

Sexual Offences Guideline Consultation

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The consultation will end on 14 March 2013

A consultation produced by the Sentencing Council.
This information is also available on the Sentencing Council's website:

www.sentencingcouncil.org.uk

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 6 December 2012 to 14 March 2013

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Additional ways to feed in your views:

We will accept responses in hard copy or via email. In addition, an online version of this consultation is available. This consultation exercise is accompanied by a resource assessment and an equality impact assessment, both of which can be found at:

www.sentencingcouncil.org.uk

A series of consultation meetings is also taking place. For further information please use the Enquiries contact details above.

Response paper:

Following the conclusion of this consultation exercise, a response will be published on our website.

Freedom of Information:

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Preface

This consultation by the Sentencing Council deals with the important and challenging subject of sentencing those who have committed sexual offences. The criminal courts are concerned on a daily basis with the complex and darker side of human nature and this is particularly evident when dealing with sexual crimes. The consultation discusses how the courts should approach these sentencing decisions, details the rationale behind the Council's thinking and explores the many issues involved in the sentencing process.

The Council wishes to highlight certain key points from the outset. The **perspective of victims** is central to the Council's considerations. The consultation document explains how the impact of sexual crimes on victims has been taken into account when identifying factors relating to physical and emotional harm and culpability and in determining levels of sentence.

The Council is aware that **public protection** is always a vital consideration in sentencing. The Council's approach to setting sentencing levels in the draft guidelines has been to reinforce the importance of firm and proper punishment, protection of the public and the prevention of reoffending. The balancing of these interests might mean that often a custodial sentence – sometimes very substantial – will be proposed. The Council believes that in some cases, however, both the victim and the public will be better protected by the imposition of punishment in the form of a rigorous community order, with programmes which challenge offenders to change their behaviour and above all not to reoffend.

Finally, the Council has been mindful of the significant rise in **sexual offences committed via the internet** involving new and developing technologies, and has sought to tailor its approach to accommodate the factors and circumstances of a wide variety of offending behaviour.

The Council needs the views of those who are affected by or concerned with this type of offending to ensure that the various factors relating to individual offences have been correctly identified, the most appropriate words have been found to define them, and the proposed levels of sentence are correct. The Council's aim, as always, is to create a guideline in which victims, judges, police and others both inside and outside the criminal justice system have confidence, and this consultation is the next stage in that process.

Introduction

The Sentencing Council proposes a review of the existing guideline on sentencing sexual offences and seeks views on its draft proposals. The Council is keen to hear from as wide an audience as possible.

Why sexual offences?

It is now eight years since the Sexual Offences Act 2003 (SOA 2003) came into force, and a clearer picture is available of the way in which new offences are being used by the courts. In addition, there are areas where the nature of offending has changed, for example, the increased use of technology to facilitate the sexual exploitation and grooming of children, and increased understanding of offenders' behaviour when targeting children. The guidelines need to be amended to reflect these developments.

A total of 6,932 people were sentenced for sexual offences in 2011.¹ The volume of offences means it is important judges and magistrates have relevant and up-to-date guidance in this complex area of sentencing. It is equally important that the process which is followed in arriving at sentences is transparent to victims and the public.

What is the Council consulting about?

The Council is consulting on a new guideline for sentencing sexual offences to replace the existing guideline, drawn up by our predecessor body, the Sentencing Guidelines Council (SGC).

The new guideline will include all the offences found in the SGC guideline with the exception of intercourse with an animal,² sexual penetration of a corpse³ and sexual activity in a public lavatory.⁴ Given that these are very low volume offences with low maximum sentences available, the Council has taken the view that sentencing guidance is not needed for these offences.

The Council seeks views on:

- the main factors that reflect the harm caused to the victim by an offence and the culpability of the offender which lead the court to decide the starting point sentence for the offence;
- the additional factors that should influence the sentence; and
- the approach and structure of the guidance and how this should be tailored to different offences.

The Council's remit⁵ extends only to consulting on the sentencing of offenders convicted of sexual offences. The Council does not have the authority to make changes to, or consult on, the content or structure of the offences within the Sexual Offences Act, nor the parts of the criminal justice system that are involved before a conviction is obtained. The remit of the Sentencing Council relates solely to drafting guidelines for sentencing following conviction.⁶ A number of reports in recent years have documented and highlighted the unique and specific challenges sexual offences present for

1 This figure includes 1,468 people who were sentenced for indecent images of children offences which, whilst not covered under the SOA 2003, are covered by the draft guidelines

2 s.69 Sexual Offences Act 2003; in 2011 one offence was sentenced

3 s.70 Sexual Offences Act 2003; in 2011 no offences were sentenced

4 s.71 Sexual Offences Act 2003; in 2011 17 of these offences were sentenced

5 ss.118–136 Coroners and Justice Act 2009

6 Full details of the Council's statutory remit can be found at: www.sentencingcouncil.org.uk/aboutthesentencingcouncil

the criminal justice system as a whole.⁷ The Council has considered this research but wider issues pertaining to the criminal justice system are outside the scope of this consultation. Maximum sentence lengths are provided by the Sexual Offences Act and the rules relating to licence periods and dangerousness are governed by legislation⁸ and are, therefore, outside the scope of this consultation.

Consultation process

The consultation will be open for 14 weeks and meetings with interested parties will be held during this time to seek views on the proposals. We will also conduct interviews with a sample of Crown Court judges to ascertain how they would apply the guideline and to identify whether it presents any practical difficulties for sentencers.

Alongside this consultation document, the Council has produced an online version for those who prefer to respond in that way. The Council has also produced a consultation stage resource assessment and an equality impact assessment. These documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

7 For example, *The Stern Review*; A report by Baroness Vivien Stern CBE following an independent review into how rape complaints are handled by public authorities in England and Wales – (2010); Sara Payne MBE: Rape the victim experience review – Home Office (2009)

8 For example, part 12 Criminal Justice Act 2003

Section one: Background

Sexual offences covered by the draft guideline

This draft guideline covers the most commonly prosecuted offences in the Sexual Offences Act 2003 (SOA 2003). It also includes offences relating to the possession, taking and making of indecent images of children which are found in the Protection of Children Act 1978 and Criminal Justice Act 1988 as amended by section 45 of SOA 2003.

The offences have been grouped in such a way as to enable the sections to be read independently. As this consultation covers such a large range of offending the Council is conscious that there will be organisations and individuals with specific interests and it is intended that dividing the consultation into distinct topic areas will reduce the burden on those responding by enabling them to reply either to the full consultation or to the areas that they are particularly concerned with. However, consultees are asked to remember that the guideline has to be presented as a coherent whole.

Applicability of the guideline

The definitive guideline issued following this consultation will be applicable to all sexual offences that it covers, regardless of the date of the offence.⁹ It will apply to offences sentenced

in both the Crown Court and magistrates' courts and will replace the existing Sentencing Guidelines Council (SGC) guidelines.

An important difference between this proposed guideline and the existing SGC guideline is that the Sentencing Council guideline will apply to all offenders, not just a first time offender with no previous convictions as was the position with the SGC guideline. Where an offender has committed previous recent and/or relevant offences, these are taken into account as an aggravating factor at step two.

The sentencing of youths

The issue of sexual offences committed by young people against young people has received increasing prominence in recent years. There is ongoing research into this area as the nature of offending develops. Examples are the NSPCC study on sexting between young people¹⁰ and the Children's Commissioner's ongoing two-year inquiry into child sexual exploitation in groups and gangs which will cover, amongst other things, youth-on-youth offending.¹¹ In addition the Home Office has been undertaking work and conducting a campaign aimed at rape in teenage peer groups.¹² This is an area where there is important ongoing work and where there are complex and specific issues.

⁹ s.125(1) Coroners & Justice Act 2009

¹⁰ *A qualitative study of children, young people and 'sexting'* A report prepared for the NSPCC, Jessica Ringrose (Institute of Education, London), Rosalind Gill (King's College, London), Sonia Livingstone (London School of Economics), Laura Harvey (Open University), May 2012

¹¹ Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups (CSEGG) www.childrenscommissioner.gov.uk/info/csegg1

¹² Home Office teenage rape prevention campaign <http://thisisabuse.direct.gov.uk/>

The principles surrounding the sentencing of youths differ from the sentencing of adults and when sentencing an offender under the age of 18, a court must have regard to the main aims of the youth justice system (to prevent offending by children and young persons) and the welfare of the offender.¹³ The Council has therefore decided not to cover youth offenders in this guideline and it will apply only to offenders aged 18 and older.

The Council proposes to look at youth offending more generally when it reviews the youth guideline in the 2014/15 work programme. As part of this process the Council will deal with sexual offending by youths and hopes that, by this point, it will have the benefit of research that is currently being conducted.

The exception is offences specified under section 13 of the SOA 2003 which are dealt with at section ten of this consultation. Section 13 of the SOA 2003 specifically creates a lower statutory maximum for six offences where they are committed by an offender under the age of 18. (The offences in question are in sections nine to 12 and section 25 of the SOA 2003 which are explained below.) These are offences where the child may have maintained that they consented to the activity and so are not treated as rape or assault. These are difficult and sensitive cases, included in legislation in order to protect children from inappropriate sexual behaviour by their peers. These offences are currently dealt with by the SGC guidance and because of their sensitivity and the fact that a gap would be left if the SGC guidance was removed but not replaced for these cases the Council has decided that guidance is needed for these six offences.

¹³ For further information about the sentencing of youths see *Overarching Principles – Sentencing Youths, SGC Definitive Guideline* http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf; s.44 Children and Young Persons Act 1933

Section two: Sentencing sexual offences and public protection

Type of sentence

When sentencing any adult offender for any offence, there are five statutory purposes which the sentencer must have regard to when deciding the type and length of sentence which should be imposed. These are:

- punishment;
- reduction in crime;
- reform and rehabilitation;
- public protection; and
- reparation to victims.¹⁴

The purposes are not ranked in any form of priority and it will be for the sentencer in each case to decide which purpose(s) the sentence is designed to deal with. For example, in the case of an offender who commits a shoplifting offence in order to get enough money to buy drugs to feed his addiction, the sentencer could decide that ‘punishment’ is the most important purpose of the sentence and decide to send him to prison for six months. However, considering all aspects of the case, the sentencer could decide that there is a realistic opportunity to rid the offender of his drug addiction which could be achieved by imposing a two-year community order with a drug rehabilitation requirement and 150 hours of unpaid work to be completed within that period. This sentence would not only punish the offender (unpaid work) but would also meet the purposes of reducing crime (by removing the motivation for the offending) and reform and rehabilitate the offender thereby providing greater protection to the public from future offences.

The balancing of these purposes of sentencing can be even more difficult when sentencing for sexual offences. Sentencers need to ensure that offenders convicted of these offences are punished but also that the sentence passed provides protection to the public from any future offences committed by that offender. The draft guideline recognises that for many offenders, long sentences of imprisonment are appropriate. However, in order to address the crucial purpose of public protection, for a limited number of offences the Council is also proposing the use of some non-custodial sentences. These sentences are community orders which include requirements designed to address an offender’s behaviour. These orders are intended to reform and rehabilitate the offender and protect the public, in addition to providing punishment.

For example, a judge sentencing an offender convicted of spying on women in community changing rooms with a hidden camera (voyeurism), may decide to impose a community order of up to three years. The order will be tailored by the judge to both punish the offender for his behaviour but also to address the underlying reasons for it. Such an order could include some or all of the following requirements:

- unpaid work for any period between 40 and 300 hours;
- obligatory participation in a sex offender treatment programme designed to rehabilitate sexual offenders;
- exclusion from a specific place, such as the location of the changing rooms with an

- electronic tag fitted to the offender to ensure he complies; and
- supervision by a probation officer who will meet with the offender to monitor their progress on the order.

There is a range of accredited sex offender treatment programmes provided by the National Offender Management Service (NOMS) throughout England and Wales. The offender will be assessed by experienced members of NOMS staff as to which parts of their behaviour need to be challenged and a programme will be designed to provide this challenge. The aim of all such programmes is to reduce the risk of further similar offending and to increase the offender's understanding of the impact of their offending on others, particularly their victims. If the offender fails to comply with any requirements he will be in breach of the order and returned to court; depending on the nature of, and reason for, the breach the order can be revoked and the offender sent to prison. In addition, the offender would have to register as a sex offender for five years which means he will have to notify the police of specific personal information for that period. This is discussed further below.

Other public protection measures

Parliament has recognised that there are particular risks to the public posed by offenders who commit sexual offences. For this reason, it has created additional orders which the courts can use once an offender has been convicted to ensure that, whatever the type of sentence, the offender's behaviour can continue to be monitored and restricted. Some of these orders are automatically applied following conviction; for example, an offender convicted of the majority of offences contained within the guideline will be automatically required to notify themselves as a sex offender and their address to the police. They also need to notify the police of any changes to their address within three days of such a change. The length of time they will need to register for depends on the type and length of the sentence they receive.¹⁵ For example, an offender who receives a sentence of

imprisonment of 30 months or more will remain on the register indefinitely whilst an offender who receives a community order will be required to register for five years.¹⁶ An offender who fails to make the initial notification to the police or fails to notify them of changes to his address commits a separate criminal offence which is punishable with up to five years' imprisonment.

Other types of orders are imposed by the sentencer when it is appropriate to do so. These include:

- sexual offences prevention orders (section 104, Sexual Offences Act 2003) – these are designed to protect the public from serious sexual harm from the offender by preventing the offender from carrying out specific activities; for example, by restricting where the offender may go or the types of activity the offender may engage in. These orders must be in place for at least five years and can last indefinitely. An offender who breaches the terms of his order commits a separate offence which is punishable with up to five years' imprisonment; and
- disqualification from working with children orders – these orders are designed to protect children. They must be made if the offence was committed against a child, unless the court is satisfied the offender is unlikely to reoffend.¹⁷ Such an order lasts indefinitely and a breach of it is a separate offence punishable with up to five years' imprisonment. In addition, a statutory scheme operates so as to automatically bar an offender from working with children or vulnerable adults.¹⁸

The purpose of these orders is to ensure that the offenders' behaviour is closely monitored by the authorities and that any further offending or breach of the order, however minor, is punished by imprisonment.

The Council proposes to include a list of the available additional orders that can be imposed for each offence within the guideline.

¹⁵ s.80 and Schedule 3 Sexual Offences Act 2003

¹⁶ s.82 Sexual Offences Act 2003

¹⁷ s.28 Criminal Justice and Court Services Act 2000

¹⁸ Pursuant to the Safeguarding Vulnerable Groups Act 2006

Section three: Developing the guideline

Sentencing data and research

In developing the draft guideline, the Council has taken into account a number of sources of information including data on current sentencing practice¹⁹ and discussions with organisations working in this field, investigators, prosecutors, sentencers and academics. To supplement statistical data the Council also assessed the results of the Crown Court Sentencing Survey (CCSS). This survey is undertaken by the Sentencing Council and records in a high proportion of cases, information on the offence, type and length of sentence given, and aggravating and mitigating factors which had a significant impact on the sentence. The survey has provided important information about the factors currently influencing sentencing decisions and has enabled the Council to better understand the more general statistics. The survey can be found on the Council's website: www.sentencingcouncil.org.uk

The Council recognises that statistical evidence only provides part of the picture when assessing sexual offences. The gravity of sexual offending and the very particular emotional and physical harm experienced by victims²⁰ means that engagement with victims and those working in this field has been vital. The Council commissioned NatCen Social research – an independent social research agency – to undertake research into victim and public

attitudes to the sentencing of sexual offences.²¹ The research was conducted with the assistance of organisations such as Rape Crisis, with 46 people who had been victims of sexual offences (or parents/guardians of victims of sexual offences). Eighty-two members of the public participated in discussions²² where attitudes to sentencing were explored in depth and views shared about appropriate sentences and factors that should be taken into account when sentencing. Throughout this consultation we have drawn on these findings and where issues specific to individual offences were identified by the report, we have referenced this in the sections on individual offences below.

Overall, the report found that although all victims are individuals and have diverse experiences and view points, there were some areas where views were consistent. A key issue to emerge was a strong desire from victims for the criminal justice system to demonstrate an accurate understanding of the overarching and long-term harmful effects of sexual violence and abuse, and how it impacts on the life of the victim and their family and to consider this to a greater extent within the sentencing process. This is something the Council has considered with great care in identifying harm factors for each of the offences and more detailed discussions on these can be found in the sections on individual offences.

¹⁹ <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics>

²⁰ The term 'victim' is used throughout the consultation paper and the draft guidelines; the Council is sensitive to the fact that some of those affected by sexual offences prefer the term 'survivor', but 'victim' is used for consistency as the term adopted throughout the criminal justice system

²¹ *Attitudes to sentencing sexual offences*: Sentencing Council Research series 01/12 www.sentencingcouncil.org.uk

²² The research involved 12 focus groups with the general public across England and Wales, and interviews with 46 victims/survivors of sexual offences or their parents/carers.

The review undertaken by Baroness Stern in 2010 on the handling of rape complaints reiterates the fact that it is the overall experience of the victim that matters and she states:²³

“They [victims] wanted to be treated well throughout the process, to be listened to, to be believed, to be kept informed. ‘It is probably more a need for complaints to be taken seriously than a punishment result’, we were told.”

This consultation deals with cases where a conviction has been secured and a judge or magistrate must pass a sentence. The quotation above, is, however a useful reminder that the eventual sentence is only part of each victim’s experience and sentencers need to be mindful of the way in which sentencing remarks are delivered and dealt with as part of the court process. As stated at page 6 these wider issues are outside the remit of this consultation but they provide the context within which the eventual sentence will be viewed.

During the consultation period the Council will be continuing interviews with Crown Court judges regarding the draft guideline. The judges will be asked to consider scenarios and to propose sentences for those scenarios using the draft consultation guideline. This work with judges will help to inform the definitive guideline. Analysis and research bulletins will be published along with the response to consultation paper, after the consultation has closed.

Structure of the guideline

The draft guideline sets out the decision-making process, developed for *Assault: Definitive Guideline*, for the court to follow in sentencing sexual offences. It is a step-by-step process, which determines the method of setting the sentence level. The nine steps set out below are to be followed for each of the sexual offences detailed in this draft guideline. However, the Council proposes that the structure for

determining harm and culpability should vary according to the offences considered. This will result in the guideline being tailored specifically to the offending behaviour that the offence deals with. This takes account of the complex nature of each of the offences and the different elements that need to be taken into consideration for each.

Due to the variations, the details of step one and step two will be set out separately for each offence. As steps three to nine will be identical, with the exception of minor differences in step seven, ancillary orders, which may vary depending on the orders available for each offence, they will be dealt with only here.

STEP ONE

Determining the offence category

At step one, the court should determine the offence category for the offence based on the **principal factual elements** of the case which demonstrate the harm caused, or likely to be caused, and the culpability of the offender in carrying out the offence. The offence category reflects the severity of the offence and sets the starting point and range of sentences within which the offender is sentenced.

STEP TWO

Starting point and category range

At step two, the court is asked to determine a provisional sentence using the recommended starting point. Based on the offence category identified at step one, the court should then consider the weight to be given to any relevant aggravating and mitigating factors in order to move upwards or downwards from the starting point. Starting points apply to all offenders, in all cases, irrespective of plea or previous convictions; where an offender has recent and/or relevant previous convictions these must be treated as an aggravating factor.

23 See footnote 7, *The Stern Review* p46: What else matters to victims

STEP THREE

Consider whether there are any factors which indicate a reduction in sentence, such as assistance to the prosecution

The court must 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 be given) by the offender to the prosecutor or investigator of an offence.

STEP FOUR

Reduction for guilty pleas

Sentencers will need to take into account 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

Dangerousness

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term. As a result of the Criminal Justice Act 2003, the specific provisions that apply vary depending on the offence and this has been taken into account in each guideline.

STEP SIX

Totality principle

Many offenders are sentenced for multiple offences, and this is especially true with sexual offences. When a court is sentencing an offender for more than one offence, firstly it needs to consider whether those sentences should be consecutive or concurrent. It then needs to decide whether the total sentence is appropriate to the offending behaviour and balanced. This is known as the totality principle. For further guidance on the totality principle please refer to the Sentencing Council guidance.²⁴

STEP SEVEN

Ancillary orders: in all cases, the court should consider whether additional orders should be made

The orders available will vary with the offence.

STEP EIGHT

Reasons

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 remand time

Sentencers must take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

²⁴ Sentencing Council: *Offences taken into consideration and totality: definitive guideline*, 11 June 2012 http://sentencingcouncil.judiciary.gov.uk/docs/Definitive_guideline_TICs__totality_Final_web.pdf

Section four: Rape and assault offences

This section considers the offences of rape, assault by penetration, sexual assault and sexual activity without consent. These draft guidelines are for offenders who are 18 years of age and over who have committed offences against victims who are 13 years of age and over. Offences committed against victims aged under 13 are addressed in the next section on child sex offences.

Rape, Sexual Offences Act 2003 – section 1

Maximum sentence: Life imprisonment (full guideline page 173)

The first offence to be considered is rape, as it is the offence which will set a benchmark for the sentence levels for many other offences.

Baroness Stern’s report²⁵ stated that:

“Rape is a serious and deeply damaging crime. It is unique in the way it strikes at the bodily integrity and self respect of the victim, in the demands it makes on those public authorities required to respond to it and in the controversy it generates....

Rape can occur in a range of circumstances. Those usually referred to as ‘stranger rapes’, the sort of incidents most often reported in the newspapers, where the victim and perpetrator do not know each other, are a small proportion of rape cases. Most rapes are carried out by someone the victim knows. Much rape

occurs in families... Vulnerable and powerless people are often the victims of men who identify them as easy targets and take advantage of their need for attention and affection.”

Throughout its consideration of the guideline on rape, the Council has considered the range of circumstances outlined by Baroness Stern above, and that rape is not simply about ‘stranger rape’; the whole range of scenarios needs to be accommodated when preparing a sentencing guideline.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. The guideline for these offences directs the sentencer to do this by considering the harm to the victim and the culpability of the offender. In the Council’s previous guidelines for assault and burglary the formulation of harm and culpability has set out factors that indicate greater or lesser harm and those that indicate higher or lower culpability.

In the guidelines for rape and sexual assault the Council is proposing a move away from this formulation in recognition of the fact that all rape is extremely harmful to the victim. The approach taken has therefore been to assume that there is **always** a baseline of harm. This

²⁵ *The Stern Review*; A report by Baroness Vivien Stern CBE following an independent review into how rape complaints are handled by public authorities in England and Wales – (2010)

is reflected by category 3 harm which has an absence of factors which indicates to the sentencer that once an offender has been found guilty of rape, they do not need to identify additional factors for the offence to be deemed harmful or serious. The violation of the victim through the act of rape is harm in itself. It would be unhelpful to articulate this as ‘lesser harm’ as these offences are inherently harmful. However, the Council also recognises that the level of harm caused by a rape can vary and categories 1 and 2 build upon the baseline of harm.

The Council also believes that an offender who carries out a rape demonstrates a high degree of culpability. For this reason, the Council believes that the use of ‘lower culpability’ would not be appropriate. Instead, the Council proposes a list of factors that may be taken into consideration that go beyond the culpability inherent in the act of rape itself.

The approach taken by the Council also differs from the approach taken in the existing Sentencing Guidelines Council (SGC) guideline which considers the gravity of the offence in terms of the physical nature of the sexual activity. The Council is concerned that simply labelling sentence levels in terms of activity does not fully reflect the seriousness or complexity of the offence.

Specific step one harm and culpability factors will be considered below.

Harm factors

Step one features an exhaustive list of the principal harm factors that a sentencer should take into account.

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of rape • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim’s home
Category 3	Factor(s) in categories 1 and 2 not present

Category 3 has no factors listed. This is because, as stated above, the Council feels it is important to recognise that the violation of the victim as a result of rape constitutes inherently serious harm, even in the absence of any other factors.

Category 2 contains a list of features that, when found, indicate additional harm.

- The existing SGC guideline lists ‘pregnancy or infection’ as an aggravating factor. The Council proposes to move these factors to step one, expressed as ‘pregnancy or STI as a consequence of rape’. The Council is consulting on the basis that these are principal factual elements which, where present, may exacerbate still further the long-term harm experienced by the victim. The phrase ‘pregnancy’ is also intended to cover instances where the victim has undergone an abortion. The Council has removed a specific reference to ‘ejaculation’ which is currently found as an aggravating factor in the SGC guideline. The rationale for this is that harm

to the victim occurs at the point penetration takes place, whether or not the offender subsequently ejaculates during penetration. The Council believes that the potential consequence of ejaculation, in other words an STI or pregnancy, is a better expression of harm. The Council does not believe that a signal should be sent out that the rape is somehow mitigated if there is no ejaculation but is keen to seek views on this. The court can also take it into account as an element of additional degradation or humiliation discussed below.

