

**Revisions to sentencing
guidelines for child cruelty
offences
Consultation**

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The consultation will close on 27 October 2022

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 4 August to 27 October 2022
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by 27 October 2022 to:
Ollie Simpson

Email: consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found at:

www.sentencingcouncil.org.uk
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.

In addition, responses may be shared with the Justice Committee of the House of Commons.

Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on its proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

What is this consultation about?

The Sentencing Council proposes to amend its existing sentencing guidelines for child cruelty offences, to reflect recent changes to the statutory maximum penalties. These offences 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).¹

Background

The Police, Crime, Sentencing and Courts Act 2022 has 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 custody.

The Sentencing Council issued guidelines for these offences in 2018 which came into force on 1 January 2019², and the Council believes that the sentence tables should be revised to reflect the recent changes in maximum penalties.

Alongside this consultation paper, the Council has produced a statistical bulletin and data tables showing current sentencing practice for this offence and a resource assessment.

¹ Whilst the offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 applies also to vulnerable adult victims, the guideline applies to child victims only. For the purposes of the section 5 offence, the offence under section 1 of the Children and Young Persons Act 1933, and therefore these guidelines, a child is anyone under 16 years of age.

² At [Causing or allowing a child to suffer serious physical harm/ Causing or allowing a child to die – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk) and [Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk)

These can be found on the Sentencing Council's website:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications/>

In the following section the proposed revision is set out and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to consultation@sentencingcouncil.gov.uk or by using the online questionnaire:

<https://consult.justice.gov.uk/sentencing-council/child-cruelty-sentencing-guidelines-consultation>

Proposed revisions

The proposed revised guidelines can be found [here](#) (for Causing or allowing a child to die/suffer serious physical harm) and [here](#) (for Cruelty to a Child).

Culpability

The Council considers that the revised maximum penalties were intended by Parliament to capture the worst cases of child cruelty, rather than as a means of increasing sentences imposed across the board. For example, the Council is unaware of any suggestion that sentencing is too low in lower culpability cases where the offender has been coerced, has a mental disorder, took some steps to protect the child, or where the offence resulted from a brief lapse of judgement.

More broadly, the Council has not been made aware of any particular concerns about the application of the current guidelines, or that sentencers and others find the guidelines difficult or confusing to use. The Council therefore proposes to make a specific addition to the culpability table to provide for a category of very high culpability cases. This reflects the approach taken in the sentencing guidelines for manslaughter. Culpability elements in the other levels (high, medium and lesser) and harm elements would remain the same.

The revised culpability tables (which are identical between the two offences) would be as follows:

Culpability demonstrated by one or more of the following
A – Very high culpability
<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
B – High culpability
<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)

C – Medium culpability

- 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:
 - 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

D – Lesser culpability

- 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

The Council considered whether to move the culpability factor “prolonged and/or multiple incidents of serious cruelty, including serious neglect” to the very high culpability level. However, based on an analysis of sentencing transcripts, we believe there is the strong possibility that this would bring a high proportion of cases currently being categorised as high culpability into the very high culpability category. It is a factor which judges cite frequently where they have seen repeated assaults and/or a sustained campaign of violence and intimidation towards a victim either prior to intervention or to the child’s death, which is common in these cases.

The Council appreciates there is an argument that such cases are very serious and that prolonged and multiple incidents should be reflected in the highest category. On balance, however, it concluded that different levels of culpability could be distinguished within this class of cases. For example, a relatively low level series of abusive incidents could take place over a matter of weeks, contrasting with a particularly sadistic and unremitting course of behaviour over a period of months or years. On balance, the Council concluded that the inclusion of this element at the new Culpability A level would dilute the purpose of our revisions, which is to distinguish the very worst examples of offending.

Question 1: what are your views on the proposed approach to reflect the statutory changes, by creating a new very high level of culpability?

Sentence levels

As mentioned above, the Council is unaware of evidence that sentence levels for this offence are too low across the range of offending.

