

Proposed Drop Down Text

Psychological harm

The assessment of psychological harm experienced by the victim is for the sentencer. Whilst it may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence.

Abuse of trust

- A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.
- In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.
- Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.
- Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.
- Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.

Age and/or lack of maturity

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence. The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

- The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.
- However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
- There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending.
- A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).

- But, an offender's knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing judge when determining the sentence that it would be just to impose

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