- ‘Additional degradation/humiliation’ has been included as a step one factor. This is not to detract from the fact that all rape involves elements of degradation and humiliation but it has been included to cover instances where the offender has additionally subjected the victim to further acts of degradation or humiliation. This may take a variety of forms²⁶ for example, urinating or ejaculating over the victim, leaving the victim naked in a public place, forcing the victim to dress up or strip for the offender. The Council believes that the psychological harm done to the victim as a result of this form of control, manipulation or humiliation by the offender justifies inclusion in category 2.
- ‘Abduction/detention’ is included to reflect the increased psychological harm that being detained or abducted would have on a victim. It is not intended to cover only the scenario where a victim is abducted from the street by a stranger but also to include, for example, the arguably more common scenario of a victim being prevented from leaving their home during an attack. The Council believes this factor should be included in category 2 as the increased psychological harm generated by the fear of escalation of the attack if the victim is unable to escape or get help, increases trauma.
- ‘Prolonged/sustained incident’ is included in category 2. The Council understands that a rape which is not prolonged or sustained is still highly traumatic. However, the inclusion of this factor is to reflect the fact that a prolonged or sustained incident may increase the psychological harm to the victim who has to endure a longer period where there is the fear of escalation and psychological trauma of not knowing if and when they may escape from the offender. In the SGC guideline there is the feature of repeated rape in the course of one attack; for example, if someone was raped vaginally and anally during one incident. The Council believes that these should be treated as two counts of rape; if they are not, the factor of ‘prolonged/sustained incident’ would be likely to apply.
- ‘Use of violence’ is included in category 2. The Council has approached this factor with a degree of caution as it is aware that force and violence in the context of sexual offences are issues around which there can be misunderstanding. As Dr Fiona Mason states when talking about the psychological effects of rape:

“The issue of force is another area around which myths abound. Force is not an essential element of the offence of rape and many rapes do not involve additional physical assault or threat going beyond the act of penetration. Often victims do not resist and many are not physically injured. However if the basic assumption made is that anyone raped would fight back, and/or be injured, this will cloud the judgments made about whether an incident was or was not rape.”²⁷

Mindful of this, the Council proposes to include ‘violence’ because where it is a feature of an offence, it should be reflected

²⁶ See for example AG Ref 113 2005 [2006] Cr App R (S) 105, *R v Doçi* [2010] EWCA Crim 2178, *R v Bouguenoune* [2008] EWCA Crim 198

²⁷ Dr Fiona Mason Psychological effects of rape and serious sexual assault, chapter 23 *Rook and Ward on Sexual Offences Law and Practice* 4th edition

in a higher sentence level. The Council does not wish to convey the impression that a lack of violence or physical harm makes a rape less serious and so has focused the wording on the use of violence, rather than on physical injury or on how far the victim has fought back. As Rape Crisis point out:

“Faced with the reality of rape, women make second by second decisions, all of which are directed at minimising the harm done to them. At the point where initial resistance, struggling and reasoning have failed, the fear of further violence often limits women’s resistance. The only form of control that seems available to women at this point is limiting the harm done to them.”²⁸

The Council would particularly welcome views on this factor.

- ‘Context of habitual sexual abuse’ is a factor that was not included by the SGC. The Council proposes this factor is placed at step one. Victims with a history of, for example, childhood sexual abuse will be especially vulnerable and are more likely to be subject to repeat victimisation.²⁹ The Council believes that the psychological harm that a rape will have on a victim who is inherently vulnerable owing to previous abuse, should be reflected by inclusion in category 2. The Council would welcome views on this proposition.
- ‘Forced entry into the victim’s home’ has been deliberately worded to capture both the stranger who breaks into the victim’s home and the offender who is known to the victim; for example, an ex-partner who enters the victim’s home uninvited. The Council wishes to ensure that the guideline on rape gives weight to both ‘stranger rape’ and rape that

is committed by someone known to the victim. This factor is included in category 2 to acknowledge the fact that the invasion of one’s home is an invasion of the place one should feel safe and have sanctuary and privacy. The psychological strain and long-term harm of victims no longer feeling safe in their homes is something that the Council believes should be acknowledged in category 2.

Category 1 adopts an approach that differs from that taken by the SGC which placed repeated rape of the same victim over a course of time or rape involving multiple victims in the category with the highest starting sentence. It is the view of the Council that if there are multiple rapes or victims, these should be charged as separate instances of rape with the overall sentence subject to the principles of totality. The draft guidelines are concerned with sentence levels for a single offence. This means that under the new guidelines, the most severe sentence may be available for a single rape.

Unlike other guidelines the Council has produced, category 1 (the highest category) does not rely solely on new factors to increase the severity of the sentence but instead permits a combination of category 2 factors to elevate a case.

Extreme violence is the only new factor which would place a case in category 1. In including this factor the Council has looked again at the arguments that are raised at page 17 concerning use of violence above and beyond that needed to commit rape. The Council does not wish to propagate myths about only violent rapes being extremely harmful but it does believe that where there has been extreme violence, this will increase the harm suffered by the victim which should be reflected in the sentence length.

²⁸ Rape Crisis: Common myths about rape <http://www.rapecrisis.org.uk/mythsampfacts2.php>

²⁹ CC Classen, O Palesh and R Aggarwal *Sexual Re-victimisation: A review of the empirical literature. Trauma, Violence and Abuse* 2005 Vol 6 no. 02 103–129

'The extreme nature of, or combination of, category 2 factors may elevate a rape to category 1' is the other factor articulated in category 1. The Council has deliberated about the factors that potentially increase harm in rape and believe that a degree of flexibility is required for sentencers given the unique nature of rape. The Council believes that many of the factors articulated in category 2, when combined, will increase the psychological and/or physical harm to the victim. This approach relies on the sentencer, in full possession of all the facts of the case, being best placed to determine when either the extreme nature

of a factor, or a combination of the factors in category 2 would justify the elevation of the case to category 1. This places more onus on the sentencer to exercise discretion and judgement. The testing to date with Crown Court judges has identified a split between those sentencers who think flexibility is helpful and those who want more direction. Some felt the definition of 'combination' needed to be clearer and that category 1 should be reserved for the most severe cases.

The scenarios below give examples of cases where discretion would be applied:

Scenario A

The victim (V) was waiting at a bus stop when approached by the offender (O) who covered V's mouth, produced a knife and said he would kill her if she screamed. O punched her in the face and dragged her into a park. O used his fingers to penetrate V and then vaginally raped her. O ordered V to adopt various positions. Each time, V was humiliated and subject to O's will. O ejaculated over V, said that he knew where she lived and would kill her if she reported the incident. O then left her semi-naked in the park. V crawled to a road where she managed to flag down a passer-by who helped her. The attack lasted 45 minutes.

This case involves elements of abduction, humiliation, degradation, violence and a sustained attack which would elevate this case to category 1.

Scenario B

The victim (V) became friendly with the offender (O) and agreed to meet up one evening for a drink. O persuaded V to come to his home so he could get changed before they went out. Once inside the flat O raped V vaginally and afterwards said that he was a powerful man and had friends that could harm her if she reported the attack. Due to the threats made, V stayed in the flat with him until he had changed and went to dinner with him, whereupon she found an opportunity to escape. V subsequently discovered that she had Chlamydia as a result of the rape.

This case, although it contains elements of detention and an STI, would remain in category 2 as the combination of factors is less extreme.

The Council would welcome views on the approach to category 1 and whether greater flexibility or direction is desirable.

Culpability

As stated at page 15, the approach being taken to culpability is different from previous guidelines. The Council considers that anyone who has committed rape has demonstrated a high degree of culpability and so it is unhelpful to talk in terms of 'lower culpability'.

Culpability
A
Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Recording of the offence
Vulnerable victim targeted
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

Culpability B has no factors listed. This is to reflect the fact that the act of rape inherently involves a high level of culpability. It is not a lower culpability category but the absence of any of the additional factors found in category A indicates a baseline of culpability that exists when a rape is committed.

Culpability A factors are examples of the main culpability factors which the Council believes should be taken into account over and above the baseline of culpability that already exists.

- ‘A significant degree of planning’ was a factor highlighted in the NatCen report by victims and the public as something that was seen

to increase the culpability of the offender.³⁰ The existing SGC guideline sets out that the planning of an offence indicates a higher level of culpability than an opportunistic or impulsive offence.

- ‘Member of group or gang during commission of offence’. This is an area that has been the subject of recent research and where work is ongoing. The Home Office has produced a report that considers amongst other issues gangs and rape.³¹ A two-year study on child sexual exploitation and groups and gangs is also being conducted by the Children’s Commissioner. Emerging findings were published in July 2012³² and state:

“From our emerging findings we have ascertained that children are being victimised through gang and group associated sexual exploitation from the age of 10 upwards, and are both female and male (although predominantly female). They come from a full range of ethnic backgrounds represented in England, and some are disabled. The abuse is taking place across England in urban, rural and metropolitan areas. Children are being sexually exploited by groups and gangs made up of people who are both the same, and different, ages, ethnicities and social backgrounds from those that characterise them as victims.”

Being a member of a group or gang is a factor that does not just pertain to children and has also been included in previous guidelines such as assault. It reflects the enhanced fear and intimidation created by the presence of more than one offender.

³⁰ *Attitudes to sentencing sexual offences* para 6.2 p49, Sentencing Council Research series 01/12 www.sentencingcouncil.org.uk

³¹ *Ending gang and youth violence: cross-government report* (November 2011), Home Office

³² *Emerging findings from the inquiry into gangs and groups*, Children’s Commissioner (July 2012)

- ‘Use of alcohol/drugs on the victim to facilitate the offence’ is included as the Council wishes to reflect the increased culpability of someone who, in a common scenario, deliberately gets a victim drunk or administers some form of drug in order to render them incapable of consenting to sexual activity.
- ‘Abuse of position of trust’ – the fact that an offender’s culpability is increased if they are in a position of responsibility is something that was established in *R v Billam*.³³ This case gave a number of examples of ‘responsibility’. The Council believes that this is an important factor in terms of increasing culpability.
- ‘Recording of the offence’ by the offender has become more prevalent since the SGC guideline was published. This was specifically referred to by the Lord Chief Justice in *R v Anigbugu*³⁴ where he said:

“A pernicious new habit has developed by which criminals take photographs of their victims – often just to show off to their friends; often just to add to the humiliation which their victim is already suffering; and sometimes... either as a form of pressure to discourage any complaint but also possibly for the purposes of blackmail... We make it clear that from now onwards the taking of photographs should always be treated as an aggravating feature of any case and in particular of any sexual cases. Photography in these cases usually constitutes a very serious aggravating feature of the case.”
- ‘Vulnerable victim targeted’ has been included as a culpability factor. The wording encompasses different types of vulnerability, and could include the victim being targeted because they are elderly, frail, separated from friends or under the influence of alcohol. Baroness Stern stated:

“Alcohol was frequently raised by the police as a complicating factor. Excessive drinking leads to vulnerability. Memories are clouded by drunkenness so the case is difficult to investigate and to take through the courts.”³⁵
- ‘Stalking/harassment of victim’ and ‘previous violence against victim’ are both culpability factors that apply in cases where the offender is someone known to the victim, although they could also apply to a ‘stranger rape’. As stated at the beginning of this section the Council believes that it is important the factors considered are not just weighted towards rape by someone unknown to the victim but also recognise the reality that rape is more often committed by someone known to the victim.
- ‘Offence committed in course of burglary’ is a factor that the Lord Chief Justice identified in the case of *R v Anigbugu*.³⁶

“In a case where rape has been committed after or in the course of a burglary in a home – even if there are no additional features beyond the rape and burglary – the starting point will rarely be less than 12 years’ imprisonment.”

The Council believes that creating a permanent record of the attack, thereby subjecting the victim to re-victimisation, should be included at step one.

33 [1986] 1 WLR 349

34 [2011] EWCA Crim 633

35 See footnote 25, *The Stern Review*

36 See footnote 34

In the proposed formulation of harm and culpability, an offence committed in the course of a burglary, combined with the category 2 harm factor of forced entry into the victim's home would result in a sentencing range that would accommodate the views expressed in the *Anigbugu* case.

- 'Use of a weapon to frighten or injure' is a means of controlling the victim that the Council believes should be reflected as increased culpability.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)' are all factors that are found in the assault guideline. The Council considers that if the offender demonstrates motivation on one of these grounds, that his culpability should increase in terms of rape and should therefore be at step one.

Q1

Do you agree with the approach to harm and culpability proposed, in order to reflect the fact that all rape involves harm to the victim and a high level of culpability?

Q2

Do you agree with the harm and culpability factors proposed at step one for rape? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. This would then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline. For example, the starting point in category 2A is 10 years' imprisonment with a range of nine to 13 years.

These aggravating and mitigating factors allow the sentencer to consider the wider context of the offence, and also relevant factors relating to the offender. The lists at this step are not exhaustive and any factors not considered at step one, but which the sentencer considers relevant to either the harm to the victim or the culpability of the offender, can be taken into account at this step. A factor being present does not mean that the sentencer must take it into account; the sentencer has discretion to decide whether factors are influential in the case before them and, if so, will make an assessment of the weight to be given to them. In exceptional cases, having considered all the factors and their impact on the seriousness of the offence, the court may decide to move outside the category range identified at step one.

Although the list of factors is not exhaustive the Council's intention is to highlight factors that are likely to be relatively common to the offence to ensure that they are considered equally by all sentencers.

The table below sets out the proposed aggravating factors for the offence of rape.

Aggravating factors*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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ are factors where there is a statutory requirement for sentencers to take them into account when assessing the seriousness of an offence. As with previous guidelines the Council recommends that these factors should be considered at step two, only after the starting point has been established. Previous convictions for sexual offences will be regarded as particularly aggravating, as will an offence committed on bail for an offence against the same victim.
- ‘Severe psychological harm to the victim’ is the first non-statutory factor the Council

is proposing. The Council is sensitive to the fact that individuals will have differing psychological responses and that assumptions should not be made about the severity of a rape based solely on the resilience or lack of resilience of a victim. Dr Fiona Mason states:

“Many factors will affect an individual’s response to trauma and psychological reactions vary between individuals... elements that contribute significantly to post-traumatic responses include perception of life threat, actual injury and being the victim of a completed, as opposed to attempted, rape. Other variables are also important as listed below: pre-existing individual variables; age, prior psychiatric history, previous exposure to trauma and preparedness; stressor variables; unpredictability, suddenness, receiving intentional harm, relationship to perpetrator; response of external world; lack of support, victim blaming; and specific experiences of the individual; captivity, a sense of hopelessness, cultural beliefs, repeat traumatisation interrupting the recovery process.”³⁷

The Council has reflected the fact that all rape involves psychological harm into the starting points. Sentencers should be enabled to increase the starting points for all categories of cases where severe psychological harm has ensued and has therefore included it at step two.

- ‘Significant physical injury to the victim’ is a factor that can be viewed independently of the step one factor of violence; it is possible for the victim to sustain injury even if the level of overt violence is not significant, although in many instances the two will be related. There has already been discussion, see page

17 above, on the treatment of violence as a harm factor. The Council has not included injury as a step one harm factor as it does not wish to propagate the myth that a lack of physical harm makes a rape less serious. For this reason, the Council is proposing that this factor aggravates the offence at step two. This will allow sentencers to move upwards from the starting point where the victim has sustained significant physical injury.

- ‘Location of offence’ and ‘timing of offence’ are aggravating factors that are found in other guidelines such as assault and burglary. The factors are deliberately not prescriptive about which type of location or what time of day would aggravate an offence. This is in order to give the sentencer the flexibility to decide, based on the specific facts of the case before the court. For example, where a rape occurs in the daytime, but the offender has deliberately waited and chosen that time because he knows the victim will be at home alone, it will be as serious as the case where an offender has assaulted a victim late at night in a public place. In the same way, an attack in the home as a result of which the victim no longer feels safe in that home, can be as serious as an attack where the victim has been deliberately taken to an unknown place in order to isolate and disorientate them.
- ‘Victim compelled to leave their home (including victims of domestic violence)’, ‘failure to comply with current court orders’, ‘offence committed whilst on licence’, ‘exploiting contact arrangements with a child to commit an offence’ and ‘presence of others, especially children’ are all factors found in previous guidelines and have their roots in the SGC guidance on domestic violence.³⁸ The Council believes it is important to include aggravating factors that pertain to a rape that has occurred within a relationship, particularly because rapes within relationships are far more prevalent than

‘stranger rape’. Compulsion to leave home might apply not only to an offence within a domestic relationship but also where, following a stranger attack in the home, the victim feels unable to return to it.

- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ are both factors which have been included in previous guidelines and are intended to reflect the serious aggravation created where offenders attempt to intimidate their victims into remaining silent. Steps taken to prevent reporting cover a wide range of scenarios and could, in the case of rape, include instances of threats that physical harm will be done, or photographs taken during the offence will be circulated, if a report is made.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ has been included in this guideline as intoxication generally aggravates offences and in the context of rape may mean that the offender has made himself insensible to the effect on his victim.

Mitigation

There are a number of mitigating factors that the Council is consulting upon. The Council is aware of the difficulties and sensitivities concerning the treatment of mitigation in sexual offences. The NatCen research commissioned by the Council reported that:

“Both the public and victims/survivors were reluctant to identify mitigating factors, with the only broadly agreed mitigation being the mental capacity or mental health of the offender. This was felt to influence the nature not duration of the custodial sentence suggested, with an emphasis on treatment or care under supervision.”

³⁸ SGC *Overarching Principles: Domestic Violence Definitive Guideline*

However, mitigating factors must be considered by the courts when sentencing sexual offences and part of the aim of the guideline is to ensure that the sentencing process is transparent to both victims and the public. For that reason, the Council believes that the mitigating factors currently considered by the courts should be discussed in consultation and should appear within the guideline. The Council wishes to encourage a discussion about these factors and to also increase understanding about the impact these factors can have on the sentence. It is important to understand that the presence of a factor in the list does not mean that the sentencer must take it into account. In cases where it is relevant, it is for the individual sentencer to decide the extent to which, if any, it mitigates the level of sentence.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

- ‘No previous convictions or no relevant/recent convictions’ is the other side to the statutory aggravating factor of previous convictions. However, with serious sexual offences, the harm caused to the victim and the culpability of the offender are likely to mean that an absence of previous convictions does not result in much movement from the starting point sentence (see the discussion on ‘previous good character and/or exemplary conduct’ below).

- ‘Remorse’ has been included and is separate from the issue of an early guilty plea (dealt with at step four of the guideline). Remorse has always been recognised as a factor that can be taken into account as a mitigating factor.³⁹ Simple statements of remorse will rarely be sufficient to satisfy a sentencer of their true nature unless accompanied by other evidence of remorse, including the time at which the remorse was expressed. As with all mitigating factors, it will be for the sentencer in the individual case to decide how much weight should be attached to it as it will not always carry the same weight.
- ‘Previous good character and/or exemplary conduct’ is included but an explicit caveat has been included to make it clear that in the context of rape, these factors should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence. This wording follows the principle set out in the case of *R v Millberry*⁴⁰ which stated:

“While the fact that an offender has previous convictions for sexual or violent offences can be a significant aggravating factor, the defendant’s good character, although it should not be ignored, does not justify a substantial reduction of what would otherwise be the appropriate sentence.”

This issue is particularly complex in the context of historical sexual offences where there is likely to have been a substantial length of time between the offence being committed and the offender being sentenced. In the intervening period, the offender may have behaved in a number of different ways and the court will need to consider whether that behaviour aggravates or mitigates the offence.

39 Archer [1998] 2 Cr App R (S) 76

40 [2002] EWCA Crim 2891

For example, the fact that an offender has for many years been involved in voluntary work as a leader of a youth organisation and is a trusted pillar of the community, could be regarded as providing limited mitigation. However, if that offender had used this apparent good character and status to access or silence victims this would be regarded as a significantly aggravating factor.

The difficulties raised by this were highlighted by Lord Chief Justice Judge in *R v Hall*:⁴¹

“The passing of the years may demonstrate aggravating features if, for example, the defendant has continued to commit sexual crime or he represents a continuing risk to the public. On the other hand, mitigation may be found in an unblemished life over the years since the offences were committed, particularly if accompanied by evidence of positive good character.”

This demonstrates the difficulty of mitigation which must be assessed very carefully against the facts of the case before the court.

- ‘Age and/or lack of maturity where it affects the responsibility of the offender’ is a standard factor in previous Sentencing Council guidelines and is intended to deal with those offenders who are only just over the age of 18 or those over 18 but who are not as mature as others in their peer group.

The age factor can also be applied to offenders who are very elderly at the time of sentence. This generally arises in the case of historic sex offences, where the offender is sentenced decades after

offences have taken place. In *Millberry*⁴² the Court of Appeal considered that:

“In addition, the court is always entitled to show a *limited degree* of mercy to an offender who is of advanced years, because the impact that a sentence of imprisonment can have on an offender of that age.”

- ‘Mental disorder or learning disability, where linked to the commission of the offence’ appears in previous guidelines. This is a mitigating factor that the NatCen research found had support amongst victims and members of the public.

Q3

Do you agree with the aggravating and mitigating factors proposed at step two for the offence of rape? If not, please specify which you would add or remove and why.

Sentence levels for rape

The starting point and ranges in the existing SGC guidelines follow the Court of Appeal judgment in *Millberry*.⁴³ This recommended the following starting points:

- five years for a single offence of rape on an adult victim by a single offender with no other aggravating features;
- eight years where: there is more than one offender; or the offender is in a position of responsibility; or where the victim is a child or vulnerable; or the offence is racially motivated; or there is repeated rape in the course of an attack; or the offender is knowingly suffering from an STI; and
- 15 years and upwards for a ‘campaign’ of rape.

⁴¹ [2011] EWCA Crim 2753

⁴² [2002] EWCA Crim 2891

⁴³ *ibid*

The Council has considered the application of the existing SGC guideline based on *Millberry*. The Council recommends keeping the starting points of five and eight years with a clearer articulation of the culpability of the offender than appears in the existing guideline. This will mean that where any of the culpability A factors are present during the offence, see page 20, the starting point is likely to be seven and 10 years, not five and eight years, before any further adjustment for aggravating factors at step two.

In the existing SGC guideline a starting point of 15 years is reserved for multiple rapes. It is

the Council's view that multiple rapes should be charged and sentenced separately and the totality principle applied as to whether those sentences should be concurrent or consecutive.

The highest category can now be used for single rapes of particular severity, which in the Council's view will mean that there is the opportunity for a full reflection of harm in these cases.

The proposed new sentence levels are set out below.

	A	B
Category 1	Starting point 15 years' custody	Starting point 12 years' custody
	Category range 13 – 19 years' custody	Category range 10 – 15 years' custody
Category 2	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 9 – 13 years' custody	Category range 7 – 9 years' custody
Category 3	Starting point 7 years' custody	Starting point 5 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody

Q4

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Assault by penetration, Sexual Offences Act 2003 – section 2

Maximum sentence: Life imprisonment (full guideline page 179)

Assault by penetration is an offence that involves penetration of the vagina or anus with objects or body parts other than the penis. The types of penetration and offending behaviours are wider than found under the definition of rape and range from acts as severe as the highest category rape (for example, a violent sexual attack involving penetration of the victim with an object intended or likely to cause significant injury to the victim), to an activity that whilst involving severe sexual violation of a victim, is more akin to a serious sexual assault (for example, momentary penetration with fingers).

In the research conducted by NatCen, the public and victims found very little distinction between the severity of assault by penetration and rape:

“Assault by penetration was also discussed with focus group participants. They felt that assault by penetration was akin to rape and should be sentenced accordingly. Penetration by objects such as bottles or knives was described as a particularly aggravated form of rape by participants – potentially more serious and more physically damaging than penetration with a penis.”⁴⁴

The Council agrees that there is a high degree of crossover between this offence and rape in the situations described above. However, because the range of potential types of offending is wider for assault by penetration, the Council is proposing that the two offences should be treated separately in the draft guideline. Whilst many of the factors will be similar at the upper

ends of both offences, the Council believes that the differences in offending in category 3 are such that there should be separate guidelines, but would be interested in views on this approach.

Q5

Do you agree that assault by penetration and rape should be treated separately in the guideline?