Of the two offences, there are far more section 1 sentences imposed (around 330 adults sentenced in 2020) than for section 5 (fewer than 10 in 2020). Volumes have decreased for both offences in recent years. In 2019 and 2020, all offenders sentenced for causing or allowing a child to die received immediate custody. Over the same period, half (50 per cent) of the offenders sentenced for causing or allowing a child to suffer serious physical harm received immediate custody. The majority of the remaining offenders received a suspended sentence order (44 per cent). For causing or allowing a child to die, the average (mean) custodial sentence length (ACSL) across 2019 and 2020 combined was 6 years 7 months. For those offenders sentenced to immediate custody for causing or allowing a child to suffer serious physical harm in 2019 and 2020, the ACSL combined was 3 years 9 months.

For the offence of cruelty to a child, 35 per cent of adults received a community order, around a third (33 per cent) received a suspended sentence order and one fifth (20 per cent) were sentenced to immediate custody. For those sentenced to immediate custody in 2020, the mean ACSL after any reduction for a guilty plea was 2 years 2 months. In 2020, 80 per cent of offenders who received an immediate custodial sentence were sentenced up to and including 3 years' custody.

For more detail, see the statistical bulletin and data tables showing current sentencing practice for this offence which is published alongside this consultation.

The Council proposes the following sentence levels to reflect the new culpability categories (no changes are proposed to the sentence levels for high, medium and lesser 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>

	Very high culpability	High culpability	Medium culpability	Lesser culpability
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: 1 year 6 months' custody</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>

Question 2: what are your views on the proposed sentence levels for very high culpability cases?

Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that guidelines have different outcomes for different groups. The Council has had regard to its duty³ under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics. There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about.

The Council has commissioned an independent external contractor to undertake a project to review our work for any potential to cause disparity in sentencing across demographic groups. Aspects to be examined will include those such as the language used, factors of individual cases, offence context, expanded explanations and structure of sentencing guidelines. The work will also consider whether any aspects of our processes of guideline development and revision have any implications for equalities and disparity in sentencing, and how the Council can best engage with under-represented groups to increase awareness and understanding of sentencing guidelines.

The available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences, it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines. However, the Council takes care to ensure that the guidelines operate fairly and includes reference to the Equal Treatment Bench Book in all guidelines:

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

³ The Public Sector Equality Duty (PSED) is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have “due regard” to three “needs” or “limbs” when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act. The second is the need to advance equality of opportunity between those who share a “protected characteristic” and those who do not. The third is to foster good relations between those who share a “protected characteristic” and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations

The Council has produced information on the demographic makeup (specifically age, ethnicity and sex) of adult offenders sentenced for child cruelty offences.

The data indicate that in 2019 and 2020, where the sex of offenders was known, 75 per cent of adult offenders sentenced for the offence of causing or allowing a child to die were female, while female offenders made up slightly under half (44 per cent) of those sentenced for causing or allowing a child to suffer serious physical harm. In 2020, 61 per cent of offenders sentenced for the offence of cruelty to a child were female. This means women make up a significantly higher proportion of offenders sentenced for these offences than is the case across offending in general.

In terms of age, the vast majority (83 per cent) of offenders sentenced in 2019-20 for causing or allowing a child to suffer serious physical harm were aged between 25 and 39. Most offenders (63 per cent) sentenced in the same time period for causing or allowing a child to die were aged 25 to 39. Over two-thirds (68 per cent) of offenders sentenced in 2020 for the offence of cruelty to a child were in this age bracket.

Across all the offences covered by these guidelines, where the ethnicity of the offender was known, the vast majority of offenders were White over the same time periods.

For other offences, where the data has shown evidence of disparity in sentence outcomes for some groups of offenders, the Sentencing Council has placed wording in the relevant guidelines, to draw sentencers' attention to these disparities and to signpost courts to important information within the Equal Treatment Bench Book. Once the Council has considered the latest available data for this offence alongside responses received to this consultation, the Council will consider before publishing definitive revisions to the child cruelty guidelines whether similar wording is necessary. The current available demographic data can be seen within the data tables at:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

The Council would welcome suggestions from consultees as to any equality and diversity matters that it should address in the development of these revisions to the guidelines.

Question 3: Are there any aspects of the revisions that you feel may cause or increase disparity in sentencing?

Question 4: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft revisions could and should address?

Question 5: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in making the proposed revisions?

