culpability category. The

starting point should be a minimum of 15 years custody, and the custodial range should go up to 12 to 20 years minimum, which would still be low in our view.” **Restore Justice**

“The starting points should be increased for high culpability cases. Causing or allowing a child to die should have a starting point of 18 years, with a sentence range of 16 - 24 years.

Cruelty to a child should have 10 years as its starting point with a sentence range of 8 - 13 years imprisonment.

These are very serious offences and the highest level of culpability should have high sentences beyond the ones proposed in the consultation.” **Member of the public**

“I believe that the levels remain low - the impact on the child is considerable, death or serious and potentially life changing injuries, the impact will potentially last a lifetime, sentences remain light.” **Member of the public**

Some of the levels proposed would exceed the statutory maximum, although the Council understood the strength of feeling about what are very serious and upsetting offences. However, the weight of opinion amongst consultees was that the sentence levels were correct. The Council remains of the view that the levels proposed are proportionate to both lesser examples of this offending, as well as other offences such as assault and manslaughter. The definitive guidelines will therefore contain the levels as consulted on.

Impact

Resource impact

This is explored in more detail in the resource assessment published by the Council, which can be found [here](#).

Equality and diversity

As a public body the Council is subject to the Public Sector Equality Duty (PSED) which means it has a legal duty to have due regard to:

- the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010;
- the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not;
- the need to foster good relations between those who share a “protected characteristic” and those who do not;

Under the PSED the relevant protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment.

Alongside the draft guidelines the Council published information on the demographic makeup (specifically age, ethnicity and sex) of offenders for sexual offences, which has subsequently been updated for the definitive guideline.

The consultation sought suggestions from respondents as to how issues of equality and diversity could be addressed by the guidelines. Several responses picked up on the potential issues for disparities between male and female offenders, although there was a balance between those observing that women (as carers) would make up a disproportionate number of offenders compared to other types of offending, and those who thought that men received more severe sentences for this offending than women.

No respondent had specific suggestions for changes to the guidelines on the basis of these issues. The West London Bench wanted to see sentencing data for males and females separated out in the statistical bulletin. This is available in the updated data tables, which can be found [here](#).

The Prison Reform Trust said:

“It remains to be seen whether or not the new guideline will have a disproportionate impact on women and the sentences they receive for these offences. The council should monitor the impact of the new very high culpability factor on the length of sentences handed down, to ensure that in practice it does not lead to general sentence inflation across the culpability levels for these offences”. **Prison Reform Trust**

The Council will look at the impact of the revision, including on different groups, as part of the usual post implementation monitoring.

Conclusion and next steps

As a result of the consultation the Council has made the changes set out in the sections above. The amended versions of the guidelines and explanatory materials are published on the Council's website (<https://www.sentencingcouncil.org.uk>) on 7 March 2023. The amendments to the existing guidelines will come into force on 1 April 2023.

The final resource assessment is published on 7 March 2023 on the Council's website.

As mentioned above, following the implementation of the definitive guidelines, the Council will monitor their impact.

Consultation respondents

Guy Cecil JP (magistrate)

Criminal Sub-Committee of the Council of His Majesty's Circuit Judges

His Majesty's Council of District Judges (Magistrates' Courts)

Justice Select Committee

London Criminal Courts' Solicitors' Association

Ministry of Justice

Simon Monks JP (magistrate)

Prison Reform Trust

Restore Justice

Senior District Judge (Chief Magistrate)

Nora Sopworth JP (magistrate)

Suffolk Magistrates Bench

West London Magistrates Bench

3 members of the public