STEP ONE

Determining the offence category

Harm

Under the existing SGC guidelines, a lower sentence is given for penetration with a body part, such as a finger or tongue where no other physical harm is sustained. A higher sentence would be given for penetration with an object (the larger or more dangerous the object, the higher the sentence should be) or penetration combined with abduction, detention, abuse of trust or more than one offender acting together.

The Council agrees with the conclusions of the NatCen research that states:

“Generally where penetration of genitals had occurred, the public and victims/survivors felt this was akin to rape regardless of what had been used to penetrate due to the level of violation inherent.”⁴⁵

The Council is proposing that the harm factors for such assaults should generally be treated in very similar terms to those in the rape guideline, with some amendments discussed below.

⁴⁴ *Attitudes to sentencing sexual offences*: Sentencing Council Research series 01/12 www.sentencingcouncil.org.uk

⁴⁵ *ibid*

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Penetration using large or dangerous object(s) • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home
Category 3	Factor(s) in categories 1 and 2 not present

The only difference to the harm factors specified in the rape guideline is that the factor relating to pregnancy or an STI occurring as a consequence of the offence is not included in the assault by penetration draft guideline. Since the offence does not involve penile penetration, these risks do not arise.

Instead, 'penetration using large or dangerous object(s)' has been added to this guideline. Whilst it is acknowledged that psychological harm results whatever the means of penetration, where a large or dangerous object has been used, the Council is of the view that this is of such significance that it should increase the starting point for the sentence. This is because it not only increases the physical consequences of the attack but also increases the psychological harm – see the discussion of severe psychological harm at page 23. Additionally it should be noted that an individual's psychological response to trauma may vary and that the object used will not always have a direct correlation to the psychological harm suffered.

For discussion on all the other harm factors listed in this proposed guideline please see the paragraphs on harm and rape at pages 16 to 19.

Culpability

For the reasons set out above, the Council believes that given the degree of similarity between offenders' behaviour in rape and in assault by penetration, the same culpability factors will apply.

Culpability

A

Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Recording of the offence
Vulnerable victim targeted
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

For a discussion of the rationale behind the inclusion of all these factors please see the section on culpability in rape at pages 19 to 22.

Q6

Do you agree with the harm and culpability factors proposed for assault by penetration? If not, please specify which you would add or remove and why.

STEP TWO**Starting points and category ranges**

Once the category and starting point has been decided the sentencer will then look at any aggravating and mitigating factors to allow the sentencer to consider the wider context of the offence. The Council believes that the same aggravating and mitigating factors apply to the offence of assault by penetration as to rape. Full discussion of these factors can be found under the discussion on rape at pages 22 to 26.

Aggravating factors*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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

Q7

Do you agree with the aggravating and mitigating factors proposed for assault by penetration? If not, please specify which you would add or remove and why.

Sentence levels for assault by penetration

The proposed sentence levels are set out below.

	A	B
Category 1	Starting point 15 years' custody	Starting point 12 years' custody
	Category range 13 – 19 years' custody	Category range 10 – 15 years' custody
Category 2	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 – 13 years' custody	Category range 4 – 9 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 2 – 6 years' custody	Category range High level community order – 4 years' custody

As discussed above, the means of penetration, whether it be penile, another body part or object, may not in every case make a difference to the victim as the violation incurred by the penetration is as severe. The Council believes that there is no justification for any difference in sentencing between rape and assault by penetration for category 1 offences. The same starting points of 15 years (culpability A) or 12 years (culpability B) custody is therefore proposed. For further discussion of these starting points, please see pages 26 and 27.

In categories 2 and 3, the ranges are broader than those in the rape guideline to accommodate the broader range of offending that can be encompassed in this offence. For example a category 2 assault by penetration could include an assault where the victim has been detained in their home by a partner for a prolonged period and as part of the assault there has been very brief penetration with a finger. However, it could also include a scenario where an ex-partner has broken into the victim's

house and carried out a violent assault and penetrated the victim with his fist.

In category 3, the starting points are higher than those in the existing SGC guideline for offences where any of the culpability A factors are present (four years as opposed to two years). In the SGC guideline this category is focused solely on the type of penetration for example, finger, toes or tongue. The Council's aim is to move away from a focus on the physical acts involved and to reflect the harm caused to the victim by any penetration, irrespective of the way in which it is carried out. Category 3 therefore reflects a baseline of harm without the need for the presence of any other factors.

Q8

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Sexual assault, Sexual Offences Act 2003 – section 3

Maximum sentence: 10 years' custody (full guideline page 185)

Sexual assault is any form of non-consensual sexual touching. It covers a range of offending from touching of the victim over clothing to non-penetrative touching of the victim's genitals. This offence excludes any penetrative sexual activity which is covered by either the offence of rape or assault by penetration.

STEP ONE

Determining the offence category

Harm

The existing SGC guideline categorises this offence purely by reference to the type of touching that has taken place, for example, 'contact between either the clothed genitalia of offender and naked genitalia of victim or naked genitalia of offender and clothed genitalia of victim'. The Council is of the view that this focus on the activity is too narrow an approach and can make it difficult for judges to reflect fully the harm caused to the victim, in particular the fear and intimidation that may be suffered by the victim. The changes proposed by the Council are intended to reflect both the emotional and physical harm that can be caused by this offence.

The proposed harm factors are set out below.

Harm	
Category 1	<ul style="list-style-type: none"> • Use of violence • Abduction/detention of victim • Forced entry into victim's home
Category 2	<ul style="list-style-type: none"> • Touching of genitalia • Prolonged/sustained assault • Additional degradation/humiliation • Context of habitual sexual abuse
Category 3	Factor(s) in categories 1 and 2 not present

Category 3 does not list any factors. This follows the same approach as that adopted in the rape and the assault by penetration draft guidelines and is intended to reflect that there is an inherent degree of harm caused by any sexual assault, without requiring the presence of any other additional factors.

Category 2 'touching of genitalia' contains the only reference to physical contact in the assessment of the level of harm. Whilst the Council maintains that the type of physical touching should not be the *only* determinant of harm, the degree of violation inherent in the touching of genitalia would always constitute at least a category 2 level of harm. The existing SGC guideline draws a distinction between clothed and unclothed genitalia. However, the Council does not believe that there is always such a clear distinction. For example, the degree of psychological harm caused by the isolation and fear of escalation in an assault where the victim is followed home at night by a stranger who, on a quiet street, grabs the victim between the legs, touches their clothed genitalia and pulls them to the ground, should constitute a category 2 level of harm, irrespective of the fact the touching of genitalia was over clothing. It is for that reason that the factor does not specify whether the genitalia should be clothed or unclothed.

The other three factors in this category are discussed under rape at pages 17 and 18.

Category 1 includes a number of factors that are found at category 2 in rape and assault by penetration. This is because category 1 sexual assaults will never be as severe as category 1 rapes or assault by penetration. This is reflected in the fact that the statutory maximum for this offence is 10 years rather than life. For example, a rape during the course of a forced entry into a home would warrant a starting point of 10 years. For sexual assault, which has a maximum sentence of 10 years allowed under the law, forced entry into the home has to be placed

in category 1 in order to enable sentencers an opportunity to pass a sentence that reflects the severity of this aggravation. The same rationale applies for use of violence and abduction/detention. For further discussion of these factors please see pages 17 and 18.

Culpability

The Council believes that there is enough commonality in offender behaviour for rape, assault by penetration and sexual assault to replicate the culpability factors. The proposed culpability factors are therefore:

Culpability
A
Significant degree of planning
Member of group or gang during the commission of the offence
Use of alcohol/drugs on the victim to facilitate the assault
Abuse of position of trust
Recording of the offence
Vulnerable victim targeted
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Use of weapon to frighten or injure
Threats of violence/threatening or violent sexual language
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

These are discussed at pages 19 to 22.

There is one additional culpability factor not found in either the rape or assault by penetration guidelines. This is 'threats of violence/threatening or violent sexual language'. It is included for this offence because the Council believes that the fear of escalation of an attack is likely to increase the psychological harm on a victim to the extent that it should affect the starting point sentence. For example, offenders may seek to control the victim using threatening language and especially violent sexual language to force compliance. In the case of rape and assault by penetration, this use of language may be secondary to the harm done by the actual penetrative assault but, in the case of non-consensual sexual touching, it can be central to the offence. The Council would welcome views on the inclusion of this factor for sexual assault.

Q9

Do you agree with the harm and culpability factors proposed at step one for sexual assault? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Once the category and starting point has been decided, the sentencer will then consider aggravating and mitigating factors to allow the sentencer to consider the wider context of the offence. The Council believes that the same aggravating and mitigating factors would apply to the offence of sexual assault as to rape or assault by penetration. Full discussion of these factors can be found under the discussion on rape at pages 22 to 26.

Aggravating factors*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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

These are discussed at pages 22 to 26.

Q10

Do you agree with the aggravating and mitigating factors proposed at step two for sexual assault? If not, please specify which you would add or remove and why.

Sentence levels for sexual assault

As has been stated above the statutory maximum for sexual assault is 10 years, which means that the sentence levels must necessarily start below those for assault by penetration and rape where the maximum sentence is life imprisonment. The starting points and ranges for culpability A are slightly higher than the existing SGC starting points and ranges. This is because the Council is taking a wider view than just the physical activity that has taken place and it reflects the inclusion of a broader range of culpability factors at step one in the draft guideline than is included in the SGC guideline.

Community orders have been included as the bottom of the range available to sentencers for categories 2B and 3 sexual assault offences. This is to reflect the very wide range of offending behaviour that can come before the courts to be sentenced. Whilst they are all serious cases, preventing reoffending and rehabilitating the offender may be better achieved by imposing a community sentence rather than a short custodial sentence where the offender's behaviour is unlikely to be addressed. For example, an offender approaches a woman at a crowded bus stop and grabs her breast over her clothing. The offender has no previous convictions. There is no doubt that this would be a very distressing experience for the victim and the sentencer will want to impose a sentence that prevents other women from being assaulted in a similar way in the future. For this type of case, the judge may wish to impose a community order for a period of up to two years with a requirement that the offender attends a sex offender treatment programme where his offending behaviour can be challenged and addressed.

The Council proposes the starting points and sentence ranges set out below.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years 6 months' custody
	Category range 3 – 7 years' custody	Category range 2 – 4 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 4 years' custody	Category range High level community order – 2 years' custody
Category 3	Starting point 26 weeks' custody	Starting point High level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody

Q11

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Sexual activity without consent, Sexual Offences Act 2003 – section 4 **Maximum sentence: Life imprisonment if penetration involved; 10 years' custody if not**

This offence covers a range of activity from forcing a victim to engage in sexual activity with a third party; for example, through the use of threats, forcing the victim to masturbate the offender or masturbate themselves or forcing the victim to engage in sexual activity with the offender; for example, a woman forces a man to penetrate her. As a woman cannot be charged with rape because penile penetration is required, this charge would be the alternative in the scenario where a woman forces a man to penetrate her.

This offence covers both penetrative and non-penetrative activity and has two different statutory maxima depending on the nature of the activity involved.

This offence is very rarely charged and since it came into force under the Sexual Offences Act 2003, there have never been more than 20 cases sentenced in any one year. In 2010, six cases were sentenced.

The Council proposes to replicate both the approach and sentence levels of the assault by penetration guideline where penetration is involved in the offence and the sexual assault guideline where there is no penetration involved. This is because very similar offender behaviour is involved in these offences and the Council believes there is enough commonality to use the same approach.

Q12

Do you agree with the Council's approach to the guideline on sexual activity without consent?

Section five: Offences where the victim is a child

This section considers offences where the victim is a child and the offender is over the age of 18. The definition of ‘child’ varies between offences in the Sexual Offences Act 2003 (SOA 2003). Generally, a child is defined as anyone under the age of 16 but there are some offences designed to give greater protection to those under the age of 13 and others where the definition of ‘child’ extends to anyone under the age of 18. At the beginning of the discussion of each offence it will be made clear which definition is applicable.

Offences relating to children under the age of 13

The first group of offences considered below are those that apply to children under the age of 13. The offences include:

- rape of a child under 13;
- assault of a child under 13 by penetration;
- sexual assault of a child under 13; and
- causing or inciting a child under 13 to engage in sexual activity.

The Sentencing Guidelines Council (SGC) included the under 13 offences in the same guideline as the equivalent offence for a victim over 13; for example, there is currently a single guideline for section 1 rape and section 5 rape of a child under 13. The Council is proposing a different approach which is to detach the under-13 offences from the offences for victims over 13 (which have already been discussed in section four).

The Council is of the view that there are issues and sensitivities unique to offences against children under 13 that require a separate guideline to ensure clarity for sentencers as to the factors to be taken into account and to provide a transparent process for others concerned with these cases.

The main difference between the under-13 offences and the equivalent offences for those 13 and over is that a victim aged under 13 is deemed to be legally incapable of consenting to sexual activity. An individual is therefore guilty of an under-13 offence if it is proved a) the sexual activity in question took place; and b) the child was under the age of 13. The under-13 offences were included in the SOA 2003 as the result of a policy decision to provide increased protection for younger children. As the then Lord Chancellor, Lord Falconer, explained during the passage of the Bill through Parliament:

“A fundamental justification for the under 13 offence is the age and vulnerability of the victim. We do not think it is right that where the victim is 12 or under the question of consent should arise. There would be many cases where it would be utterly invidious for a 12 year old or under to have to give evidence in relation to consent. We therefore think that there needs to be a cut off period. We think we have got the cut off period right.”⁴⁶

The issue of whether a victim under 13 consented to sexual activity is not a matter that a jury would have to consider in order to decide if an offender is guilty. The criminal justice system and courts can sometimes deal with cases where a child under 13 maintains that they willingly consented to sexual activity. Children in cases such as these are frequently vulnerable for a variety of reasons and subject to manipulation by sexual offenders. These cases demonstrate why the issue of consent was removed as a requirement for a conviction. In any event, the chronological age and emotional immaturity of these children preclude any meaningful consent.

Once a conviction has been obtained, sentencers will be faced with a variety of factual circumstances that will influence the type and length of sentence and the guideline seeks to deal with the most common of these. These factual circumstances can range from forced non-consensual activity seen in the equivalent offences for victims aged 13 and over discussed in section four, to instances where an adult offender has exploited or groomed a child to the extent that the child maintains they have consented to the activity and may even regard themselves as being in a 'genuine' relationship with the offender, or where, over time, the child has become habituated to the activity.

The Council feels it is important that, for these under-13 offences, cases where a child has been groomed into acquiescence are treated equally by sentencers as cases where there is forced non-consensual sexual activity and notes the recent report by the children's charity Barnardo's which found:

"Younger children are increasingly at risk of sexual exploitation. The experience of at least a third of our services is that overall, the children we are working with are getting younger. During the last five years, the average age of service users has fallen from 15 to around 13, and some services have started working with children as young as 10. One service stated: 'It is widely accepted by professionals, that 13 year old females are sexually active'. Another noted that 11, 12 and 13 year olds are being forced to have sex under the influence of alcohol. Some services suggested that the rise in children at risk of exploitation could be linked to earlier sexual abuse or exposure to overtly sexual content in the media, on the internet or via mobile phones. In these cases referrals are often made to projects on the basis that a child is displaying inappropriate sexualised behaviour."⁴⁷

47 *Puppet on a String: The urgent need to cut children free from sexual exploitation*, Barnardo's (2011)

Rape of a child under 13, Sexual Offences Act 2003 – section 5
Maximum sentence: Life imprisonment
(full guideline page 191)

Rape of a child under the age of 13 is committed if there is penile penetration of the vagina, anus or mouth of a child under 13. As set out above,

nothing else needs to be proved for the offence to have been committed and there is no defence of believing the child to be 13 or older.

Examples of the range of behaviour that may be charged and brought to court are given in the scenarios below and illustrate why sentencing for this offence presents challenges.

Scenario A

The victim (V) is a 12-year-old girl who lives with her mother and her mother's boyfriend, the offender (O), aged 31. O starts to kiss and sexually touch V. He orders V not to tell anyone otherwise the family will be split up and she will be taken into care. The touching becomes more frequent and escalates to one occasion of O vaginally raping V and threatening to kill her unless she complies. V breaks down and tells her mother everything and they go to the police.

Scenario B

The victim (V) is a 12-year-old girl and is in the park with her friend (A). They have been drinking alcohol when they are approached by the offender (O), who is 19, and O's friend (B). O strikes up a conversation with V and they go off together to a corner of the park where they start kissing and V performs oral sex on O. He asks V if she will go further and have sex with him. She hesitates at first but then agrees. They have vaginal intercourse, then return to their friends in the park where all four carry on drinking. V later tells A what happened; A tells V's older sister who reports the matter to their mother. V's mother reports the incident to the police.

Scenario C

The victim (V) is a 12-year-old girl and starts emailing the offender (O) (aged 26) on an internet chat room. They are in regular contact and exchange personal information which becomes sexually explicit. V admits her age to O but they continue to correspond. O tells her that age doesn't matter because he loves her. O persuades V to send him naked pictures of herself and in return sends her a naked picture of himself. V regards O as her boyfriend and they start to meet on a regular basis as V comes out of school when they go to O's house and have vaginal sexual intercourse. V always returns home before her parents are back from work so they are unaware of what is happening. V tells her best friend about her 'boyfriend' and his age. Her best friend is sufficiently concerned to tell their form teacher who reports the matter to V's parents and the police.

Scenario D

The victim (V) is a 12-year-old girl and lives next door to the offender (O) who is 19. They have known each other for a number of years. O lives at home with his parents and has learning difficulties with very few friends of his own age. V and O begin to spend a lot of time together and O asks V if she will be his girlfriend. There are no signs of exploitation with both believing they are in a genuine relationship. They have sex on two occasions. V's parents find out she is seeing O and confront O's parents who say they will sort it out. V's parents find her visiting O a couple of weeks later and report him to the police.

STEP ONE**Determining the offence category**

The first step the court will take is to consider the main factual elements of the offence. It has already been discussed that there may be a wide range of factual scenarios given the nature of the offence. The guideline does not attempt to deal with cases that are exceptional; instead it captures the most common cases that may come before the court.

Step one features an exhaustive list of the main harm factors that a sentencer should take into account.

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of rape • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home
Category 3	Factor(s) in categories 1 and 2 not present

Category 3 has no factors listed. The Council believes it is important for the guideline to reflect the fact that any rape of a child under the age of 13 involves an inherent serious harm, without the presence of any other factors.

Category 2 contains a list of principal features that when found in addition to the rape indicates additional harm. These harm factors are the same as those found in the section 1 SOA 2003 rape guideline and full explanations for each are found at pages 16 and 18.

Category 1 adopts the same approach as for the section 1 SOA 2003 rape offence set out at page 18. In the same way, the presence of extreme violence or the extreme nature of any category 2 factor could elevate a case to category 1. A full explanation of the rationale can be found at page 18.

Culpability

As set out earlier, there is a very wide range of offending behaviour exhibited by those who commit this offence, including exploitative behaviour used to obtain the acquiescence of the victim. For this reason, the culpability factors in this guideline are wider than those found in the section 1 SOA 2003 rape guideline at page 19 and these additional factors are explained in detail below.

Culpability**A**

Significant degree of planning

Member of group or gang during commission of offence

Use of alcohol/drugs on the victim to facilitate the offence

Use of gifts/bribes to coerce the victim

Evidence of grooming by offender

Use of threat (including blackmail)

Abuse of position of trust

Recording of the offence

Vulnerable child targeted

Previous violence against victim

Offence committed in course of burglary

Use of a weapon to frighten or injure

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

Culpability B has no factors listed. This is to reflect the fact that the act of rape of a child under the age of 13 already involves high culpability. It indicates the high culpability that will always exist even in the absence of any other factors.

Culpability A factors are examples of the principal culpability factors which the Council believes should be taken into account over and above the inherent culpability. A number of these factors are found in the SOA 2003 section 1 rape draft guideline at page 19. Where the factors have already been discussed the reference to the relevant discussion is given.

- ‘Significant degree of planning’ – see discussion at page 20.
- ‘Member of group or gang during commission of offence’ – see discussion at page 20.
- ‘Use of alcohol/drugs on the victim to facilitate the offence’ – see discussion at page 21. In addition to the use of alcohol to incapacitate the victim, access to alcohol and/or drugs may be used as part of the grooming process by offenders to gain the trust or friendship of a child by allowing them to behave in a way that would not be permitted by their parents or other responsible adults.
- ‘Use of gifts/bribes to coerce the victim’ is included because gifts or bribes may also be used as part of the process of exploiting or grooming a child to gain their trust.
- ‘Evidence of grooming by offender’ is included as a separate factor to cover a wide variety of sexual exploitation. Whilst two particularly harmful examples of this type of behaviour are separately listed above (use of alcohol and gifts), the Council understands that grooming behaviour can take many forms and there should be a more widely drafted factor to enable the courts to take this into account when determining the starting point for the sentence.
- ‘Use of threat (including blackmail)’ will increase the culpability of the offender. The offender may use the threat of telling others about the activity as a way of controlling the victim.
- ‘Abuse of position of trust’ has been previously discussed at page 21 but it is worth noting that for victims under the age of 13, trust arises not only from a position of formal responsibility but also from the offender’s relationship with the child, for example, a babysitter or a family friend who has been trusted to look after the child on a day out.
- ‘Recording of the offence’ – see discussion at page 21.
- ‘Vulnerable child targeted’ has been adapted from the section 1 SOA 2003 rape guideline where the factor is: ‘vulnerable **victim** targeted’. The higher starting points and ranges for this offence already account for vulnerability due to the age of the victim. There is, however, targeting of additional vulnerability that sentencers will need to reflect in the starting point, for example, an offender who targets children in care⁴⁸ or children whose home life is chaotic or dysfunctional,⁴⁹ knowing they are likely to be more susceptible to the attention of an adult who befriends them and professes to care for them.
- ‘Previous violence against victim’ – see discussion at page 21.
- ‘Offence committed in course of burglary’ – see discussion at page 21.

⁴⁸ Briefing for the Rt Hon Michael Gove MP, Secretary of State for Education, on the emerging findings of the Office of the Children’s Commissioner’s Inquiry into Child Sexual Exploitation in Gangs and Groups, with a special focus on children in care (July 2012)

⁴⁹ *Listening to Troubled Families*, a report by Louise Casey CB (July 2012) <http://www.communities.gov.uk/documents/communities/pdf/2183663.pdf>

- ‘Use of a weapon to frighten or injure’ – see discussion at page 22.
- ‘Offence racially or religiously aggravated’, ‘offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)’ and ‘offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)’ – see discussion at page 22.

Q13 Do you agree with the harm and culpability factors proposed at step one for rape of an under 13 year old? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors that have not already been considered at step one which either aggravate or mitigate the offence. This leads the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

These aggravating and mitigating factors allow the sentencer to consider the wider context of the offence, and also factors which relate to the offender. The factors are not exhaustive; any factors not already considered at step one but which the sentencer considers relevant to either the harm to the victim or the culpability of the offender, can be taken into account here as can additional relevant factors. The mere fact that a factor is present does not mean that the sentencer must take it into account; the sentencer must use their discretion to decide whether they are influential in the case before them and, if so, make an assessment of the weight to be given to them. In exceptional cases,

having considered all the factors and their impact on the level of the sentence, the court may decide to move outside the category range identified at step one.

Although the list of factors is non-exhaustive, the Council’s intention is to highlight the most common factors to ensure that they are considered equally by **all** courts.

The table below sets out the proposed aggravating factors for the offence of rape. A number of these factors are found in the SOA 2003 section 1 rape draft guideline. Where the factors have already been discussed the reference to the relevant discussion is given. Any additional factors are explained below.

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Victim’s education disrupted

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst offender under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Severe psychological harm to the victim’ – see discussion at page 23.
- ‘Significant physical injury to the victim’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Victim compelled to leave their home, school, etc’ and ‘victim’s education disrupted’ have been included to reflect the fact that where a child has had to move from their home, place of care or school as a result of the rape it can create even longer term harm as they will have had their education disrupted or been uprooted from friendship and support networks.
- ‘Failure to comply with current court orders’, ‘offence committed whilst on licence’, ‘exploiting contact arrangements with a child to commit an offence’ and ‘presence of others, especially other children’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’, ‘attempts to dispose of or conceal evidence’ and ‘commission of offence whilst offender under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

There are a number of mitigating factors that the Council is consulting on and further details of these are given in the section on rape and assault at page 24. The Court must consider mitigating factors and an explanation of why it is important that the Council fully consults on mitigating factors can be found at page 25.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

Q14

Do you agree with the aggravating and mitigating factors proposed at step two for rape of a child under 13? If not, please specify which you would add or remove and why.

