

Sexual Offences Guideline

Sentencing a child or young person for sexual offences involves a number of different considerations from adults. The primary difference is the age and level of maturity. Children and young people are less emotionally developed than adults; offending can arise through inappropriate sexual experimentation; gang or peer group pressure to engage in sexual activity; or a lack of understanding regarding consent, exploitation, coercion and appropriate sexual behaviour.

Below is a non-exhaustive list of factors that illustrate the type of background factors that may have played a part in leading a child or young person to commit an offence of this kind.

- Victim of neglect or abuse (sexual, physical or emotional) or has witnessed the neglect or abuse of another.
- Exposure to pornography or materials which are age inappropriate.
- Involvement in gangs.
- Associated with child sexual exploitation.
- Unstable living or educational arrangements.
- Communication or learning disabilities or mental health concerns.
- Part of a peer group, school or neighbourhood where harmful sexual norms and attitudes go unchallenged.
- A trigger event such as the death of a close relative or a family breakdown.

This guideline should be read alongside the *Overarching Principles – Sentencing Children and Young People* definitive guideline which provides comprehensive guidance on the sentencing principles and welfare considerations that the court should have in mind when sentencing children and young people.

The first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

STEP ONE**Offence Seriousness – Nature of the offence**

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A non-custodial sentence* may be the most suitable disposal where one or more of the following factors apply:

Any form of non-penetrative sexual activity

Any form of sexual activity (including penetration) without coercion, exploitation or pressure except where there is a significant disparity in age or maturity

Minimal psychological or physical harm caused to the victim

A custodial sentence or youth rehabilitation order with intensive supervision and surveillance* or fostering* may be justified where one or more of the following factors apply:

Any penetrative activity involving coercion, exploitation or pressure

Use or threats of violence against the victim or someone known to the victim

Prolonged detention/sustained incident

Severe psychological or physical harm caused to the victim

* Where the child or young person appears in the magistrates' court, and the conditions for a compulsory referral order apply, a referral order must be imposed unless the court is considering imposing a discharge, hospital order or custody.

See page 38.

STEP TWO**Offence Seriousness – Aggravating and mitigating factors**

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

Aggravating factors*Statutory aggravating factors:*

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

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors (non-exhaustive):

Significant degree of planning

Child or young person acts together with others to commit the offence

Use of alcohol/drugs on victim to facilitate the offence

Abuse of trust

Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intention of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups

Grooming

Significant disparity of age between the child or young person and the victim (measured chronologically or with reference to level of maturity) (where not taken into account at step one)

Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability

Any steps taken to prevent reporting the incident/seeking assistance

Pregnancy or STI as a consequence of offence

Blackmail

Use of weapon

Mitigating factors (non-exhaustive)

No previous findings of guilt **or** no relevant/recent findings of guilt

Good character and/or exemplary conduct

Participated in offence due to bullying, peer pressure, coercion or manipulation

Genuine belief that activity was lawful

STEP THREE

Personal mitigation

Having assessed the offence seriousness, the court should then consider the mitigation personal to the child or young person to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one, or a community sentence to a different means of disposal.

Personal mitigating factors (non-exhaustive)

Particularly young or immature child or young person (where it affects their responsibility)

Communication or learning disabilities or mental health concerns

Unstable upbringing including but not limited to:-

- time spent looked after
- lack of familial presence or support
- disrupted experiences in accommodation or education
- exposure to drug/alcohol abuse, familial criminal behaviour or domestic abuse
- exposure by others to pornography or sexually explicit materials
- victim of neglect or abuse, or exposure to neglect or abuse of others
- experiences of trauma or loss

Determination and/or demonstration of steps taken to address offending behaviour

Strong prospect of rehabilitation

Child or young person in education, training or employment

STEP FOUR

Reduction for guilty plea

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 part one, section five of the *Overarching Principles – Sentencing Children and Young People* definitive guideline.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence; or
- by reducing a community sentence to a different means of disposal.

Alternatively the court could reduce the length or severity of any punitive requirements attached to a community sentence.

See the *Overarching Principles – Sentencing Children and Young People* definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

STEP FIVE**Review the sentence**

The court must now review the sentence to ensure it is the most appropriate one for the child or young person. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.

See the *Overarching Principles – Sentencing Children and Young People* definitive guideline for comprehensive guidance on the sentencing principles and welfare considerations that the court should have in mind when sentencing children and young people, and for the full range of the sentences available to the court.

Referral Orders

In cases where children or young people have offended for the first time and have pleaded guilty to committing an offence which is on the cusp of the custody threshold, YOTs should be encouraged to convene a Youth Offender Panel prior to sentence (sometimes referred to as a “pseudo-panel” or “pre-panel”) where the child or young person is asked to attend before a panel and agree an intensive contract. If that contract is placed before the sentencing youth court, the court can then decide whether it is sufficient to move below custody on this occasion. The proposed contract is not something the court can alter in any way; the court will still have to make a decision between referral order and custody but can do so on the basis that if it makes a referral order it can have confidence in what that will entail in the particular case.

The court determines the length of the order but a Referral Order Panel determines the requirements of the order.

| Offence seriousness | Suggested length of referral order |
|---------------------|------------------------------------|
| Low | • 3 – 5 months |
| Medium | • 5 – 7 months |
| High | • 7 – 9 months |
| Very high | • 10 – 12 months |

The YOT may propose certain requirements and the length of these requirements may not correspond to the above table; if the court feels these requirements will best achieve the aims of the youth justice system then they may still be imposed.

Youth Rehabilitation Order (YRO)

The following table sets out the different levels of intensity that are available under a Youth Rehabilitation Order. The level of intensity and the content of the order will depend upon the court’s assessment of seriousness.

| | | Requirements of order |
|-----------------|--|---|
| Standard | Low likelihood of re-offending and a low risk of serious harm | Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> • reparation; • unpaid work; • supervision; and/or • attendance centre. |

| | | Requirements of order |
|------------------|--|--|
| Enhanced | Medium likelihood of re-offending or a medium risk of serious harm | Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or • a combination of the above. |
| Intensive | High likelihood of re-offending or a very high risk of serious harm | Seek to ensure the control of and enable help or change for the child or young person through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour; • requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or • a combination of the above. |

YRO with Intensive Supervision and Surveillance (ISS) or YRO with Fostering

A YRO with an ISS or fostering requirement can only be imposed where the court is of the opinion that the offence has crossed the custody threshold and custody is merited.

The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the child or young person to reside with a local authority foster parent for a specified period of up to 12 months.

Custodial Sentences

If a custodial sentence is imposed, the court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with ISS or fostering could not be justified.

Where a custodial sentence is **unavoidable** the length of custody imposed must be the shortest commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range.