Sentence levels for rape of a child under the age of 13

The Council is consulting on the basis that sentencing starting points and ranges for this offence should be higher than for the equivalent starting points and ranges in the SOA 2003 section 1 offence of rape in order to reflect the increased harm and culpability that exists when an adult offender decides to engage in penetrative sexual activity with a child under the age of 13.

The Council recognises that given the range of factual scenarios with which a sentencer may be faced, (examples are given at page 38) there is a necessity for flexibility within the sentencing regime. The Council is proposing the inclusion of explanatory text at the beginning of the guideline in order to indicate to sentencers that flexibility may be necessary. The wording proposed is:

“When dealing with the statutory offence of rape of a child under 13, the court may be faced with a wide range of offending behaviour.

Sentencers should have particular regard to the fact that these offences are not only committed through force or fear of force but may include exploitative behaviour towards a child which should be considered to indicate high culpability.

The guideline is designed to deal with the majority of offending behaviour which deserves a significant custodial sentence; the starting points and ranges reflect the fact that such offending merits a significant custodial sentence. There may however be a relatively small number of cases where a lengthy community order with a requirement to participate in a sex offender treatment programme may be the best way of changing the offender’s behaviour and of protecting the public by preventing any repetition of the offence, for example where the offender is himself young and particularly vulnerable.

Sentencers are reminded that if moving outside the guideline they must be satisfied that it would be contrary to the interests of justice to follow the guideline.”

This narrative guides a sentencer contemplating a sentencing option not available under the guideline. It is intended to cover exceptional cases, such as is outlined in scenario D at page 38, where the offender is an adult who is young themselves (19), with learning difficulties and there are no signs of exploitation. In this case, a sentencer may decide that a non-custodial sentence is more appropriate to address the behaviour of that offender. A lengthy community order with a sexual offences treatment programme attached may better enable the offender to understand his behaviour and see why the relationship is inappropriate and illegal. This sort of scenario will be rare but is

highlighted here to illustrate the difficult and sensitive decisions a sentencer can be faced with in trying to decide how best to lessen the chances of reoffending.

The Council seeks views as to whether the above explanatory text would assist sentencers, reinforcing flexibility in exceptional circumstances, whilst stressing the importance of taking due regard of exploitative and grooming behaviour.

Q15 Do you agree with the narrative guidance for rape of a child under 13? If not, do you have other suggestions as to the wording?

As stated above, the Council recommends that sentencing starting points and ranges for this offence should be higher than for rape of victims over the age of 13 to reflect the increased harm and culpability that exists when an adult offender engages in penetrative sexual activity with a child under the age of 13.

In the existing SGC guideline there are higher starting points and ranges for victims under the age of 13 except in the highest category where the starting point is 15 years’ custody, whatever the age of the victim. The logic to this is that when a rape has factors placing it in the highest category, the age of the victim becomes secondary to the extreme nature of those other factors.

Whilst the Council appreciates the logic of this approach, it feels there should be a differential in the sentence level to reflect the inherent vulnerability and harm done to a young victim by the commission of this offence. It is therefore proposing that the starting point is raised in the highest category so that it becomes a starting point of 16 years’ custody for victims under the age of 13 as opposed to 15 years’ custody for victims over the age of 13.

As was stated at page 27, the highest sentence level in the existing SGC guideline is reserved for multiple rapes. The Council proposes a move away from this approach and is recommending that the 16 year starting point should be available for single rapes.

The proposed new sentence levels are set out below.

	A	B
Category 1	Starting point 16 years' custody	Starting point 13 years' custody
	Category range 13 – 19 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 13 years' custody	Starting point 10 years' custody
	Category range 11 – 17 years' custody	Category range 8 – 13 years' custody
Category 3	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 8 – 13 years' custody	Category range 6 – 11 years' custody

Q16 Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Assault of a child under 13 by penetration, Sexual Offences Act 2003 – section 6

Maximum sentence: Life imprisonment (full guideline page 197)

Sexual assault of a child under 13, Sexual Offences Act 2003 – section 7

Maximum sentence: 14 years' custody (full guideline page 203)

Causing or inciting a child under 13 to engage in sexual activity, Sexual Offences Act 2003 – section 8

**Maximum sentence:
If penetration, life imprisonment
If no penetration, 14 years' custody (full guideline page 209)**

The issues and sensitivities that are attached to the offence of rape of a child under 13 are shared by the other under 13 offences (assault of a child under 13 by penetration, sexual assault of a child under 13 and causing or inciting a child under 13 to engage in sexual activity). The Council proposes to adopt the same approach and to keep the guidelines for these offences separate from the equivalent offence for those 13 and over. The guidelines, like the rape of a child under-13 guideline, will follow the format of the over-13 guidelines but have the addition of factors that more specifically relate to 'grooming' as these offences, unlike the over-13 offences, could involve a child being coerced and groomed into sexual activity.

The starting points and ranges are higher than for the over-13 guidelines but the same issue arises as discussed at page 38 about the potential range of offending behaviours because of the statutory definitions of these offences. The Council acknowledges that there may be exceptional cases when the judge is faced with a factual set of circumstances that do not fit within the guidelines and a greater degree of flexibility is required.

The guidelines are set out at pages 197 to 213.

Q17

Do you agree that the remaining under 13 offences should be treated separately from the 13 and over guidelines? If not, please give reasons.

Q18

Do you agree with the proposed guidelines for these offences? If not, please specify which factors you would add or remove and why.

Other sexual offences against children

The second group of offences to be considered are not specific to children under the age of 13. The offences looked at here will, in practice, normally be charged where the children are aged between 13 and 15 years.

Sexual activity with a child, Sexual Offences Act 2003 – section 9

and

Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003 – section 10

Maximum sentence: 14 years' custody (full guidelines page 215)

The offence of sexual activity with a child involves a person over the age of 18 engaging in penetrative or non-penetrative (touching) sexual activity with a child under the age of 16. The offence was introduced in the Sexual Offences Act 2003 following the Home Office review in 2000, *Setting the boundaries: reforming the law on sex offences*.⁵⁰ The review concluded that:

“... [Offences of] rape, sexual assault by penetration and sexual assault, all of which deal with non-consensual

⁵⁰ *Setting the Boundaries: Reforming the law on sex offences*, Home Office (2000)

behaviour, should be available for use as needed. There should be a separate offence to tackle behaviour that would not be an offence if committed between consenting adults but was wrong and inappropriate when children were involved. In general, therefore, consent was irrelevant – the culpability of the behaviour was because it was with a child.”

The offence of sexual activity with a child is normally charged where a victim is aged 13 to 15⁵¹ and the child maintains that they agreed to the sexual activity. Where a victim is over 13, lack of consent would need to be proved to obtain a rape conviction. Where a victim over the age of 13 maintains they have consented to the sexual activity, a charge of rape is unlikely to be successfully prosecuted. However, due to the age of the child, the offence of sexual activity with a child can be charged and successfully prosecuted instead of rape. This is because there needs to be proof only that the offender engaged in the sexual activity, irrespective of whether the child maintains that they agreed to the activity.

This offence applies to offenders over the age of 18 only. Where the offender is under the age of 18, a different regime applies and is discussed at page 139. As the CPS charging guidance makes clear: “sections 9 to 13 [of the SOA 2003] clarify that any sexual activity involving consenting children under 16 is unlawful”.⁵²

Similarly, the offence of causing or inciting a child to engage in sexual activity involves a person over the age of 18 intentionally causing or inciting a child under the age of 16 to engage in penetrative or non-penetrative sexual activity. The offence can be committed

where the offender has not touched the victim but has caused or incited the victim to engage in sexual activity on their own (for example, masturbation) or with a third party (for example, an offender persuades their victim to perform oral sex on another child). Unlike the section 9 offence, it does not require any touching to have taken place and extends to causing or inciting any sexual activity, for example, an offender persuading their victim to strip. This offence could also be conducted remotely, for example, if an offender caused their victim to engage in sexual activity via a webcam.

In the existing SGC guideline these offences and others, discussed below in this section, are referred to as ‘ostensible consent offences’.⁵³ In a recent Attorney General’s reference case, Lord Justice Pitchford noted:

“‘Ostensible consent’ and ‘willingness’ are terms which, in the context of offences against the young in particular, are susceptible to misunderstanding and, even if accurately used, are liable to obscure the true nature of the encounter between the offender and the victim.”⁵⁴

The Council agrees that the current focus and prominence given to the ‘ostensible consent’ of the victim does not fully address the culpability of the offender and is proposing that the guideline should concentrate on the offender’s behaviour rather than the behaviour of the victim. The Council intends to move away from the label of ‘ostensible consent’ and instead to focus the draft guideline on the way in which the offender has obtained the agreement of the child; for example, by the manipulation, coercion or grooming of the child to get them to agree to the activity and to maintain that agreement when the authorities become involved.

51 Where the child is under the age of 13, the normal charge is rape of a child under 13 or sexual assault of a child under 13, regardless of whether the child maintains consent

52 CPS charging guidance: *Sexual Activity with a Child*

53 Sentencing Guidelines Council *Sexual Offences Act 2003: Definitive Guideline*, pp48–58

54 AG Ref numbers 11 and 12 of 2012 (*R v Channer and another*) [2012] EWCA Crim 1119

As with the existing SGC guideline the Council has decided to deal with these two offences of engaging in sexual activity and causing or inciting sexual activity in the same guideline as they have the same statutory maximum sentence of 14 years' custody. The Council is also of the view that there is parity in terms of the harm done to the child and the culpability of the offender. The Council is interested in views on whether maintaining this approach of dealing with these offences together is generally supported.

Q19 Do you believe that engaging in sexual activity with a child and causing or inciting a child to engage in sexual activity should be dealt with in the same guideline?

STEP ONE Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. These offences deal with both penetrative and non-penetrative sexual activity and therefore encompass a wide range of sexual touching and sexual activity.

The approach of the existing SGC guideline is to focus purely on the nature of the sexual contact to determine offence starting points and ranges. In the section on rape and assault offences – see page 16 – the Council has already set out its concerns about labelling sentence levels solely in terms of activity because it does not fully reflect the seriousness or complexity of the offence. For these offences, however, the Council **is** consulting on the basis that harm is determined by reference to the sexual activity that has taken place. This is because, in this offence, the child may not see themselves as a victim and may not be conscious of harm

having been done to them. They may see the offender as their 'boyfriend' and may be unable or reluctant to articulate or recognise any psychological or emotional harm that has been done to them. The Council therefore suggests that harm must be correlated to the nature of the sexual activity, because where penetrative activity has taken place this will generally be more harmful and corrupting to the child than non-penetrative sexual activity. The suggested categorisation is set out below.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Category 3 involves sexual activity that does not involve penetration or masturbation.

Category 2 involves masturbation. The Council has decided to consult on the basis of category 2 containing only masturbation; an analysis of case law highlights the fact that masturbation and penetrative activity are involved in the majority of cases that come before the courts to be sentenced. The Council is seeking views on whether this makes category 2 too narrow but is keen to move away from the current complex formulation of physical contact found in the SGC guideline; for example, 'contact between naked genitalia of offender and naked genitalia or another part of victim's body, particularly face or mouth'.

Category 1 involves penetrative activity which could be penile, or by an object or other body part if it is of the vagina or anus, or penile penetration of the mouth. The Council has placed penetrative activity in the highest category because the consequences of this type of activity are the most harmful to victims. The legislation already recognises the increased

severity if penetration occurs, as the offence becomes triable only in the Crown Court if penetrative activity has occurred.⁵⁵

Culpability

In this offence, the Council believes that the culpability of the offender is particularly important in determining the severity of the offence.

Culpability

A

Use of gifts/bribes to coerce the child or other preparatory 'grooming' behaviours

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Abuse of position of trust

Sexual images of victim recorded, retained, solicited or shared

Vulnerable child targeted

Offender lied about age

Member of group or gang during commission of offence

Significant disparity in age

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

Culpability B has no factors listed, as with earlier guidelines. It is envisaged that the type of offender who would fall into this category is one who is in an unlawful and inappropriate relationship with their victim but there is not a significant disparity in age and there are no signs of exploitation (but see discussion on significant disparity in age below).

Culpability A lists factors which demonstrate that the offender has manipulated or coerced the victim or where there is disparity due to the offender's age or position in relation to the child. The specific factors that have been listed are:

- 'Use of gifts/bribes to coerce the child or other preparatory 'grooming' behaviours' is included to capture a wide range of behaviours. There has already been discussion of this factor in the rape of child under 13 guideline at page 40. This factor has been drafted widely to enable the courts to take into account the wide range of grooming behaviours that offenders employ when determining the starting point for the sentence. These behaviours are designed and used to gain the trust of the child to engage in the sexual activity and to subsequently exert control over the child.
- 'Use of threat (including blackmail)' – see discussion at page 40.
- 'Use of alcohol/drugs on victim to facilitate the offence' – see discussion at page 40.
- 'Abuse of position of trust' – see discussion at page 40.
- 'Sexual images of victim recorded, retained, solicited or shared has been widened from the wording 'recording of the offence' which is found in the other rape and assault guidelines. This is deliberate as, in the commission of these offences, the offender may have persuaded the victim to take naked pictures of him/herself. The images will be self-generated by the victim rather than recorded by the offender. The reason for inclusion of 'sexual images solicited' as a culpability factor is that the Council believes that an offender is culpable if he is soliciting sexual images from his victim regardless of whether the victim is robust enough to turn down the request. The Council would be

interested in views on the wording of this factor.

- ‘Vulnerable child targeted’ – see discussion at page 40.
- ‘Offender lied about age’ has been included to cover those instances, especially when contact has been made electronically, where an offender has misled their victim about their age so the victim believes they are in contact with a peer.
- ‘Member of group or gang during commission of offence’ – see discussion at page 20.
- ‘Significant disparity in age’ has been included as a culpability factor that increases seriousness. The Council feels that it is important to acknowledge disparity in age but, as this guideline deals only with offenders over the age of 18, there will be very few instances where the disparity in age is not significant. The Council would be interested in views on whether this factor should be included at step one or should be an aggravating factor at step two and reasons why this would be the preferred approach.
- ‘Offence racially or religiously aggravated’, ‘offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)’ and ‘offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)’ – see discussion at page 22.

Q20 Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. This would then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

Although the list of factors at step two is non-exhaustive the Council’s intention is to highlight factors that are likely to be relatively common to ensure they are considered equally by all courts.

The table below sets out the proposed aggravating factors for the offence of sexual activity with a child and causing/inciting sexual activity.

Where the factors have already been discussed the reference to the relevant discussion is given. Any new factors are explained in full below.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence
--

Pregnancy or STI as a consequence of sexual activity
--

Failure of offender to respond to previous warnings about the relationship
--

Commission of offence whilst under the influence of alcohol or drugs
--

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’, ‘offence committed whilst on licence’ and ‘exploiting contact arrangements with a child to commit an offence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Pregnancy or STI as a consequence of sexual activity’ is included at step two for this offence; for other offences it is at step one. This has been done deliberately because the Council is proposing, as discussed at page 47, that for this offence, penetrative sexual activity will place the offender in the highest category of harm. If pregnancy or STI resulted as a consequence of the penetrative activity, and was placed at step one there would be no opportunity for the sentencer to aggravate the sentence to take into account this additional factor. However, including pregnancy or STI at step two allows the sentencer to move upwards from the starting point from the highest category and treat pregnancy or STI as an aggravating factor.

- ‘Failure of offender to respond to previous warnings about the relationship’ has been included because there may be instances where an offender has been warned, for example by the victim’s parents, about the inappropriate nature of the relationship but they have continued with the relationship.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

There are a number of mitigating factors that the Council is consulting on. The sensitivity of mitigating factors, and the importance of giving them proper consideration in this consultation, is discussed in further detail in page 24.

Where the factors have already been discussed in previous sections the reference to the relevant discussion is given. Any new factors are explained in full below. The list of mitigating factors is non-exhaustive.

Mitigating factors

No previous convictions or no relevant/recent convictions
--

Remorse

Previous good character and/or exemplary conduct
--

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

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

Mental disorder or learning disability, where linked to the commission of the offence

Offender voluntarily stops the sexual activity taking place

- ‘No previous convictions or no relevant/recent convictions’ – see discussion at page 25.
- ‘Remorse’ – see discussion at page 25.

- ‘Previous good character and/or exemplary conduct’ is included, as it is in other guidelines. An explanatory note has been placed against this factor in the rape and assault offences which states that in the context of those offences, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction in what would otherwise be the appropriate sentence (see page 25). The Council is interested in whether it is felt that this should be reserved for offences such as rape and assault or whether such an explanation should be provided for the offences under discussion in this section.
- ‘Offender voluntarily stops the sexual activity taking place’ is a factor that has been included as there may be situations when a section 10 offence (causing or inciting sexual activity) is charged where sexual activity is incited but does not take place. The Council is consulting on whether the guideline should adopt a similar approach to that taken in the existing SGC guideline of including this as a mitigating factor. An alternative might be to include in category 3, attracting the lowest starting point, a factor stating that sexual activity was incited but did not take place. The Council would be interested in views on the preferred approach.
- ‘Determination and/or demonstration of steps taken to address sexual behaviour’ is a factor that is not included as mitigation in all offences. There are some offences such as rape where it is felt that this should not be listed as the gravity and complexity of the offending mean that this mitigation would carry very little weight. The Council is, however, consulting on whether in some sexual offences it may be appropriate to give the offender some credit for recognising and trying to address their behaviour and prevent future offending, so further victims are not created. As with remorse, simple statements of wanting to address behaviour will rarely, if ever, be sufficient to satisfy a sentencer of their true nature unless accompanied by clear evidence of how the offender has tried to address their behaviour. It will be for the sentencer in the individual case to decide how much weight should be attached to this factor as it will vary based on the facts before the judge.
- ‘Age and/or lack of maturity where it affects the responsibility of the offender’ – see discussion at page 26.
- ‘Mental disorder or learning disability, where linked to the commission of the offence’ see discussion at page 26.

Q21

Do you agree with the aggravating and mitigating factors proposed at step two for sexual activity with a child? If not, please specify which you would add or remove and why.

Sentence levels for sexual activity with a child

The starting points and ranges for sexual activity with a child and causing or inciting sexual activity are, in this draft guideline, influenced more by culpability than harm; starting points reflect two different and distinct levels of culpability which have already been discussed at page 48. Where the offence does not involve the exploitation or grooming of the victim, the sentence levels are substantially lower than those for offences where exploitation or grooming is involved.

Where the offender falls into the culpability B category (where there is no evidence of grooming or exploitation or significant disparity in age – see the example given under culpability B at page 48), then a non-custodial option will be open to the sentencer as part of the available range. The sentencer must assess the facts in the case before them and must be able to pass a sentence that will not only punish

the offender but also protect the public and any future victims by addressing the offender's behaviour and thinking, to best ensure they do not reoffend. In particular cases, the sentencer may, therefore, decide that a lengthy community order with not only punitive elements, but also a requirement that the offender engages in a sexual offender treatment programme will challenge their past behaviour and thinking, will be the best way to do this.

Where, however, there has been penetrative sexual activity, a custodial starting point is

always proposed. Similarly, where there is evidence of exploitation or grooming, a custodial starting point is recommended at every category level. Additionally, for the top category, the Council is proposing to increase the existing SGC starting point of four years and range of three to seven years, to a five year starting point with a range of four to 10 years. The Council believes that this increase is representative of sentences that are already being passed by courts⁵⁶ and is needed in order to address what can be very serious offending. The scenario below illustrates the point.

Scenario E

The offender (O) is a 40-year-old man who has a 13-year-old daughter (A). A has a 14-year-old friend (the victim, V) who has a difficult relationship with her parents and is emotionally vulnerable. V is a regular visitor to O's house to visit A. O allows V to smoke and drink and provides her with cigarettes and alcohol in the absence of A. He tells V that he is 'there for her' if her parents don't listen or understand her and provides V with money to top up her mobile phone so they can stay in touch. O starts texting V sexually explicit messages and encourages V to send naked pictures of herself to him which she does. O escalates the nature of the relationship and engages V in various sexual activities over a period of months including masturbation, oral sex and vaginal intercourse on numerous occasions. V believes herself to be in love with O. O persuades V not to tell anyone about the relationship by telling her that if she does he will go to prison. V's parents become suspicious about the amount of time she is spending at O's house and go to the police when V refuses to come home one weekend. When questioned by the police O denies any relationship. Under the draft guidelines, this would fall into category 1A with a starting point of five years and a range between four and 10 years.

⁵⁶ In 2011 36 per cent of offenders received a sentence of over 4 years

The proposed new sentence levels are set out below.

	A	B
Category 1	Starting point 5 years' custody	Starting point 1 year's custody
	Category range 4 – 10 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 3 years' custody	Starting point 26 weeks' custody
	Category range 2 – 6 years' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 6 months' custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Low level community order – High level community order

Q22 Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Sexual activity with a child family member, Sexual Offences Act 2003 – section 25
and
Inciting a child family member to engage in sexual activity, Sexual Offences Act 2003 – section 26
Maximum sentence: 14 years’ custody (full guideline page 221)

The SOA 2003 contains specific provisions for sexual activity with a child or inciting a child to engage in sexual activity when a family relationship is involved.

There is some overlap between sexual activity with a child family member in section 25 and sexual activity with a child in section 9 (discussed at page 45).

The section 25 offence is committed when a family member sexually touches a child under the age of 18; this can be either penetrative or non-penetrative sexual touching.

The section 26 offence is similar to but narrower than the section 10 offence of causing or inciting a child to engage in sexual activity (discussed at page 45).

The section 26 offence cannot involve a third party and is committed when the family member incites the child to touch them or allows themselves to be touched by the child.

It should be noted that the definition of ‘child’ for these offences involving a family member is a person aged under 18, and not a person aged under 16. The rationale for this higher age limit was set out in the Home Office report *Setting the Boundaries* which preceded the SOA 2003:

“...children up to the age of 18 deserve protection from abuse and exploitation in situations where they might not be

able to make an informed and mature choice of sexual partner because of their dependence on members of the family. Children in a family are particularly vulnerable... until [the age of 18] they are still legally children and dependent in many ways on adult parents or guardians.”⁵⁷

Unlike sections 9 and 10 the offender does not have to be over the age of 18 under the legislation but this section deals only with offenders over that age. For a discussion of this offence for offenders under the age of 18 please see section ten.

The definition of ‘family member’ is wider than blood relationships to recognise the fact that family units can be diverse and complex.⁵⁸ It includes blood relations of a child along with step parents and step siblings, foster parents and anyone living in the same household as the child who is regularly involved in caring for, training, supervising or being in sole charge of the child.

These offences will normally be charged where the victim maintains that he or she agreed to the sexual activity (see explanation at page 46).

The Council intends to take a similar approach to that proposed for sexual activity with a child explained at pages 45 to 53. This means the Council is consulting on the basis of dealing with both section 25 and 26 offences in the same guideline. They have the same statutory maximum sentence of 14 years and the Council believes that there is parity in terms of the harm done to the child and the culpability of the offender. As with the section 9 and 10 offences above the Council is interested in views on whether dealing with these offences together is generally supported.

⁵⁷ *Setting the Boundaries*, Home Office (2000), para 5.5.7

⁵⁸ s.27 Sexual Offences Act 2003

Q23

Do you believe that engaging in sexual activity with a child family member and inciting a child family member to engage in sexual activity should be dealt with in the same guideline? If not, please give reasons.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. These offences cover both penetrative and non-penetrative sexual activity and so encompass a wide range of sexual touching and sexual activity.

Before consideration of the harm and culpability of the offence, the Council believes it is important to emphasise that abuse of trust is an inherent feature of these offences and that, given the range of family relationships that are set out under the SOA 2003, the closer the family relationship between the offender and the victim, the greater the harm and the culpability for that offence will be. The narrative proposed for inclusion in the guideline is:

“The court should determine which category of harm the offence falls into by reference only to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point. This offence involves those who have a family relationship with the victim and it should be assumed that the greater the abuse of trust within this relationship the more grave the offence.”

The Council is interested whether it is felt that the inclusion of this type of narrative at this point would assist sentencers and, if not, how it would be proposed to deal with the degree of trust within the relationship?

The Council is proposing to adopt the same format as the offence of sexual activity with a child, as the same challenges arise in terms of the child not always perceiving or articulating the harm done to them and the fact the Council intends the emphasis for the sentence to be on the offender’s culpability rather than the child’s actions (see page 46).

The harm factors have already been discussed at page 47.

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability

As with sections 9 and 10 of the SOA 2003, the Council believes that the culpability of the offender is particularly important in determining the severity of these offences. It is therefore proposed that the same approach is adopted and where the factors have already been discussed, this is indicated. Any additional factors are fully explained below.

Culpability**A**

Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Sexual images of victim recorded, retained, solicited or shared

Vulnerable child targeted

Significant disparity in age

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

Culpability B has no factors listed. Given that the offender will always be in a family relationship⁵⁹ with the victim there will be a very high level of culpability on the part of the adult offender which will be reflected in the sentence starting points and ranges discussed below.

Culpability A lists factors that demonstrate manipulation, exploitation and coercion of the victim, in addition to the abuse of trust inherent in this offence.

- 'Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours' – see discussion at page 48.
- 'Use of threat (including blackmail)' – see discussion at page 40. This factor is likely to be particularly relevant in the context of family relationships where the offender may use threats to exploit the child's fears of

family breakdown as a way of persuading them not to reveal the abuse.

- 'Use of alcohol/drugs on victim to facilitate the offence' – see discussion at page 40.
- 'Sexual images of victim recorded, retained, solicited or shared' – see discussion at page 48.
- 'Vulnerable child targeted' – see discussion at page 40.
- 'Significant disparity in age' – see discussion at page 49.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)' – see discussion at page 22.

There are differences between some culpability A factors in this guideline and those found in the sexual activity with a child guideline at page 48. The first of these is 'abuse of position of trust' which does not appear in this guideline. As set out above, abuse of trust is inherent in these offences and is already reflected in the sentencing starting points and ranges.

The next difference is the absence of the factor 'offender lied about age' as in these offences it is assumed the victim will be aware of the offender's age because of the family relationship. It is not included at step one as a principal factors of these offences but if it is relevant to the facts of a particular case, the sentencer can take it into account as an aggravating factor at step two to increase the sentence from the starting point.

⁵⁹ As defined by s.27 Sexual Offences Act 2003

The third difference is the absence of ‘member of group or gang during commission of offence’. The Council is, however, seeking views as to whether this should be listed as a step one principal factor when a family member is involved or whether it can be considered as an aggravating factor at step two.

Q24

Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child family member and inciting a child family member to engage in sexual activity? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. This would then lead the court to decide whether the sentence should be adjusted upwards or downwards in the relevant range.

The Council has identified what it believes to be the most common factors but this is not an exhaustive list and sentencers will have the flexibility to take into account other relevant factors to increase the sentence from the starting point.

The table below sets out the proposed aggravating factors. Where factors have been discussed already the reference to the relevant discussion is given.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Commission of offence whilst under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Pregnancy or STI as a consequence of sexual activity’ – see discussion at page 50.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.

The Council has not included ‘failure of offender to respond to previous warnings about the relationship’ because the offence is committed in the context of a family relationship and therefore it is unlikely that warnings about contact between the offender and the victim will have been given. It is more likely that other family members will immediately contact the relevant authorities. The Council is, however, seeking views on this reasoning.

Mitigation

The Council is consulting upon the same mitigating factors as for the offence of sexual activity with a child. A more extensive discussion of mitigating factors is found at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Sentence levels for sexual activity with a child family member

As with sexual activity with a child in a non-familial relationship, culpability is particularly significant in terms of the suggested starting points and ranges. To reflect the fact that abuse of trust is always present in these offences, the proposed starting points and ranges are higher than for the offence of sexual activity with a child. Given that the current offence will always involve a family member, the Council is recommending that where the offence includes penetrative sexual activity, a custodial sentence would always be appropriate. The Council is not recommending community orders for this higher category.

However, because of the wide definition of ‘family member’ the Council is recommending giving sentencers the option of a non-custodial sentence in cases where there has been neither penetrative sexual activity or masturbation and where there are no signs of exploitation or grooming. Such a scenario is set out below.

Q25 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

Scenario F

An 18-year-old male au pair lives with a family and is responsible for being in sole charge of a 14-year-old girl after school, driving her home from school and cooking dinner. The au pair and girl become close and are caught by the parents in a state of undress kissing and touching each other. There is no evidence of exploitation and the victim maintains she wanted to kiss the au pair and become his girlfriend.

The au pair comes within the definition of ‘family member’ by virtue of section 27(4) of the SOA 2003 and has therefore committed the section 25 offence. As a result of the conviction, the au pair will be placed on the sex offenders register. This is a difficult sentencing exercise but in such a case a sentencer may wish to impose a community order with both punishment (unpaid work) and rehabilitation elements (for example, psychological treatment challenging the thought processes that led the offender to think his behaviour was acceptable) as opposed to a relatively short custodial sentence.

The proposed sentence levels are set out below.

	A	B
Category 1	Starting point 6 years’ custody	Starting point 3 years 6 months’ custody
	Category range 4 – 8 years’ custody	Category range 2 years 6 months’ – 5 years’ custody
Category 2	Starting point 4 years’ custody	Starting point 18 months’ custody
	Category range 2 – 6 years’ custody	Category range 6 months’ – 2 years 6 months’ custody
Category 3	Starting point 1 year’s custody	Starting point Medium level community order
	Category range High level community order – 2 years’ custody	Category range Low level community order – High level community order

Q26

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Engaging in sexual activity in the presence of a child, Sexual Offences Act 2003 – section 11
and
Causing a child to watch a sexual act, Sexual Offences Act 2003 – section 12
Maximum sentence: 10 years’ custody
(full guidelines page 227)

The section 11 offence is committed where an offender aged over 18 intentionally engages in sexual activity knowing they can be observed by a child, and obtaining sexual gratification from being observed. The offender may be in the same room as the child but equally could be conducting the sexual activity at a different location via a webcam.

The section 12 offence is committed by an offender over the age of 18 causing a child to watch a third party engage in sexual activity or causing a child to look at an image of a person engaging in sexual activity, and obtaining sexual gratification from making the child watch the act. For the purposes of these offences a child is defined as anyone under the age of 16.⁶⁰

The Council proposes to deal with both these offences in one guideline as it is of the opinion that there are common offending behaviours involved and that they are both equally harmful. They also share a statutory maximum of 10 years’ imprisonment. Although the existing SGC guidelines treat these offences separately, since their publication there has been an increased understanding of the ways in which children can be groomed. The activities in both these offences can be deployed by offenders to normalise and desensitise children to sexual activity. The European Online grooming project found:

“Visual desensitisation involved sending young people adult pornography and/or indecent images of children. Where online groomers talked about a gradual process of offence intensity and escalation, images were used to instigate sexual discussion. Use of images also intensified the abuse process for the offender. For example, it was not uncommon for some offenders to describe masturbating to ejaculation whilst discussing images with young people.”⁶¹

Q27

Do you believe that the offences of engaging in sexual activity in the presence of a child and causing a child to watch a sexual act should be dealt with in the same guideline? Please give reasons for your answer.

STEP ONE**Determining the offence category**

The first step that the court will take is to consider the principal factual elements of these offences.

In this draft guideline, severity of harm is determined by the type of sexual activity viewed by the victim. The existing SGC guideline gives the highest starting point to images of consensual penetration and live sexual activity. However, the Council believes that there are some images of sexual activity which should attract the highest starting point because of the depravity portrayed in them and their distorting effect on the child’s view of sexual activity. The proposed categorisation is set out below.

⁶⁰ s.11(1)(d) and s.12(1)(c), Sexual Offences Act 2003

⁶¹ European online grooming project final report p7, <http://www.european-online-grooming-project.com/>

Harm	
Category 1	<ul style="list-style-type: none"> • Causing victim to view extreme pornography • Causing victim to view indecent/prohibited images of children • Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> • penetration of vagina or anus (using body or object) • penile penetration of the mouth • masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Category 3 involves a wide range of sexual imagery and activity that does not involve penetration, masturbation or extreme images.

Category 2 deals with penetrative sexual activity and masturbation. Causing a victim to view penetrative activity is currently the highest category of harm in the SGC guideline. The Council wishes to retain similar sentence levels for causing a child to view this type of activity and does not propose to reduce sentence levels. The Council does, however, feel there is another level of imagery deserving even higher sentence starting points and ranges (see discussion of category 1 below).

Category 1 covers offences where the child is exposed to extreme pornography,⁶² indecent or prohibited images of children or views live sexual activity which involves sadism, violence, sexual activity with an animal or a child. When the SGC guideline was written, the offence of extreme pornography had not been created but the Council believes that the guidelines should now be brought up to date to include a reference to extreme pornography.

Culpability

As set out earlier in this discussion, exposure to sexual imagery can be used by offenders to desensitise a child to sexual activity in order to facilitate further sexual offending by the offender or others. The Council is recommending that the culpability factors should focus on whether there is evidence of such grooming or manipulation of the child. Increased culpability will be demonstrated by an offender who is deliberately trying to corrupt and desensitise the child alongside the sexual gratification they are getting in exposing the child to the imagery or sexual activity.

Many of the factors identified below have already been discussed in relation to other offences such as sexual activity with a child and that is indicated below.

Culpability

A

Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Abuse of position of trust

Vulnerable child targeted

Significant disparity in age of parties

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

⁶² Extreme pornography is defined in s.63(7) Criminal Justice and Immigration Act 2008 as an image which: "portrays, in an explicit and realistic way, any of the following - (a) an act which threatens a person's life, (b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals, (c) an act which involves sexual interference with a human corpse, or (d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive)."

Culpability B has no factors listed but the sentence starting points and ranges reflect the inherent abusive and corrupting behaviour that will always be present when an offender exposes a child to sexual imagery for the offender's sexual gratification.

Culpability A lists factors that demonstrate an offender has manipulated, exploited or coerced a child.

- 'Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours' – see discussion at page 48.
- 'Use of threat (including blackmail)' – see discussion at page 40.
- 'Use of alcohol/drugs on victim to facilitate the offence' – for these offences, alcohol or drugs may not just be used to obtain the victim's agreement to view the activity or make them incapable of resistance, alcohol and drugs may also be used to obtain the victim's trust as part of the wider grooming process.
- 'Abuse of position of trust' – see discussion at page 40.
- 'Vulnerable child targeted' – see discussion at page 40.
- 'Significant disparity in age of parties' – see discussion at page 49.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)' – see discussion at page 22.

Q28

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one, the court is then guided to identify whether there are any additional factors which might aggravate or mitigate the offence warranting adjustment from the starting point.

Where factors have been discussed already the reference to the relevant discussion is given.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst offender under the influence of alcohol or drugs

- 'Previous convictions' and 'offence committed whilst on bail' – see discussion at page 23.
- 'Location of offence' and 'timing of offence' – see discussion at page 24.
- 'Failure to comply with current court orders' and 'offence committed whilst on licence' – see discussion at page 24.
- 'Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution' – see discussion at page 24.

- ‘Attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Commission of offence whilst offender under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

The Council is consulting upon the same mitigating factors as for the offence of sexual activity with a child. A more extensive discussion of mitigating factors is found at page 24.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

Q29

Do you agree with the aggravating and mitigating factors proposed at step two? Please give reasons for your answer.

Sentencing starting points and ranges

As discussed in the introductory paragraphs to this offence (see page 60), the Council is recommending a different approach to that taken by the SGC. The maximum sentences that were recommended in the SGC guideline for these offences were:

- two years’ imprisonment with a range of one to four years’ imprisonment for sexual activity in the presence of a child which involved consensual penetration; and
- 18 months’ imprisonment with a range of 12 months to two years’ imprisonment for causing or inciting a child to watch a live sexual act.

Both of these types of activity are now likely to be encompassed in category 2 with similar sentence levels as described in the scenarios below.

Scenario G

The offender (O), a 25-year-old male, has been emailing his victim (V), a boy aged 11, over a number of weeks after they started chatting on an online forum about video games. O has offered to support V as he has been having a difficult time with bullying at school. They start to communicate by webcam. One evening O asks V sexually explicit questions and then masturbates in front of the webcam knowing that V is watching him remotely. O tells V he must continue to communicate with him so they can do it again and if he doesn’t maintain contact or if he tells anyone what has happened he will tell people at V’s school that V is gay. This is likely to be a section 11 offence falling into category 2A with a starting point of two years and a range of one to three years.

Scenario H

The offender (O), a 25-year-old male is looking after the victim (V), an 11-year-old boy, whilst his mother is out for the evening. During the course of the evening O starts talking to V explicitly about sex and tells V the sorts of sexual activity he enjoys. V is uncomfortable with the conversation and says he wants to go to bed. O becomes verbally aggressive towards V and insists he should watch a DVD he has brought with him. V is intimidated and stays and O shows V a pornographic film. O describes graphically how he is sexually aroused watching the film with V and what sexual activity he would like to engage in with V. O then tells V he will get into serious trouble for having watched it. He also tells V that if V tells his mother she will think her son is a pervert for looking at pornography. The offence comes to light when V gets very distressed and breaks down when his mother asks O to babysit again. This is likely to be a section 12 offence falling into category 2A with a starting point of two years and a range of one to three years.

The Council is also consulting on the inclusion of additional activity to be included in category 1 for the reasons set out at page 60. For example, where a child is forced to watch pornography that involves sadism or is shown indecent images of children, for the sexual gratification of the offender, then this will fall into category 1. The Council believes that the harm done to the child is increased by the extreme nature

of the imagery and, where it is combined with manipulative and coercive behaviour on the part of the offender, it should attract a custodial sentence higher than currently reflected in SGC guidelines.

The proposed sentence levels and starting points are set out below.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

Q30

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Meeting a child following sexual grooming, Sexual Offences Act 2003 – section 15

Maximum sentence: 10 years’ custody (full guideline page 233)

This offence is committed when an offender aged 18 or over meets or communicates with a child (for this offence defined as ‘under the age of 16’) who then either meets the child or travels with the intention of meeting the child intending to commit an offence under the SOA 2003. This offence is different to the child sexual offences discussed so far, which have involved the offender committing the substantive offence, whereas this offence is committed by preparing to commit one of those substantive offences.

The offence is often referred to by the shorthand of ‘grooming’. However, as set out earlier in this section, that phrase can also be used to describe manipulative behaviour used by offenders to condition victims to obtain their apparent acquiescence to sexual activity with the offender or others. There has recently been reporting of ‘on-street grooming’ and also ‘internet grooming’ but it is important to distinguish the wider activity this can involve from the activity required for the commission of this offence.

The section 15 offence specifically requires:

- communication⁶³ with a child on at least two occasions; and
- the offender travels to meet the child following this communication with the intention of committing a sexual offence.

It is important to appreciate that both the above elements will have to be proved for an offender to be guilty of the offence of grooming. It is not applicable where an adult has communicated

with their victim but has not also travelled to meet the child. The reason this offence was introduced into the SOA 2003 was because, prior to the act, unless a sexual offence had already been committed there would be nothing that an offender could have been charged with and therefore this offence “enables earlier intervention than would otherwise be possible.”⁶⁴

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence.

The fact that this offence is designed to enable early intervention and to prevent an offender committing further offences means that harm and culpability may not have been fully realised due to that intervention. For this reason it is difficult to articulate harm and culpability in the same way as for other sexual offences.

It is proposed therefore that the guideline categories are as follows below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Grooming without raised harm or culpability factors present

Harm factors

The existing SGC guideline has just two categories of offence. The highest is reserved for cases when the intent of the offender is to commit an assault by penetration or rape. The second category applies where the offender’s intent is to coerce the child into any other form of sexual activity.

⁶³ This communication could be in person or remotely via phone or the internet

⁶⁴ Rook and Ward on Sexual Offences, 4th edition, para 4.135

The Council is proposing that harm and culpability should be articulated in more detail than in the existing SGC guideline. The proposed factors indicating raised harm are set out below.

Factors indicating raised harm
Child threatened (including blackmail)
Continued contact with victim despite victim's attempts to terminate contact
Sexual images of victim exchanged
Vulnerable victim targeted
Child exposed to extreme sexual content for example, extreme pornography
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

- 'Child threatened (including blackmail)' is included here as a harm factor. This is different to other guidelines where it is a culpability factor. In other offences, for example, sexual activity with a child, the use of threats increases the offender's culpability in procuring the sexual activity which subsequently takes place. In this offence, because no actual sexual activity has necessarily taken place, the harm to the child will be psychological as a result of the threats made to them.
- 'Continued contact with victim despite victim's attempts to terminate contact' has been included to deal with cases where the offender has persisted with his offending behaviour despite attempts by the victim to terminate contact. This is likely to induce a sense of menace in the victim and therefore increases the psychological harm.
- 'Sexual images of victim exchanged' – in other guidelines this is expressed as the culpability factor 'sexual images of victim recorded, retained, solicited or shared'. It is included here as a feature of harm for this offence because of the damage caused by the victim's knowledge that there are images held by the offender which may be circulated and over which they have no control.
- 'Vulnerable victim targeted' is intended to cover vulnerability over and above the fact that the victim is a child (see also the discussion on vulnerability under the offence of sexual activity with a child at page 40). Barnardo's in their report *Puppet on a String* have said:

“...some groups of young people are more vulnerable to targeting by the perpetrators of sexual exploitation. These include children living in care, particularly residential care, those who are excluded from mainstream school and those who misuse drugs and alcohol. Barnardo's is concerned that these children are increasingly being targeted by abusers who are developing more sophisticated grooming techniques.”⁶⁵
- 'Child exposed to extreme sexual content for example, extreme pornography' – there has already been discussion of exposure to extreme pornography at page 60 in relation to the offence of causing a child to watch sexual activity. If the communication with the offender has included exposure to extreme sexual content, then this will have had a harmful and corrupting effect on the child.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual

⁶⁵ Barnardo's report *Puppet on a String* http://www.barnardos.org.uk/ctf_puppetonastring_report_final.pdf

orientation)’ and ‘offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)’ – see discussion at page 22.

In terms of culpability, the offender starts with a high degree of culpability by communicating with, and travelling to meet the victim in order to engage them in some form of sexual activity. There are, however, a number of culpability factors that the Council believes further increases culpability. These are set out below.

Factors indicating raised culpability

Communication indicates penetrative sexual activity is intended
Lied about age/persona
Use of coercion through threats, gifts or bribes
Abuse of position of trust
Offender deliberately targets a child under the age of 13
Abduction or detention
More than one offender acting together

- ‘Communication indicates penetrative sexual activity is intended’ – this factor demonstrates the severity of the sexual offence the offender intended to commit.
 - ‘Lied about age/persona’ is included as the Council feels there is increased culpability because of the additional deception on the part of the offender. The Council is alive to the fact that not all offenders will disguise their identity and that some will exploit the fact that, for example, a young girl may be looking for an older ‘grown up’ boyfriend. It is certainly not intended that if someone has been honest about their age and persona it should be used as mitigation. The Council does, however, feel a deliberate change to identity indicates a high level of planning and culpability. The European Online Grooming Project reported:
- “Online identities were shaped to present the men positively to young people. There were men that described making ‘minor’ changes to their identity such as changing their name, age, marital status or using a younger (perhaps more attractive) photograph of themselves. Some men made these minor changes to their identity based on unsuccessful previous attempts at contact. There were also people that made major changes to their identity. Here changes went beyond amending age or name, and could involve pretending to be a young girl or woman. Some offenders also talked about using multiple concurrent identities online, and switching between them to maximise the opportunity of contact. Finally, there were online groomers that did not change their identity before or during their online encounters with any young people. Alongside listing legitimate details, some men were also explicit about their sexual interest in young people. That some of these men went on to develop contact with young people raises important questions about the vulnerability of some young people online.”⁶⁶
- ‘Use of coercion through threats, gifts or bribes’ are elements of sexual exploitation that has already been discussed for other offences at pages 40 and 48.
 - ‘Abuse of position of trust’ – see discussion at page 40.
 - ‘Offender deliberately targets a child under the age of 13’ – the Council believes that higher sentence levels should potentially be available where the offender deliberately targets a child victim, whatever their age. However, it is consulting on whether deliberate targeting of those under the age

66 European Online Grooming Project <http://www.european-online-grooming-project.com/>

of 13 should increase culpability as this age group were specifically identified in the SGC guideline as an increased culpability factor. The Council would welcome views on this.

- ‘Abduction or detention’ would increase the offender’s culpability – see discussion at page 17.
- ‘More than one offender acting together’ – earlier Sentencing Council guidelines⁶⁷ have included ‘offending committed in the context of group or gang activity’ as a higher culpability factor. The Council is aware that grooming by groups and gangs is the subject of an ongoing report by the Children’s Commissioner.⁶⁸ The Council is continuing to monitor developments in this area but recommends that offences committed in this context should be treated as a factor increasing the offender’s culpability.

Q31

Do you agree with the format of the guideline for the offence of meeting a child following sexual grooming?

Q32

Do you agree with the harm and culpability factors proposed at step one for the offence of meeting a child following sexual grooming? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one the court is then guided to identify whether there are any additional factors which might aggravate or mitigate the offence warranting adjustment from the starting point.

Where factors have been discussed already the reference to the relevant discussion is given.

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ – see discussion at page 24.
- ‘Attempts to dispose of or conceal evidence’ – see discussion at page 24.

⁶⁷ Sentencing Council: *Assault: definitive guideline*

⁶⁸ <http://www.childrenscommissioner.gov.uk/info/csegg1>

Mitigation

The Council is consulting upon the same mitigating factors as those present in all the offences where children are victims. A more extensive discussion of mitigating factors is found at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Sentence levels for meeting a child following sexual grooming, etc

The Council recommends that category 1 should have the same starting point and ranges as the top range under the existing SGC guideline. The SGC guideline, however, has higher starting points and ranges for offences committed against those under the age of 13. The Council recommends that the SGC higher level starting point for those under the age of 13 should be available for all age groups where higher harm and higher culpability are present.

Category 1	Starting point 4 years' custody
	Category range 3 – 7 years' custody
Category 2	Starting point 2 years' custody
	Category range 1 – 4 years' custody
Category 3	Starting point 18 months' custody
	Category range 1 year – 2 years 6 months' custody



Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Abuse of position of trust

There are a number of offences specific to child victims where the offender is in a formal position of trust in relation to the child. The offences are:

- abuse of position of trust: sexual activity with a child, Sexual Offences Act 2003 – section 16;
- abuse of position of trust: causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003 – section 17;
- abuse of position of trust: sexual activity in the presence of a child, Sexual Offences Act 2003 – section 18; and
- abuse of position of trust: causing a child to watch a sexual act, Sexual Offences Act 2003 – section 19.

69 s.21(4) Sexual Offences Act 2003 “This subsection applies if A looks after persons under 18 who are accommodated and cared for in one of the following institutions - (a) a hospital; (b) an independent clinic; (c) a care home, residential care home or private hospital; (d) a community home, voluntary home or children’s home; (e) a home provided under section 82(5) of the Children Acts (1989) or (f) a residential family centre.
s.21(5) This subsection applies if A looks after persons under 18 who are receiving education at an educational institution and B is receiving, and A is not receiving, education at that institution.”

The offending activity mirrors that found in the equivalent child sexual offences discussed earlier in this section – see page 45; there are, however, key differences which will be discussed below. Under the legislation abuse of trust offences occur where the victim is a child under the age of 18 and the offender is in a formal position of trust in relation to that child as defined by section 21 SOA 2003.⁶⁹ The definition includes, amongst others: teachers, people working in hospitals, clinics, care homes and children’s homes.

CPS charging guidance makes it clear that, even though it would be possible to use the abuse of trust legislation in respect of a child of any age, abuse of position of trust offences are charged only when the child is over the age of 16 and it appears that they agreed to the activity. The CPS charging guidance states:

“These [sections 16–19 SOA 2003] offences will only be charged where the victim is aged 16 or 17. Therefore, the sentencing starting points in the guidelines are only intended for those cases and are significantly lower than those for a child sex offence involving the same type of sexual activity, which should be applied in all other cases.”⁷⁰

The reason it is only applied to 16 and 17 year olds is that the offence overlaps with other sexual offences. If, for example, a teacher engages in sexual activity with a pupil under the age of 16, the teacher would also commit the offence of sexual activity with a child.⁷¹ That offence has a higher maximum sentence of 14 years, whereas the abuse of trust offences have a maximum of five years.

**Abuse of position of trust:
sexual activity with a child,
Sexual Offences Act 2003 – section 16
and**

**Abuse of position of trust:
causing or inciting a child
to engage in sexual activity,
Sexual Offences Act 2003 – section 17**

**Maximum sentence: 5 years’ custody
(full guidelines page 239)**

STEP ONE

Determining the offence category

The Council is consulting on adopting the approach of the existing Sentencing Guideline Council (SGC) guideline which includes both these offences in the same guideline, as harm and culpability are equally weighted in these offences and they have the same statutory maximum.

The court will consider the main factual elements of these offences at step one. The Council has decided to replicate the approach to harm that was taken in the sexual activity with a child guideline (see discussion at page 45). As with that offence, the victim may believe him/herself to be in a relationship with the adult in the position of trust and may not be aware of the harm that is being done to them. Harm is therefore attributed based upon the degree of sexual activity that has taken place. The suggested categorisation is therefore:

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, a child
Category 2	Masturbation by, or of, a child
Category 3	Factor(s) in categories 1 and 2 not present

⁷⁰ CPS Legal Guidance, s.16 Abuse of a position of trust – http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/s16_abuse_of_a_position_of_trust_sexual_activity_with_a_child/

⁷¹ s.9 Sexual Offences Act 2003

An explanation of these harm categories can be found under the sexual activity with a child guideline at page 47.

Culpability

A number of the culpability factors have been replicated from the guideline on sexual activity with a child and where the factors have already been discussed the relevant discussion is highlighted.

Culpability

A

Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Sexual images of victim recorded, retained, solicited or shared

Vulnerable child targeted

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

- 'Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours' – see discussion at page 48.
- 'Use of threat (including blackmail)' – see discussion at page 40.
- 'Use of alcohol/drugs on victim to facilitate the offence' – see discussion at page 40.
- 'Sexual images of child recorded, retained, solicited or shared' – see discussion at page 48.

- 'Vulnerable child targeted' – see discussion at page 40.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)' – see discussion at page 22.

There are a number of culpability factors which appear in the sexual activity with a child guideline which have been omitted here. The first is 'abuse of position of trust'. This is because an abuse of a position of trust is an essential feature of these offences; it has to be present for the offender to be guilty of the offences and is therefore not listed as a culpability factor.

'Offender lied about age' is not included as it is the nature of the contact that creates the offender's culpability (for example, teacher and pupil) and deception about age is less likely to be a principal factor in abuse of trust cases. The Council would be interested in views on this point.

'Member of group or gang during the commission of the offence' has been removed as, based on the types of cases that are prosecuted, the Council does not believe that in abuse of trust cases, membership of a group or gang is normally a key factual element of the offence. The Council is seeking views and evidence as to whether this is correct or whether this should be included as a step one factor for these offences.

'Significant disparity in age' is not included as the Council feels that the age of the offender is not as significant a culpability factor as the position of trust the offender holds in relation to the child.

Q34

Do you agree with the harm and culpability factors proposed at step one for ‘abuse of trust: sexual activity with a child’ and ‘abuse of trust: causing or inciting a child to engage in sexual activity’? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one the court will consider the starting point and identify whether there are additional factors that aggravate or mitigate the offence. This is a non-exhaustive list of factors.

The table below sets out the proposed aggravating factors. Where the factors have already been discussed the reference to the relevant discussion is given.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Child required to move school, institution, home, hospital, etc as a result of relationship and/or adverse impact on child’s education or training

Failure of offender to respond to previous warnings about the activity

Commission of offence whilst under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Pregnancy or STI as a consequence of sexual activity’ – see discussion at page 50.
- ‘Child required to move school, institution, home, hospital, etc as a result of relationship and/or adverse impact on child’s education or training’ has been included because of the type of offenders likely to be charged with this offence. Where, for example, the victim has had to change schools because the offender was their teacher, the long-term effect of the disruption to their education should be reflected in an upward movement from the starting point.
- ‘Failure of offender to respond to previous warnings about the activity’ is included here to cover situations where, for example, a teacher has been warned by the school about becoming too close to a pupil and then proceeded to engage in sexual activity with that pupil.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

The Council is consulting on the same mitigating factors as in the guideline on sexual activity with a child – see discussion at page 24. The Council is seeking views as to whether these mitigating factors are also relevant for the abuse of trust offences.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Offender voluntarily stops the sexual activity taking place

Q35

Do you agree with the aggravating and mitigating factors proposed at step two for these offences? If not, please specify which you would add or remove and why.

Sentence levels for:

- **abuse of trust: sexual activity with a child; and**
- **abuse of trust: causing or inciting a child to engage in sexual activity.**

Although very similar factors to the sexual activity with a child (section 9) offence have been used to determine the category of these offences, their statutory maximum is five years as opposed to 14 years for the section 9 offence. Therefore, the starting points and ranges must be lower.

The proposed sentencing starting points and ranges are therefore:

	A	B
Category 1	Starting point 18 months' custody	Starting point 1 year's custody
	Category range 1 – 2 years' custody	Category range 26 weeks' – 18 months' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order

Q36

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels, please give reasons why.

Abuse of position of trust: sexual activity in the presence of a child, Sexual Offences Act 2003 – section 18 and Abuse of position of trust: causing a child to watch a sexual act, Sexual Offences Act 2003 – section 19
Maximum sentence: Five years' custody (full guideline page 245)

Sections 18 and 19 mirror the section 11 and 12 offences already discussed at page 60. As with the previous offences, the offender will be in a position of trust and the victim will be under the age of 18 when the activity takes place. This offence will ordinarily only be charged when the victim is aged 16 or 17 for the reasons given at page 70.

STEP ONE

Determining the offence category

The Council proposes to replicate the harm factors that have been set out for the section 11 and 12 offences and a full discussion of these factors can be found at page 61.

Harm	
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Causing victim to view indecent/prohibited images of children Engaging in or causing victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of the mouth Masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability

The culpability factors also replicate those found under the section 11 and 12 offences. All the factors below are discussed at page 61. There are factors found in the section 11 and 12 offences which have been omitted from this offence.

The first factor that has been omitted is 'abuse of position of trust'. This is because an abuse of a position of trust is an essential factual element of the offence as explained at page 70.

'Significant disparity in age' is not included as the Council feels that the age of the offender is a secondary consideration to the fact that they are in a position of trust in relation to the child in abuse of trust cases.

Culpability

A

Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours

Use of threat (including blackmail)

Use of alcohol/drugs on the child to facilitate the offence

Vulnerable child targeted

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

Q37

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO**Starting points and category ranges**

Having identified the appropriate category at step one, the court will consider the starting point and identify whether there are additional factors that aggravate or mitigate the offence. This is a non-exhaustive list of factors.

The table below sets out the proposed aggravating factors. These are exactly the same factors as discussed at page 72 and a full explanation can be found under that section. ‘Pregnancy or STI as a consequence of sexual activity’ is, however, removed as a factor as these offences are about causing the child to view, rather than engage in, activity and so this factor is not relevant for this offence.

Aggravating factors*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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Adverse impact on child's education or training

Child required to move school, institution, home, hospital, etc as a result of activity

Failure of offender to respond to previous warnings about activity

Commission of offence whilst under the influence of alcohol or drugs

These are discussed at page 72.

Mitigation

The same mitigating factors are listed as discussed at page 73 and the same issues arise. For a full discussion see page 24.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

These are discussed at page 72.

Sentence levels for abuse of trust

As with the other abuse of trust offences, the statutory maximum for these offences is five years’ imprisonment. The sentence levels have

therefore been lowered from the section 11 and 12 equivalent offences for victims who are under 16. The proposed sentence levels are therefore:

	A	B
Category 1	Starting point 18 months’ custody	Starting point 1 year’s custody
	Category range 1 – 2 years’ custody	Category range 26 weeks’ – 18 months’ custody
Category 2	Starting point 1 year’s custody	Starting point 26 weeks’ custody
	Category range 26 weeks’ – 18 months’ custody	Category range High level community order – 1 year’s custody
Category 3	Starting point 26 weeks’ custody	Starting point Medium level community order
	Category range High level community order – 1 year’s custody	Category range Low level community order – High level community order

In the current SGC guidelines the starting point and ranges if an offender has consensual intercourse in the presence of the victim⁷² are higher (2 years starting point, 1–4 years’ custody) than the starting points and ranges given for having penetrative intercourse with the victim⁷³ (18 months starting point, 1 year – 2 years 6 months’ custody). The Council, whilst accepting that both forms of activity should have a custodial starting point, does not believe that there is a justification for the starting point to be

higher if an offender has sexual activity in the presence of the victim than if the offender has penetrative sexual intercourse with the victim. Views are sought on this point.

Q38 Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels, please give reasons why.

72 s.18 Sexual Offences Act 2003

73 s.16 *ibid*

Section six: Indecent images of children

This section covers offences relating to indecent images of children. The offences under consideration are:

- possession of an indecent photograph or pseudo photograph of a child, Criminal Justice Act 1998 – section 160(1) and
- taking, making, distributing and sharing an indecent photograph or pseudo photograph of a child, Protection of Children Act 1978 – section 1(1)

These offences relate to photographs or ‘pseudo’ photographs of children. This covers photographs (including moving images) and also images made, for example, on a computer but which look like real photographs.

There are other areas of legislation⁷⁴ that deal with prohibited non-photographic images of children; for example, cartoons and drawings. Such types of prohibited images are not dealt with under this guideline. This is because of the particularly low volume of prosecutions for these offences; there have only ever been six people sentenced for prohibited images since the introduction of the offence in 2009. In addition this guideline does not deal with the possession of extreme pornographic images⁷⁵ or wider obscene publication offences where children are not depicted in the images.

The indecent images offences have a statutory maximum of five years’ imprisonment

for possession of images and 10 years’ imprisonment for the distribution, taking or making of such images. Sentences passed for an offence cannot be higher than the statutory maximum. The definition of ‘child’ for these offences is anyone under 18 years of age.

This is an area of offending that, due to advances in technology, has changed since the offences were created and the present guidelines were written by the Sentencing Guidelines Council (SGC). The ease with which images, including moving images, can be shared and downloaded has increased offenders’ ability to share or trade in such images; advances in electronic storage capacities have also meant that offenders can retain a much larger volume of images than previously. These developments, amongst others, have shaped the way such offences are committed. Judicial understanding of the way in which offenders behave has also developed – see full guideline at page 251.

The approach taken in this guideline is different from that adopted for other sexual offences. This is because the Council believes that this guideline does not lend itself to the harm and culpability model used for the other offences, often because there will be no identified victim before the court. In a large number of cases, the victim in the image will not have been identified or located. However, harm and culpability remain the focus of this model, albeit expressed in a different way. Where the victim has not been identified the court will consider the nature

⁷⁴ s.62 Coroners and Justice Act 2009

⁷⁵ ss.63–67 Criminal Justice and Immigration Act 2008

and level of harm caused by indecent images. The victim who has been abused to create the image is subjected also to further harm due to the image being recorded and viewed. There is also further harm due to the fact that viewing the images creates a market and demand for these pictures and so leads to further abuse. Mr Justice Keith articulates the approach taken by the court to harm in the case *R v Beaney*⁷⁶ where he states:

“The serious psychological injury which they [the children in the picture] would be at risk of being subjected to arises not merely from what they are being forced to do but also from their knowledge that what they are being forced to do would be viewed by others. It is not difficult to imagine the humiliation and lack of self-worth they are likely to feel. It is not simply the fact that without a market for these images the trade would not flourish. If people... continue to download and view images of this kind... the offences which they commit can properly be said to contribute to the psychological harm which the children in those images would suffer by virtue of the children’s awareness that there were people... watching them forced to pose and behave in this way.”

STEP ONE

Determining the offence category

The Council has included what it believes to be the main factual elements of the offence. The Council has chosen to determine the offence category firstly, by identifying the role of the offender (broadly reflecting culpability) and secondly, by considering the severity of the image (broadly representing harm).

Role of the offender

The Council believes that one of the principal factors to be considered by the sentencer is the offender’s role and involvement with the images. Although the discussion around role principally focuses on computer-related crime, it should not be overlooked that a variety of media and methods can be used in the creation, distribution and possession of indecent photographs of children.

- Possession of images: offenders will be placed in this category if they possess images but there is no evidence of distributing, possession with a view to distributing, or involvement in the production of the image. ‘Making’ of an image by downloading should be distinguished from the category ‘production/taking’ which is discussed below. If ‘making’ is charged in relation to downloading and does not involve production/taking of the image then for the purposes of sentencing ‘making’ by downloading should be treated as possession.
- Distribution: includes both actual distribution and possession of the images with a view to distributing them or showing them or making them available to others.⁷⁷
- Production/taking: includes an offender being involved in the actual taking or making of an image at source; in other words involvement in producing the original image. This is to be distinguished from ‘making’ by downloading, discussed above under possession. Any offender found guilty of production/taking will be placed in the highest category.

In order to provide clarity the Council is proposing to include guidance in the text clarifying how these categories should be used – see full guideline at page 251.

⁷⁶ [2004] EWCA Crim 449

⁷⁷ s.1(1)(c) Protection of Children Act 1978

Severity of the image

The existing SGC guideline sets out five levels of prohibited image based on those set out in the judgment in *Oliver*⁷⁸ which adapted the image classification found in the Copine scale.⁷⁹ The image levels used are:

- level one – images depicting erotic posing with no sexual activity;
- level two – non-penetrative sexual activity between children, or solo masturbation by a child;
- level three – non-penetrative sexual activity between adults and children;
- level four – penetrative sexual activity involving a child or children or both children and adults; and
- level five – sadism or penetration of, or by, an animal.

The Council is sensitive to the fact that classification of images can be a difficult and resource intensive job for the investigating and prosecuting authorities. The Council is also aware that the images before the court may give only a partial indication of the abuse suffered by the victim in the image, and image level alone does not give a complete account of the offender's behaviour. However, the court can only sentence what is before it and the Council believes that, despite the limitations around using image level, the severity of the sexual offence depicted in the image can be an initial guide to the harm that will have been suffered by the victim depicted.

Given the challenges presented by the classification of images, the Council proposes the levels of images can be simplified further. The proposed levels are set out below.

- Category A: 'Images involving penetrative sexual activity'; 'possession of images involving sexual activity with an animal or

sadism'. The Council believes that any image showing a child involved in penetrative sexual activity should be placed in the highest category. In line with the other sexual offences involving a child discussed in section five page 36, it is envisaged this would involve penetration of the vagina or anus (using body or object) and penile penetration of the mouth in either case by, or of, the victim. It is not proposed that a distinction is made between penetrative activity between an adult and child and penetrative activity between children.

It is also intended that category A includes images involving sexual activity with an animal or sadism. In the existing SGC guideline, 'penetrative activity and sadism' and 'penetration of, or by, an animal' are expressed as different levels of image (four and five respectively) but they attract exactly the same sentence starting points and ranges. The Council has therefore placed both of these into category A.

The Council has changed the wording 'penetration of, or by, an animal' to 'sexual activity involving an animal' to ensure that it covers images involving non-penetrative activity and addresses a difficulty that currently arises. This difficulty is highlighted in the CPS charging guidance in relation to the current categorisation which states:

"A question is raised as to what happens if a photograph shows a non-penetrative sexual act involving an animal (for example an animal licking the sexual organs of a child). A strict interpretation of level five would suggest that it could not come within that level but neither would it fit into any other level other than, conceivably, level one"⁸⁰

78 [2003] 1 Cr App R 28 CA

79 The Copine project (Combating Paedophile information networks in Europe) at the University of Cork developed a scale to categorise child abuse images. It has ten levels and was originally developed to look at the psychological approach to pictures rather than for use in courts.

80 CPS charging guidance indecent photographs of children http://www.cps.gov.uk/legal/h_to_k/indecent_photographs_of_children/#a03

- Category B: ‘Possession of images involving non-penetrative sexual activity’. This category combines the SGC levels two and three. The SGC made a distinction between non-penetrative sexual activity between children (or a child on their own) and non-penetrative sexual activity between an adult and a child. The Council is of the opinion that even if the image does not contain an adult, this does not mean that an adult was not involved in making it or otherwise exploiting the victim in order to generate the image. In addition, the ongoing victimisation of the child that flows from the image being recorded and viewed will be great even if there is not an adult in the picture. The Council is aware of the intensive law enforcement resources needed to classify images; the Council has taken the view that a distinction between images involving just children and those involving adults and children is not required for sentencing purposes as both create similar levels of harm and culpability. The Council is, therefore, consulting on the basis that all non-penetrative sexual activity should be dealt with using the same starting point and category ranges.
- Category C: ‘Images of erotic posing’. This category is included to capture other prohibited images which do not fall within A and B above. ‘Erotic posing’ is a term used in the SGC guideline but may be misleading. There may be cases where an image is not posed or ‘erotic’ but could still be deemed indecent, for example, a naked picture of a child not engaged in sexual activity but with a focus on the child’s genitals. The Council invites views on whether this category could be defined differently to better reflect indecent images not captured in A and B.

It will be noted that the levels have been labelled as A, B and C rather than numbered. The reason for this is that for a number of years those working in the criminal justice system have been used to referring to the image levels by the current 1 to 5 labelling. In all the

Sentencing Council guidelines, the highest starting points and ranges are found in category 1. However, under the current SGC grading system based on *Oliver*, category 1 is the lowest starting point and range. The Council feels it would be confusing to reverse the order and so is proposing to use A, B and C.

Q39

Do you agree with the proposed rationalisation of the current levels 1 to 5?

It will be rare that the court will sentence an offender for only one level of image as most offenders have collections containing mixed levels of images. This can cause difficulties for sentencers and the Council is proposing that for ‘mixed collections’ the highest category of image level present in the collection will initially determine the appropriate starting point and range. If, however, to use that category will be unrepresentative of the offender’s conduct, a lower category may be appropriate. However, it is suggested that a lower category is unlikely to be appropriate if the offender has produced or taken higher level material. To assist sentencers in dealing with mixed collections it is suggested that an explanation is included in the guideline. The wording proposed is:

“In most cases the intrinsic character of the most serious of the offending images will initially determine the appropriate category. If, however, the most serious images are unrepresentative of the offender’s conduct a lower category may be appropriate. A lower category will not, however, be appropriate if the offender has produced or taken (i.e. photographed) images of a higher category.”

Q40

Do you agree with the approach suggested to dealing with mixed collections? If not, please state why.

An important difference from the existing SGC guideline is that the quantity of material will not be used to determine the category at step one. Currently the SGC classes quantity by reference to a ‘small number’ and ‘large number’ to determine sentence starting points and ranges for different levels of images. These terms are not, however, defined and this has caused difficulties for judges in assessing what constitutes ‘small’ or ‘large’. The Council has formed the view that the number of images is not necessarily an indicator of the offender’s culpability; what the offender has done with the images is a better indicator of this. For example,

an offender who has produced even a small number of images attracts a higher starting point than an offender in possession of the same number.

However, as a large volume of images may provide an additional indicator of increased culpability in some cases, it is included as an aggravating feature in step two, allowing the court to move up from the starting point in appropriate cases. This is discussed at page 83.

In light of the points raised above, the proposed structure at step one is therefore:

	Possession	Distribution*	Production**
Category A (previously levels 4 and 5)	Possession of images involving penetrative sexual activity	Sharing images involving penetrative sexual activity	Creating images involving penetrative sexual activity
	Possession of images involving sexual activity with an animal or sadism	Sharing images involving sexual activity with an animal or sadism	Creating images involving sexual activity with an animal or sadism
Category B (previously levels 2 and 3)	Possession of images involving non-penetrative sexual activity	Sharing of images involving non-penetrative sexual activity	Creating images involving non-penetrative sexual activity
Category C (previously level 1)	Possession of images of erotic posing	Sharing of images of erotic posing	Creating images of erotic posing

* Distribution includes possession with a view to distributing or sharing images

** Production includes the taking or making of any image at source, i.e. the original image

Making an image by simple downloading should be treated as possession for the purposes of sentencing

Q41

Do you agree with the use of role and the use of image levels A, B and C to determine the category of offence and the exclusion of volume at step one? If not, please give reasons.

Q42

Do you have any suggestions for how level C ‘erotic posing’ could be re-labelled?

STEP TWO**Starting points and category ranges**

Once the appropriate category has been determined using role and image level as described above, the court is asked to identify whether there are any additional factors which might aggravate or mitigate the offence. This would then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

It is important to highlight that the list of factors at step two is non-exhaustive. The Council's intention is to set out factors that are likely to be relatively common to these offences to ensure that they are considered equally by all courts. It is also important to note that the list of factors is not a checklist; however, where any such factor is present the court can take it into account rather than relying on volume alone.

The table below sets out the proposed aggravating factors.

Aggravating factors*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

Age and/or vulnerability of the child depicted*

Visible physical pain suffered by child depicted

Period over which images were possessed, made or distributed

Large volume of images possessed, distributed or produced/taken

Placing images where there is the potential for a high volume of viewers

Collection includes moving images

Attempts to dispose of or conceal evidence

Abuse of position of trust

Child depicted known to the offender

Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children

Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse

Systematic storage of collection

* Age and/or vulnerability of the child should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent)

- 'Previous convictions' and 'offence committed whilst on bail' – see discussion at page 23.
- 'Age and/or vulnerability of the child depicted' should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent). This is included to deal with cases where, for example, the victim has not been identified and so the court cannot know the actual age of the child. The current SGC guideline includes a suggestion that starting points should be higher where the subject of the photograph is under the age of 13. The Council recognises the difficulty for sentencers in ascribing an age to an unidentified victim and does not believe that there should be a strict cut-off in age terms when assessing the harm caused to the victim. It is recommending that an assessment of the developmental stage of the child will assist the sentencer rather than a reference to an actual age.
- 'Visible physical pain suffered by the child depicted' is intended to cover the increased harm to the victim demonstrated by the victim visibly responding to physical pain.

- ‘Period over which the images were possessed, made or distributed’ builds a more comprehensive picture of the offender’s behaviour and may be relevant to risk. Where an offender is claiming previous good character as mitigation, but has been involved with such images over a long period, sentencers may wish to take this into consideration in determining whether any weight is given to previous good character.
- ‘Large volume of images possessed, distributed or produced/taken’ allows the volume of images to be taken into account where it is a significant consideration. There will be cases when a large volume of images is a very significant aggravating factor especially where the material is being distributed or produced.
- ‘Placing images where there is the potential for a high volume of viewers’ has been included to deal with the increased harm to the victim where an offender puts images in a place where, potentially, a large number of people could access those images. It is intended to reflect the emotional distress caused to such a victim by the potential for large numbers of unknown individuals viewing them in a vulnerable state.
- ‘Collection includes moving images’. The Council feels that one moving image of, for example, 20 minutes does not equate directly with one still image as there may be more than one abusive incident which takes place during that period. Potentially, hundreds of still images may be taken from the one 20-minute film. In order to reflect this, the Council is recommending the inclusion of moving imagery as an aggravating feature.
- ‘Attempts to dispose of or conceal evidence’. This is designed to address issues arising from offenders’ increasingly sophisticated efforts to prevent images being discovered. It ranges from the mislabelling of files to give the impression that the content is lawful to advanced encryption techniques.
- ‘Abuse of position of trust’ and ‘child known to the offender’ are both aggravating factors because both indicate the close proximity of the offender to the commission of the abuse. It will be more common that the victim will not have been identified by the court but where knowledge of the child or abuse of trust is established evidentially it demonstrates increased culpability on the part of the offender due to the targeting or manipulation of the victim.
- ‘Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children’. Where such a factor is present it demonstrates a higher level of culpability on the part of the offender.
- ‘Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse’. Where such searches are uncovered by forensic examination, they can reveal that the offender has been searching for higher levels of image than those recovered. Whilst the offender can only be sentenced for the images recovered, such searches can assist the court in assessing the offender’s culpability.
- ‘Systematic storage of collection’. It has already been discussed above that attempts made to conceal may aggravate an offence. However, systematic storage could also increase the offender’s culpability where it demonstrates the deliberate thought and effort invested by the offender in collecting specific indecent images.

Mitigation

The mitigating factors below have already been discussed in previous guidelines and a full discussion of these can be found at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q43 Do you agree with the aggravating and mitigating factors proposed at step two for the indecent images offences? If not, please specify which you would add or remove and why.

Sentence levels for indecent images of children

The maximum sentence available for possession of indecent images is five years' imprisonment and 10 years' imprisonment for distribution and production.

The discussion at page 80 sets out the difficulties with sentencing for mixed collections. The approach proposed by the Council is that the most severe images should be used as an initial starting point.

For the highest category of images (A) a custodial option is recommended as a starting point in all cases whether the offender has

been charged with possession, distribution or production. Where an offender has been involved in the taking or making of an image at source and this involves penetration, sadism or an animal, then the Council has recommended a range that goes towards the very top end of the 10-year ceiling set by the statute and a starting point of 6 years with a range of 4–9 years is recommended. For all the image level A categories a custodial starting point has been recommended.

Level B images also attract a custodial starting point under the proposed guidelines.

The Council has moved away from the very short custodial sentences recommended in the existing SGC guideline; for example, currently four weeks is available in two of the categories. The Council does not believe that such short sentences are appropriate because of the very limited work the prison authorities would be able to do to address the behaviour of the offender in such a short period.

It will be seen that a non-custodial starting point is recommended for possession and distribution of level C images and for possession of level B images. Section two of the consultation – page 10 – sets out a discussion on the purposes of sentencing and the importance of public protection when sentencing sexual offences. For offences involving indecent images, there may be cases where the sentencer considers that a lengthy community order with a sexual offences treatment programme, such as the *i-sotp*⁸¹ programme (specifically designed to treat internet offenders), will be more appropriate than a very short custodial sentence. Such an intensive community-based order may be more likely to achieve the purposes of sentencing and of protecting the public because the offender's thinking and behaviour will be better addressed via

⁸¹ *i-sotp* (Internet Sex Offender Treatment Programme) is a programme designed to explore and address internet sex offending; the aim is to reduce the risk of further similar offending and, like other sex offender programmes, increases the offenders understanding of the impact of their offending on others, including their victims

treatment and the degree of risk posed to the community by the offender can be closely monitored. However, the Council has also deliberately included a custodial option as part of the sentencing range in **every** category to ensure that sentencers retain such an option

in appropriate cases. This is a change from the existing SGC guidelines where only a non-custodial option is available for possession of the lowest level. The proposed sentence starting points and ranges are:

	Possession	Distribution	Production
Category A	Starting point 1 year's custody	Starting point 3 years' custody	Starting point 6 years' custody
	Category range 26 weeks' – 2 years' custody	Category range 2 – 5 years' custody	Category range 4 – 9 years' custody
Category B	Starting point 26 weeks' custody	Starting point 1 year's custody	Starting point 2 years' custody
	Category range High level community order – 18 months' custody	Category range 26 weeks' – 2 years' custody	Category range 1 – 4 years' custody
Category C	Starting point High level community order	Starting point 13 weeks' custody	Starting point 18 months' custody
	Category range Medium level community order – 26 weeks' custody	Category range High level community order – 26 weeks' custody	Category range 1 – 3 years' custody

Section 2 at page 11 includes an explanation of the additional orders that a court can impose when an offender is convicted of sexual offences. Sentencers will wish to consider carefully which orders to impose for these offences, particularly where the offender is placed on a community order. For example, the court could impose a sexual offences prevention order with a condition that the offender is prevented from accessing the internet unless the police are given access to the computer history.

In addition to the community order, a sexual offences prevention order can provide a useful additional safeguard.

Q44 Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated please give reasons why.

Section seven: Exploitation offences

This section deals with offences concerning the commercial sexual exploitation of both adults and children. The offences under consideration are:

Sexual exploitation of adults

- Causing or inciting prostitution for gain
- Controlling prostitution for gain

Keeping a brothel

Sexual exploitation of children

- Paying for the sexual services of a child
- Causing or inciting child prostitution or pornography
- Controlling a child prostitute or a child involved in pornography
- Arranging or facilitating child prostitution or pornography

Trafficking

- Trafficking into the UK for sexual exploitation
- Trafficking within the UK for sexual exploitation
- Trafficking out of the UK for sexual exploitation

These guidelines do not deal with wider prostitution offences such as soliciting but focus instead on offences where the victim has been sexually exploited by others for commercial gain.

There is a degree of overlap between the exploitation of prostitution offences and trafficking and the Council has been mindful of this when considering the factors involved in both.

Causing or inciting prostitution for gain, Sexual Offences Act 2003 – section 52

and

Controlling prostitution for gain, Sexual Offences Act 2003 – section 53

Maximum sentence: 7 years' custody (full guidelines page 257)

These offences involve an offender who causes or incites an individual to become a prostitute or controls the activities of a prostitute and in both cases does so with the expectation of gain for themselves or a third person. This legislation would ordinarily be applied to prostitutes aged 18 and over. A prostitute who is under 18 will be protected by the child prostitution offences, discussed at page 96, which have a higher statutory maximum.

The Council proposes to deal with causing or inciting prostitution and controlling prostitution in the same guideline as they have the same statutory maximum of 7 years and similar issues in relation to harm and culpability arise.

STEP ONE

Determining the offence category

The first step the court will take is to consider the principal factual elements of the offence. The harm factors which the Council has identified in these offences are:

Harm	
Category 1	<ul style="list-style-type: none"> • Abduction/detention of prostitute(s) • Violence used against prostitute(s) • Sustained and systematic psychological abuse of prostitute(s) • Prostitute(s) coerced or forced to participate in unsafe/particularly degrading sexual activity • Prostitute(s) forced or coerced into seeing many 'customers' • Prostitute(s) tricked/deceived into prostitution
Category 2	Factor(s) in category 1 not present

Category 2 does not contain any factors but reflects the harm inherent in causing or inciting someone to enter into prostitution (effectively recruiting the individual) or controlling the victim. This harm will exist even in the absence of any other factors.

Category 1 contains a number of factors which the Council believes will increase the harm already caused to the victim.

- 'Abduction/detention of prostitute(s)' will increase the harm suffered by the prostitute because they will be isolated from others and less able to seek help.
- 'Violence used against prostitute(s)'. The Council is aware that control and coercion can be exercised without violence being used; a lack of violence towards the prostitute would not be considered as reducing the seriousness of this offence but, as the CPS state:

"Female prostitutes are often at risk of violent crime in the course of their work which can include both physical and sexual attacks, including rape. Perpetrators of such offences include violent clients or pimps."⁸²

The term 'violence' is intended to include physical violence and sexual violence or control such as rape cited above.

- 'Sustained and systematic psychological abuse of prostitute(s)' is another type of harm which the Council feels should be reflected. Even if there is no evidence of physical violence, psychological abuse may be a powerful weapon in controlling and exploiting the prostitute. Where there is evidence of such abuse being used by the offender, the Council recommends that this should place harm in the higher bracket as it can be as coercive and damaging as physical violence.
- 'Prostitute(s) coerced or forced to participate in unsafe/particularly degrading sexual activity' reflects situations where the offender may coerce or force the prostitute to have unprotected sex knowing that some clients will pay a premium for such activity. This increases the harm to the prostitute due to the exposure to the risk of sexually transmitted infections and pregnancy. A prostitute might also be coerced or forced by the offender to undertake sexual activity with clients which the prostitute finds degrading. The harm results from the prostitute's lack of choice or control over the activity engaged in and the risk or humiliation they are exposed to as a consequence of the activity.
- 'Prostitute(s) forced or coerced into seeing many 'customers'' again may increase the harm done to the prostitute as they will be coerced or forced into working in a way that they may not be comfortable with, have little control over and which increases their exposure to risk of physical and psychological harm.
- 'Prostitute(s) tricked/deceived into prostitution'. This offence will sometimes be charged in place of trafficking as there is a degree of overlap and so there may be instances where an individual is tricked or deceived into entering into prostitution. The victim may have willingly travelled to the country with the promise of a legitimate job and be deceived into prostitution upon

arrival. By this stage they may be isolated and without means of financially supporting themselves and effectively forced into prostitution. This increases harm because of the lack of control the individual has over the choices made.

Culpability

It will be noted that for the exploitation offences there are two categories of harm, and three categories of culpability. This varies from the approach in other guidelines where there are three levels of harm and two of culpability. This has been done as a wide range of culpability is found in this offence arising from the definition of ‘control’ which applies if someone intentionally controls **any** of the activities of another person relating to prostitution. This means that control could range from an offender with links to organised crime controlling a network of prostitutes right through to a former prostitute, who has been exploited, looking after the diary of another prostitute and involved in this work as a means of moving away from having to see clients. The current Sentencing Guidelines Council (SGC) guidelines deal with the wide range of culpability by including “using employment as a route out of prostitution” and “coercion” as mitigating factors. The Council suggests that it is clearer and more transparent to set out clearly differing levels of culpability at step one. The Council proposes the following categories of culpability to reflect degrees of involvement:

Culpability

A

Causing/inciting or controlling prostitution on significant commercial basis

Expectation of substantial financial gain

Abuse of position of trust/responsibility

Exploitation of prostitute(s) known to be trafficked

Significant involvement in limiting the freedom of prostitutes

B

Close involvement with prostitute(s) e.g. control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)

C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

Culpability C ‘Performs limited function under direction’ and ‘Close involvement but engaged by pressure/intimidation/exploitation’ applies to the offender who plays a relatively peripheral role. As the legislation extends to control of any of the activities relating to prostitution someone who takes bookings on behalf of a prostitute or drives the prostitute around is likely to fall under this category. This category may also apply if an offender has close involvement but is engaged by exploitation or coercion himself or herself.

Culpability B is ‘Close involvement with prostitute(s) e.g. control of finances, choice of clients, working conditions, etc (where offender’s involvement is not as a result of coercion)’. This would apply to cases where the offender has a close degree of control of the prostitute, and is, for example, exerting influence and making decisions on behalf of the prostitute e.g. controlling which clients they see. In this category there would be an absence of evidence that the offender was anyway coerced into involvement. An offender could be in this category if they controlled just one prostitute or if they controlled more than one prostitute. If, however, the activity was on a significant commercial scale this would be classed as culpability A discussed below.

Culpability A includes factors which show a very high degree of culpability.

- ‘Causing/inciting or controlling prostitution on significant commercial basis’ is intended to cover those offenders very deliberately engaged in a role causing harm to a large

number of people. Additionally, where that activity is conducted on a significant commercial basis it places the offender in category A to reflect the increased culpability of controlling a large number of individuals involved in prostitution.

- ‘Expectation of substantial financial gain’ results in increased culpability because the offender is motivated by the expectation of substantial financial gain for himself or herself. The previous SGC guideline placed a monetary value on “substantial gain” of £5,000. The Council does not wish to ascribe a specific monetary value to substantial gain as the definition of what is substantial will be subject to change over time and will be dependent on the circumstances of the offence.
- ‘Abuse of position of trust/responsibility’ will increase an offender’s culpability even in the absence of commercial scale or substantial financial gain because of the manipulation involved.
- ‘Exploitation of prostitute(s) known to be trafficked’ is recommended as a category 1 factor. The Council endorses the views of the CPS set out in their legal guidance for these offences.

“The increase in human trafficking for sexual exploitation is also fuelling the market for prostitution in the UK... This is a lucrative business and is often linked with other organised criminal activity such as immigration crime, violence, drug abuse and money laundering. Women may be vulnerable to exploitation because of their immigration status, economic situation or, more often, because they are subjected to abuse coercion and violence.”⁸³

- ‘Significant involvement in limiting the freedom of prostitutes’ would increase an offender’s culpability because it is an extreme example of control over the prostitute.

Q45

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors not already considered at step one which would aggravate or mitigate the offence. This leads the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range.

These factors will allow the court to consider the wider context of the offence. The factors are not exhaustive and any factors not considered at step one but which the court considers relevant to the harm of the victim or the culpability of the offender can be taken into account here. In exceptional cases, having considered all the factors, the court may decide to move outside the category range identified at step one.

Although the list of factors is non-exhaustive, the Council’s intention is to highlight the most common factors to ensure that they are considered equally by the courts. The suggested factors are:

Aggravating factors*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 comply with current court orders

Offence committed whilst on licence

Deliberate isolation of prostitute(s)

Threats made to expose prostitute(s) to the authorities (immigration or police)

Threats of harm to the prostitute's family/friends

Prostitute(s) passport(s)/identity documents removed

Prostitute(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure prostitute's compliance

Food withheld

Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- 'Previous convictions' and 'offence committed whilst on bail' – see discussion at page 23.
- 'Failure to comply with current court orders' and 'offence committed whilst on licence' – see discussion at page 24.
- 'Deliberate isolation of prostitute(s)' would aggravate the offence as it means that the offender can exert a greater degree of control over them. This will be particularly relevant if the prostitute was from another country and had therefore been cut off from all social and family ties.
- 'Threats made to expose prostitute(s) to the authorities (immigration or police)' is frequently used to control and coerce individuals involved in prostitution. This can include threats to expose their criminal activity to the police but is particularly effective as a method of control where the prostitute has been brought into the United Kingdom illegally and fears that they will be deported.
- 'Threats of harm to prostitute's family/friends' may be used by the offender as another means of controlling the victim. The victim's feelings of helplessness and fear are likely to increase where they know the offender has influence over or access to their family which could result in harm befalling family members.
- 'Prostitute(s) passport(s)/identity documents removed' is a direct way of limiting the physical movement and freedom of the prostitute thereby placing them under the control of the offender.
- 'Prostitute(s) prevented from seeking medical treatment' demonstrates the high level of control that impacts on the welfare and physical wellbeing of the individual.
- 'Use of drugs/alcohol or other substance to secure prostitute's compliance' is included as there is a very strong link between drug use and street prostitution. Where it is found that the offender has either assisted the prostitute to develop a dependency, or has exploited a pre-existing dependency in order to control and manipulate the prostitute, this should aggravate the offence.
- 'Food withheld' and 'earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates' are all specific examples of how control can be exercised over the prostitute.
- 'Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution' and 'attempts to dispose of or conceal evidence' – see discussion at page 24.

Mitigation

The mitigating factors that are set out below have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q46 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

Sentence levels for causing/inciting and controlling prostitution

The Council is recommending that in the most serious cases, where a high level of exploitation and harm have been demonstrated, the offender should receive a custodial sentence with the top of the sentencing range towards the statutory maximum of 7 years. In all category 1 cases where there is evidence of increased harm a custodial starting point and range is recommended.

In category 2 cases a custodial starting point and range is proposed for offenders who demonstrate the highest level of culpability.

When the offender is shown to have been exploited themselves or has very limited involvement, and there are none of the category 1 harm factors present, it is recommended that a starting point of a community order may be the most suitable way of dealing with the offender because it will deal with the underlying reasons as to why they have become involved and seek to avoid the offender returning to offending.

The suggested starting points and ranges are:

	A	B	C
Category 1	Starting point 4 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point Medium level community order
	Category range 2 – 5 years' custody	Category range High level community order – 2 year's custody	Category range Low level community order – High level community order

Q47 Please give your views on the proposed sentence levels (starting points and ranges) for these offences? If you disagree with the levels stated, please give reasons why.

Keeping a brothel used for prostitution, Sexual Offences Act 1956 – section 33A

Maximum sentence: 7 years' custody (full guideline page 263)

This offence is concerned with keeping, managing, acting or assisting in the running of a brothel. Although different from the causing and inciting or controlling prostitution offences, there are commercial elements to the exploitative behaviour in common with the offences discussed above.

STEP ONE

Determining the offence category

Where there has already been discussion of the factors set out below the relevant section is highlighted.

When considering the offence of keeping a brothel the Council is focusing on factors which increase the harm to the prostitutes working within that brothel. The proposed harm factors are:

Harm	
Category 1	<ul style="list-style-type: none"> • Brothel uses prostitute(s) under 18 • Abduction/detention of those working in brothel • Violence used against prostitute(s) working in brothel • Sustained and systematic psychological abuse of prostitute(s) working in brothel • Prostitute(s) working in brothel coerced or forced to participate in unsafe/particularly degrading sexual activity • Evidence prostitute(s) working in brothel forced or coerced into prostitution • Prostitute(s) working in brothel forced or coerced into seeing many 'customers' • Prostitute(s) working in brothel tricked/deceived into prostitution • Established evidence of community impact
Category 2	Factor(s) in category 1 not present

Category 2 has no additional features as the starting points and sentencing ranges are intended to reflect the inherent harm that is done to an individual by their sexual exploitation for someone else's financial gain.

Category 1 lists factors that increase the level of harm. The factors identified are:

- 'Brothel uses prostitute(s) under 18'. If the offender keeps manages or assists with the running of a brothel which uses those under 18, they are complicit or positively encouraging the corruption and sexual exploitation of those under 18.
- 'Abduction/detention of those working in brothel' – see discussion at page 87.
- 'Violence used against prostitute(s) working in brothel' – see discussion at page 87.
- 'Sustained and systematic psychological abuse of prostitute(s) working in brothel' – see discussion at page 87.
- 'Prostitute(s) working in brothel coerced or forced to participate in unsafe/particularly degrading sexual activity' – see discussion at page 87.
- 'Evidence prostitute(s) working in brothel forced or coerced into prostitution' – see discussion on coercion at page 87.
- 'Prostitute(s) working in brothel forced or coerced into seeing many 'customers'' – see discussion at page 87.
- 'Prostitute(s) working in brothel tricked/deceived into prostitution' – see discussion at page 87.
- 'Established evidence of community impact' has been included to take account of cases where the brothel has an impact on the local area; for example, it is located near a school and there are clients going in and out

frequently or it is in a residential area and the presence of clients is intimidating for residents at night.

Culpability

As with causing, inciting or controlling a prostitute, the Council believes that the main focus of this offence is the role played by the offender and the level of deliberate exploitation and corruption of those working in the brothel. As the definition in legislation for this offence is *to keep, or manage, or act or assist in the management of a brothel* (section 33A, Sexual Offences Act 1956) a wide range of involvement and a wide range of culpability is covered. As with the previous offences the focus is on distinguishing between those who have genuine power and influence through their involvement with the brothel and those who have a minor role or are coerced or exploited themselves. Many of the culpability factors have already been discussed above and the relevant discussion has been referenced.

Culpability

A

Keeping brothel on significant commercial basis

Involvement in keeping a number of brothels

Expectation of substantial financial gain

Abuse of position of trust/responsibility

Exploitation of prostitute(s) known to be trafficked

Significant involvement in limiting freedom of those working in brothel

B

Keeping/managing premises

Close involvement with prostitute(s) e.g. control of finances, choice of client, working conditions, etc (where offender's involvement is not as a result of coercion)

C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

Culpability C 'Performs limited function under direction' and 'close involvement but engaged by pressure/intimidation/exploitation' is discussed at page 88. In the context of brothel keeping this would apply to 'maids' who have a limited role and may help look after the other women in the brothel or have a limited role, for example, answering the door and letting clients in. This category may also apply to those helping run the brothel but who are undertaking their role due to coercion or exploitation.

Culpability B

- 'Keeping/managing premises' has been included to reflect the culpability of those that undertake a management role with a degree of day to day responsibility for the running of the brothel.
- 'Close involvement with prostitute(s) e.g. control of finances, choice of client, working conditions, etc (where offender's involvement is not as a result of coercion)' is intended to reflect situations where the offender has a degree of control and autonomy in the running of the brothel.

Culpability A indicates factors that show a high degree of culpability.

- 'Keeping brothel on significant commercial basis' and 'involvement in keeping a number of brothels' are in the highest category to reflect the fact that the offender will be directing and involving a large number of people in the operation of brothels.
- 'Expectation of substantial financial gain' – see discussion at page 89.
- 'Abuse of position of trust/responsibility' – see discussion at page 89.
- 'Exploitation of prostitute(s) known to be trafficked' see discussion at page 89.
- 'Significant involvement in limiting freedom of those working in brothel' – see discussion at page 89.

Q48 Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO
Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any other additional factors which would aggravate or mitigate the offence.

Many of the factors below replicate those found under the causing inciting and controlling prostitution guideline and the relevant discussion is referenced.

Aggravating factors

<i>Statutory aggravating factors</i>
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
<i>Other aggravating factors</i>
Failure to comply with current court orders
Offence committed whilst on licence
Threats made to expose prostitute(s) to the authorities (immigration or police)
Threats of harm to prostitute’s family/friends
Prostitute(s) passed around by offender and moved to other brothels
Prostitute(s) passport(s)/identity documents removed
Prostitute(s) prevented from seeking medical treatment
Use of drugs/alcohol or other substance to secure prostitute’s compliance
Food withheld

Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates
Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Attempts to dispose of or conceal evidence

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Threats made to expose prostitute(s) to the authorities (immigration or police)’ – see discussion at page 90.
- ‘Threats of harm to prostitute’s family/friends’ – see discussion at page 90.
- ‘Prostitute(s) passport(s)/identity documents removed’ – see discussion at page 90.
- ‘Prostitute(s) prevented from seeking medical treatment’ – see discussion at page 90.
- ‘Use of drugs/alcohol or other substance to secure prostitute’s compliance’ – see discussion at page 90.
- ‘Food withheld’ and ‘earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates’ – see discussion at page 90.
- ‘Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

Mitigation

Most of the mitigating factors have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Prostitute(s) working in brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

- ‘Prostitute(s) working in a brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal’ is a new factor and the Council would be interested in views.

Q49 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify what you would add or remove and why.

Sentence levels for keeping a brothel used for prostitution

The Council is proposing at the top end of the sentencing range a starting point and range that is higher than that suggested in the current SGC guidelines which has at its top level 2 years starting point with 1–4 years’ range. The highest category under the current SGC guidelines is for an offence where the offender is the keeper of the brothel and has made profits in region of £5,000 and upwards. In the top category proposed in this new guideline the Council is recommending a starting point of 5 years’ custody with a range of 3–6 years’ custody for category (1A) where the offender will have been involved in serious exploitation, or factors such as the brothel using prostitutes who are children. In addition, there will be a degree of larger scale management of the brothel or brothels and either abuse of a position of trust or an element of limiting the freedom of the prostitute.

At the other end of the range of this offending, where the offender is guilty of the offence but has minimal involvement and there are no signs of exploitation of prostitutes working in the brothel, a community order is proposed. Such a disposal would be designed to address the reasons the offender has become involved in the brothel.

The proposed starting points and sentence ranges are:

	A	B	C
Category 1	Starting point 5 years’ custody	Starting point 3 years’ custody	Starting point 1 year’s custody
	Category range 3 – 6 years’ custody	Category range 2 – 5 years’ custody	Category range High level community order – 18 months’ custody
Category 2	Starting point 3 years’ custody	Starting point 1 year’s custody	Starting point Medium level community order
	Category range 2 – 5 years’ custody	Category range 26 weeks’ – 2 years’ custody	Category range Low level community order – High level community order

Q50

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated please give reasons why.

Sexual exploitation of children
Causing or inciting child prostitution or pornography, Sexual Offences Act 2003 – section 48
and
Controlling a child prostitute or a child involved in pornography, Sexual Offences Act 2003 – section 49
and
Arranging or facilitating child prostitution or pornography, Sexual Offences Act 2003 – section 50
Maximum sentence: 14 years’ custody
(full guidelines page 267)

As with the adult offences discussed at page 86, sections 48 to 50 are aimed at commercial sexual exploitation but these offences concern children. These offences have similarities with sections 8 and 10 of the Sexual Offences Act 2003 (SOA 2003) (causing or inciting a child under 13 and under 16 to engage in sexual activity) discussed at page 45. The difference is that the definition of ‘child’ for these offences extends to all those under 18, including 16 and 17 year olds.

These offences cover offenders involved in causing, inciting, controlling, arranging or facilitating a child involved in prostitution or pornography. The inclusion of pornography also makes this offence wider than the adult offence.

Perhaps due to the fact there are alternative charges for victims under 16, these cases are sentenced very rarely; between 2006 and 2010 there were only forty six section 48–50 cases sentenced.⁸⁴

The Council is proposing to consider all these offences together in one guideline given there is commonality in the harm caused and the culpability of the offender and they all share a statutory maximum.

STEP ONE
Determining the offence category

The first step the court will take is to consider the principal factual elements of the offence. The Council has identified what they believe would be the main harm and culpability factors for this offence; many of the factors are adapted from the adult exploitation of prostitution offences and where there has already been a relevant discussion this is highlighted. New factors are discussed below.

The harm factors that the Council has identified in these offences are:

Harm	
Category 1	<ul style="list-style-type: none"> Abduction/detention of victim Prostitution or pornography involves penetrative sexual activity Violence used against victim Victim coerced or forced to participate in unsafe/particularly degrading sexual activity Victim passed around by the offender to other adults and/or moved to other brothels Victim forced/coerced into prostitution or pornography Victim tricked/deceived into prostitution or pornography
Category 2	Factor(s) in category 1 not present

- ‘Abduction/detention of victim’ – see discussion at page 87.
- ‘Prostitution or pornography involves penetrative sexual activity’ has been included for these offences as, although the offender

may not have had any direct sexual contact with the child, their actions in committing this offence will have resulted in the child being exposed to a very high degree of harm.

- ‘Violence used against victim’ – see discussion at page 87 and is particularly harmful where the victim involved is under 18.
- ‘Victim coerced or forced to participate in unsafe/particularly degrading sexual activity’. The Council acknowledges that any sexual activity that commercially exploits a child is degrading. This harm factor is intended to cover situations where there is additional degradation. The Council would particularly welcome views as to whether this factor should be included and if so, whether the current formulation adequately reflects the harm.
- ‘Victim passed around by the offender to other adults and/or moved to other brothels’. Such ‘trading’ of victims and exposure to other offenders, whether in the context of a brothel or otherwise, significantly increases the harm to the child.
- ‘Victim forced/coerced into prostitution or pornography’ – see discussion at page 87.
- ‘Victim tricked/deceived into prostitution or pornography’ – see discussion at page 87.

Culpability

As with the adult exploitation offences discussed at page 88, the role of the offender will be a key factor in determining culpability. A number of the factors are adapted from the adult offence above; where there has already been discussion this is referenced.

Culpability

A

Role in directing or organising child prostitution or pornography with an expectation of substantial financial or other gain

Abuse of position of trust/responsibility/power

Exploitation of victims known to be trafficked

Significant involvement in limiting the freedom of the victim

B

Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion)

C

Performs limited function under direction

Close involvement but engaged by pressure/intimidation/exploitation

Culpability C ‘Performs limited function under direction’ and ‘close involvement but engaged by pressure/intimidation/exploitation’ are intended to include the offender who plays a peripheral role or who is engaged because they are exploited or coerced themselves. Nonetheless, these offences concern the commercial sexual exploitation of children and even where a limited role is performed, a high level of culpability will exist which will be reflected in the sentencing levels; see discussion at page 100.

Culpability B ‘Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion)’ – see discussion at page 88.

Culpability A is a level of culpability that would cover offenders with a high degree of influence and control.

- ‘Role in directing or organising child prostitution or pornography with an expectation of substantial financial or other gain’ would apply to individuals who orchestrate activity for substantial commercial gain. The current SGC guideline includes *organised commercial exploitation* in the highest category but the Council is proposing to widen this to cover situations where the activity might not be formally organised. As with the adult offence, the Council is proposing a move away from a monetary value to ‘substantial financial or other gain’ as it will depend on the facts of the case.
- ‘Abuse of position of trust/responsibility’ will be particularly relevant in relation to an offender involved in the exploitation of children. Where an offender has exploited their position of trust or responsibility towards a child this demonstrates the highest level of culpability.
- ‘Exploitation of victims known to be trafficked’. Where an offender knows that a child has been trafficked this demonstrates the highest level of culpability due to the increased isolation and vulnerability of those children. This could apply equally to children trafficked into the UK from abroad or those trafficked internally within the UK.
- ‘Significant involvement in limiting freedom of the victim’ – see discussion at page 89.

Q51

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO

Starting points and category ranges

Having identified the appropriate category at step one the court considers the starting point and identifies whether there are any additional factors that have not already been considered at step one which would aggravate or mitigate the offence and decide whether the sentence should be adjusted upwards or downwards within the relevant range.

Although the list of factors is non-exhaustive, the Council’s intention is to highlight the most common factors. Some of these factors will have been discussed previously and where this is the case it is indicated. The suggested factors are:

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim

Vulnerability of victim

Threats made to expose victim to authorities, relatives or friends

Threats of harm to prostitute’s family/friends

Victim’s passport(s)/identity documents removed

Victim prevented from seeking medical treatment

Victim prevented from attending school

Use of drugs/alcohol/other substance to secure victims compliance

Food withheld

Earnings of victim withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses, etc

Victim manipulated into dependence on offender (e.g. physical, emotional, financial)
--

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence
--

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Deliberate isolation of victim’. The deliberate isolation of the victim from family and friends will aggravate the offence as it ensures the victim is removed from any support network or the possibility of seeking assistance.
- ‘Vulnerability of victim’ is intended to deal with additional vulnerability other than the age of the child which is already factored into the sentencing starting points and ranges. For example, children in care or children who have been subject to sexual abuse may be particularly vulnerable and targeted by offenders for this very reason. This factor at step two will give the court the flexibility to take onto account any other vulnerability factors which they feel will aggravate the offence.
- ‘Threats made to expose victim to authorities, relatives or friends’ – see discussion at page 90.
- ‘Threats of harm to prostitute’s family/friends’ – see discussion at page 90.
- ‘Victim’s passport(s)/identity documents’ removed – see discussion at page 90.
- ‘Victim prevented from seeking medical treatment’ – see discussion at page 90.
- ‘Victim prevented from attending school’. If there is evidence that the offender has kept the child from attending school then this could be an aggravation to reflect the longer-term harm to the child.
- ‘Use of drugs/alcohol/other substance to secure victims compliance’ – see discussion at page 90.
- ‘Food withheld’ and ‘earnings of victim withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses, etc’ – see discussion at page 90.
- ‘Victim manipulated into dependence on offender (e.g. physical, emotional or financial)’ aggravates the seriousness of an offence because it involves additional exploitation and control of the victim.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

Mitigation

The proposed mitigating factors have already been discussed in some detail at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q52 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

sentence levels to reflect the commercial element involved in these offences. This guideline would then only cover 16 and 17 year olds who would not be covered by causing or inciting sexual activity as it applies to children under 16.

Sentence levels for causing, inciting, controlling, arranging or facilitating child prostitution or pornography

The Council is proposing to include distinct starting points and ranges for victims under 13, those who are 13–15 and those who are 16–17 but is seeking views on this approach. An alternative to differing sentence levels would be to refer the court to the starting points and ranges for causing and inciting sexual activity with a child (see page 53) and increase those

Q53 Do you prefer the approach below of starting points and ranges that distinguish between those aged under 13, 13–15 and 16 and over, or do you favour referring the sentencer to the guideline on causing and inciting sexual activity or an alternative approach?

The suggested starting points and ranges are:

		A	B	C
Category 1	U13	Starting point 10 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
		Category range 8 – 13 years' custody	Category range 6 – 11 years' custody	Category range 2 – 6 years' custody
	13–15	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 2 years 6 months' custody
		Category range 6 – 11 years' custody	Category range 4 – 8 years' custody	Category range 1 – 4 years' custody
	16–17	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
		Category range 3 – 7 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	U13	Starting point 8 years' custody	Starting point 6 years' custody	Starting point 2 years' custody
		Category range 6 – 11 years' custody	Category range 4 – 9 years' custody	Category range 1 – 4 years' custody
	13–15	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
		Category range 4 – 9 years' custody	Category range 2 – 5 years' custody	Category range 26 weeks' – 2 years' custody
	16–17	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
		Category range 2 – 5 years' custody	Category range 26 weeks' – 2 years' custody	Category range High level community order – 1 year's custody

Q54

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated please give reasons why.

Paying for the sexual services of a child, Sexual Offences Act 2003 – section 47

Maximum sentence:

If penetration and child under 13, life imprisonment

If the child is under 16, 14 years’ custody

If the child is 16–17, 7 years’ custody (full guideline page 273)

The other exploitation offences discussed in this section concern the offender sexually exploiting others in order to profit in some way but do not involve sexual contact between the offender and the victim. This section 47 offence is different as it concerns offenders who obtain the sexual services of a child in return for payment to the child or to a third person.

Payment not only covers financial payment but also other forms of payment in kind, for example, providing drugs or alcohol to the child or writing off a debt. Rook and Ward on Sexual Offences also state that:

“It (payment) also covers the case where A obtains a child’s sexual services by providing other sexual services [to a third party] in return. This ensures that the s47 offence catches the activities of paedophile rings whose members provide each other on a reciprocal basis with access to children to exploit sexually.”⁸⁵

For the purposes of this offence a child is defined as anyone under the age of 18.⁸⁶

The legislation creates differing sentencing maxima depending on the age of the child but the activity can also be covered by other offences. For example, where the victim is under 13, any sexual activity would also be covered by sections 5–8 of the SOA 2003⁸⁷ regardless of whether payment was involved (for discussion of these offences see section five). Similarly, where the victim is between 13 and 15 a section 9 offence (sexual activity with a child) would also have been committed.

The current SGC guidelines were drafted on the basis that ordinarily those alternative charges would be used. Since 2006, section 47 has been sentenced on 13 occasions with four of these cases involving a child under 16. In the context of the low volume of these section 47 cases, the Council proposes that where victims are under 16 sentencers are directed to the guidelines for sections 5–8 and 9 where section 47 is charged. The starting points for those offences would be applied but commercial exploitation would increase the seriousness by becoming an additional factor at step one culpability. For example:

Scenario A

The offender is convicted of paying for penetrative sex with the victim a 15 year old under section 47. The sentencer is directed to the guideline on sexual activity with a child and would use the harm and culpability factors in that guideline to arrive at a category. The example given would fall into category 1A as the penetrative activity would place it in category 1 harm, and commercial exploitation would be added to that guideline as a higher culpability factor (A). This would attract a starting point of 5 years with a range of 3–10 years.

⁸⁵ Rook and Ward on Sexual Offences Law and Practice 4th edition para 10.15

⁸⁶ s.47(2)(c) Sexual Offences Act 2003

⁸⁷ s.5 Rape of a child under 13, s.6 Assault by penetration of a child under 13, s.7 sexual assault of a child under 13, s.8 causing a child under 13 to engage in sexual activity, *ibid*

This approach would result in the section 47 guideline applying only to victims aged 16 and 17.

Q55

Do you agree that it would be appropriate to refer the sentencer to the guidelines for sections 5–9 SOA 2003 if the victim is under 16?

STEP ONE

Determining the offence category

The court will determine the principal harm and culpability factors at step one. Although a victim who is 16 or 17 is over the age of consent, the victim is a young person who has been commercially sexually exploited. As with sexual activity with a child (see discussion at page 47), the Council has articulated harm in a way that is correlated to the sexual activity that has taken place. The suggested categories of harm for victims aged 16 and 17 are:

Harm	
Category 1	<ul style="list-style-type: none"> Activity involving violence Victim subjected to unsafe/particularly degrading sexual activity
Category 2	<ul style="list-style-type: none"> Penetrative sexual activity Masturbation by, or of, the victim
Category 3	Other sexual activity

Category 3 would be sexual activity that did not include any of the elements of categories 1 and 2.

Category 2 ‘Penetrative sexual activity’ and ‘masturbation’. In other guidelines relating to sexual activity with children penetrative activity has been placed in the highest category of harm. In those guidelines the definition of child is someone under 16 and so under the age of consent. In this offence, as discussed above, we are proposing that the guideline only applies to victims aged 16 and 17. Ordinarily it would be legal for 16 and 17 year olds to engage in penetrative activity; it is the fact that

the offender is paying for sexual services that makes this an offence. The Council is interested in views on whether it is right to place this in the second category of harm due to the fact the victim is over the age of consent or whether the commercial exploitation outweighs this fact.

Category 1 includes any activity that involves violence and unsafe or particularly degrading activity. The Council is consulting on the basis that, even if over the age of consent, being subjected to violent and/or degrading and unsafe activity will be high harm as it will expose the victim to increased risk.

Culpability

There will be an inherently high degree of culpability involved where an offender has paid for the sexual services of a child and this is reflected in culpability B. The Council has identified additional factors that increase this culpability which are included in culpability A. A number of these factors have been discussed already in relation to child sex offences and where this is the case the relevant discussion has been highlighted.

Culpability	
A	
	Abduction/detention of victim
	Sexual images of victim recorded, retained, solicited or shared
	Part of group or gang during commission of offence
	Threats made to victim (including to expose victim to authorities, relatives or friends)
	Offender aware that he is suffering from a sexually transmitted disease
	Offender aware victim has been trafficked
B	
	Factor(s) in category A not present

Culpability B has no factors listed but a high degree of culpability is already inherent because the offender has paid for the sexual services of a child.

Culpability A

- ‘Abduction/detention of victim’. If there is any element of abduction or detention involved limiting the child’s freedom then this will increase culpability. See discussion at page 87. This applies whether the offender has been directly involved in the abduction and detention or was aware that the victim had been detained or abducted but paid for the sexual services of that child.
- ‘Sexual images of victim recorded, retained, solicited or shared’ – see discussion at page 48.
- ‘Part of group or gang during commission of offence’ – see discussion at page 20.
- ‘Threats made to victim (including to expose victim to authorities, relatives or friends)’ – see discussion at page 90.
- ‘Offender aware that he is suffering from a sexually transmitted disease’ increases culpability because the offender deliberately exposes the victim to the risk of contracting that disease.
- ‘Offender aware victim has been trafficked’ is included as there may be an overlap between trafficking and a child who is being sexually exploited for commercial purposes; if this is known to the offender it should increase culpability.

Q56

Do you agree with the harm and culpability factors proposed at step one for paying for the sexual services of a child? If not, please specify which you would add or remove and why.

STEP TWO**Starting points and category ranges**

Having identified the appropriate category at step one, the court considers the starting points and identifies whether there are any additional factors that have not already been considered that will adjust the sentence upwards or downwards from the starting point. The list of factors is non-exhaustive and where the factors have already been discussed reference to the relevant discussion is given.

Aggravating factors*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 comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ – see discussion at page 24.
- ‘Attempts to dispose of or conceal evidence’ – see discussion at page 24.

Mitigation

The mitigating factors are the same factors that have been previously discussed for other child sex offences so please see discussion at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Sentence levels for paying for the sexual services of a child (victim 16 or 17 years old)

The statutory maximum for victims aged 16 or 17 is 7 years’ custody. The Council proposes starting points and sentence ranges designed to reflect the degree of harm, culpability and exploitation. The proposed starting points and ranges are given below.

Q57 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify what you would add or remove and why.

Q58 Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

	A	B
Category 1	Starting point 4 years’ custody	Starting point 2 years’ custody
	Category range 2 – 5 years’ custody	Category range 1 – 4 years’ custody
Category 2	Starting point 3 years’ custody	Starting point 1 year’s custody
	Category range 1 – 4 years’ custody	Category range 26 weeks’ – 2 years’ custody
Category 3	Starting point 1 year’s custody	Starting point 26 weeks’ custody
	Category range 26 weeks’ – 2 years’ custody	Category range High level community order – 1 year’s custody

Trafficking into the UK for sexual exploitation, Sexual Offences Act 2003 – section 57

and

Trafficking within the UK for sexual exploitation, Sexual Offences Act 2003 – section 58

and

Trafficking out of the UK for sexual exploitation, Sexual Offences Act 2003 – section 59

Maximum sentence: 14 years’ custody (full guidelines page 279)

The activity involved can be much wider than trafficking for the purpose of sexual exploitation and can also cover trafficking for the purposes of labour exploitation and domestic servitude. This consultation is, however, only concerned with trafficking offences dealt with in the Sexual Offences Act 2003. These are trafficking into, trafficking out of or trafficking within the UK for the purpose of sexual exploitation.

Those offences require an offender to:

- i) facilitate or arrange the travel of a victim either into, out of or within the UK; and
- ii) intend to do, or believe that someone else will do, something to the victim that constitutes an offence.

The sentencing statistics show that these are low volume offences; between 2006 and 2010 the number of sentences recorded ranged from 10 cases a year to 24 cases a year.⁸⁸ However, these are offences where the statistics do not necessarily reflect the full picture; for example, trafficking is often charged alongside other offences and as the MoJ statistics record only the principal offence, the volume of offences may be masked. As the first annual report of the inter-departmental ministerial group on human trafficking states:

“Traffickers are often prosecuted for one of a number of possible offences and not just human trafficking offences.... These prosecutions and convictions will not appear on national statistics as convictions for human trafficking offences. So, whilst the number of prosecutions and convictions for trafficking offences may appear low, compared to the number of potential victims identified, there are many more convictions of persons involved in trafficking for other related offences...”⁸⁹

Trafficking is therefore an important part of the wider picture of exploitation; there may be overlap with offences already considered in this section such as controlling prostitution or other sexual offences related to the exploitation of the victim.

Since the original SGC guidelines came into force, much work has been done within the UK to further understand the mechanics and behaviours associated with trafficking and the first prosecutions for internal trafficking within the UK have taken place.⁹⁰

The UK Human Trafficking Centre states:

“Someone becomes a victim of trafficking not only because of the journey they are forced to make but because of the exploitation to which they are exposed at the end of that journey, and to which they have not consented. Any consent they do give to make the journey in the first place is likely to have been gained fraudulently, for example with the promise of a job or a better standard of living... human trafficking is about three elements: movement, control and exploitation.”⁹¹

⁸⁸ Ministry of Justice Court Proceedings Database

⁸⁹ First annual report of the inter-departmental ministerial group on human trafficking October 2012

⁹⁰ http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/

⁹¹ <http://www.soca.gov.uk/about-soca/about-the-ukhtc/an-overview-of-human-trafficking/common-myths>

The Council is proposing to deal with trafficking into, out of and within the UK under the same guideline as all three offences share the same harm to the victims and culpability of offenders.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the principal factual elements of the offence. The Council has decided to use the same general approach applied to exploitation of prostitution offences at page 86. There are differences which are discussed below but there are also factors in relation to the sexual exploitation of the victim that are shared between the trafficking offence and the exploitation of prostitution offences.

The list of harm factors below is exhaustive and is intended to contain the principal harm factors that a court should take into account:

Harm	
Category 1	<ul style="list-style-type: none"> • Abduction/detention of victim • Violence used against victim • Sustained and systematic psychological abuse of victim • Victim under 18 • Victim coerced or forced to participate in unsafe/particularly degrading sexual activity • Victim forced or coerced into prostitution • Victim tricked/deceived as to purpose of visit
Category 2	Factor(s) in category 1 not present

Category 2 does not contain any factors as the starting points and ranges for this category will reflect the inherent harm caused to victims of trafficking even in the absence of any other harm factors.

Category 1 contains a number of factors the Council believes indicate an increased level of harm suffered by the victim.

- ‘Abduction/detention of victim’ is included. The Council has considered the various ways in which victims may have come to be trafficked; not every victim of trafficking will have been abducted or forced into travel but may have willingly agreed to be transported, unaware of the offender’s intention to control and sexually exploit them. It is recommending that where abduction or detention has occurred at any stage of the offence it increases the harm because of the fear and loss of control the victim will have experienced.
- ‘Violence used against victim’ – see discussion at page 87.
- ‘Sustained and systematic psychological abuse of victim’ – see discussion at page 87.
- ‘Victim under 18’. Where the victim is under 18 the harm is increased because of the corrupting effect on their emotional development.
- ‘Victim coerced or forced to participate in unsafe/particularly degrading sexual activity’ – see discussion at page 87.
- ‘Victim forced or coerced into prostitution’. The Serious Organised Crime Agency cites, as a ‘myth’ surrounding trafficking, that many trafficked women are already prostitutes:

“The majority of trafficking victims working as prostitutes will have been forced into this against their will, having already been trafficked without their consent, deceived into consenting to the journey, or deceived about the kind

of work they would be doing at the end of the journey.”⁹²

The Council recommends that where the victim is subsequently forced to engage in such activity it increases the harm flowing from the offence.

- ‘Victim tricked/deceived as to purpose of visit’ would increase the harm caused by the offender. As set out above, not all those trafficked will have been forced to travel but many will have been deceived into the purpose of their transportation. Where this is the case the Council is recommending that this is included in the increased harm category.

Culpability

As with a number of the exploitation offences discussed earlier in this section, the Council is recommending two harm categories but three levels of culpability. This is to reflect the fact that the court may be faced with offenders who have played various roles from directing and organising a trafficking chain to limited involvement through pressure, exploitation or coercion.

The SGC guideline currently determines category level as either:

- involvement at any level in any stage of the trafficking operation where the victim was coerced (starting point 6 years, range 4–9 years); or
- involvement at any level in any stage of the trafficking operation where there was no coercion of the victim (starting point 2 years’ custody, range 1–4 years).

The Council is proposing to move away from this categorisation to better reflect the culpability of the offender and to recognise that there may be harm even where coercion is not obvious (see discussion of harm factors at page 106).

The levels of culpability proposed are:

Culpability

A

Directing or organising trafficking on commercial scale and/or substantial influence on others in trafficking organisation/chain

Expectation of substantial financial gain

Abuse of position of trust/responsibility

B

Operational or management function within chain

Involves others in operation whether by pressure/influence/intimidation or reward (and offender’s involvement is not as a result of coercion)

C

Performs limited function under direction

Engaged by pressure/intimidation/exploitation

Culpability C ‘Performs limited function under direction’ and ‘engaged by pressure intimidation/exploitation’. Anyone who has played a role in the trafficking of others will be culpable but this category is intended to cover those who have played a peripheral role and have not directed, controlled or managed any activity along with those whose involvement is as a result of their own exploitation or trafficked status.

Culpability B ‘Operational or management function within chain’ and ‘involves others in operation whether by pressure/influence/intimidation or reward (and offender’s involvement is not as a result of coercion)’ would apply to an offender who has more than a peripheral role and is responsible for engaging others in the trafficking operation or has a degree of oversight or control over the trafficking activity.

Culpability A are intended to deal with those offenders with very high levels of culpability.

92 <http://www.soca.gov.uk/about-soca/about-the-ukhtc/an-overview-of-human-trafficking/common-myths>

- ‘Directing or organising trafficking on commercial scale and/or substantial influence on others in trafficking organisation/chain’ would encompass an offender who was at the top of an organised trafficking chain. These offenders have high levels of influence and control and therefore their lack of interaction with individual victims should not decrease their culpability. It is the power and influence they exert in directing the operation that are significant. When the SGC originally consulted on exploitation in April 2004 it stated:

“Those at the top of an organised trafficking chain may have very little personal involvement with the day to day operations and may have no knowledge at all of individual victims. However, we take the view that being in control of a money making operation that is based on the degradation, exploitation and abuse of vulnerable people may be equally, if not far more, serious than the actions of an individual who is personally involved in an operational part of the chain.”⁹³

The Council agrees with this reasoning and that lack of knowledge and awareness of individual victims should not in any way lessen the offence as the offender is prepared to commercially sexually exploit others and to control this exploitation.

- ‘Expectation of substantial financial gain’ – see discussion at page 89.
- ‘Abuse of position of trust/responsibility’ – see discussion at page 89.

Q59

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category ranges

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional aggravating and mitigating factors and adjust the sentence up or down accordingly.

These factors will allow the court to consider the wider context of the offence. The list of factors is non-exhaustive but the Council’s intention is to highlight the most common. The suggested factors are:

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim(s)

Victim(s) children left in home country due to trafficking

Exploitation of victim(s) from particularly vulnerable backgrounds

Threats made to expose victim(s) to the authorities (immigration or police)

Threats of harm to the victim’s family/friends

Victim(s) previously trafficked/sold/passed around

Victim(s) passport(s)/identity documents removed

Victim(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure victim’s compliance

Food withheld

Earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses, unreasonable interest rates

Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

- ‘Previous conviction’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Deliberate isolation of victim(s)’. A degree of isolation will be an inevitable consequence of the fact a victim is in a different country or area of the UK. However, the Council is recommending that the seriousness of the offence is increased where the victim is then denied access to any form of communication with family/friends or is deliberately separated from people they have travelled with.
- ‘Victim(s) children left in home country due to trafficking’. Such a situation is likely to cause considerable further anguish to the victim and additional harm to the children left behind. The report of the Inter Departmental Ministerial Group on Trafficking states:

“To entice victims traffickers often approach individuals promising to help them to find a better life through education or higher paid employment in the UK. Individuals may accept an offer of help without knowing the full consequences of the situation they may find themselves in once they arrive in the UK.”⁹⁴

The motivation of improved prospects for the victim’s family may make them

susceptible to being trafficked as the victim has the expectation that they will be able to help or improve the prospects and situation of other members of their family including their children; the consequences for such victims is also greater.

- ‘Exploitation of victim(s) from particularly vulnerable backgrounds’. Whilst all victims of trafficking are likely to be vulnerable in some way the Council believes that the exploitation of particularly vulnerable groups increases the severity of the offence. In recent cases of internal trafficking it was seen that children in care and from dysfunctional backgrounds were at increased risk of grooming and being trafficked internally for the purposes of sexual exploitation.⁹⁵
- ‘Threats made to expose victim(s) to the authorities (immigration or police) – see discussion at page 90.
- ‘Threats of harm to the victim’s family/friends’ may be deployed by the offender as another means of controlling the victim. The victim’s feelings of helplessness and fear are likely to increase where they know the offender has influence over or access to their family which could result in harm befalling family members.
- ‘Victim(s) previously trafficked/sold/passed around’ would increase the seriousness of the offence as there is continuing damage and harm to the victim.
- ‘Victim’s passport(s)/identity documents removed’, ‘victim(s) prevented from seeking medical treatment’, ‘use of drugs/alcohol or other substance to secure victim’s compliance’, ‘food withheld’ and ‘earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses,

94 <http://www.homeoffice.gov.uk/publications/crime/human-trafficking-report>

95 See footnote 32

unreasonable interest rates' are all common means of control by the offender and have been discussed previously at page 90.

- 'Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution' and 'attempts to dispose of or conceal evidence' – see discussion at page 24.

Mitigation

The mitigating factors that are set out below have already been discussed in some detail at page 24. The Council is proposing that is someone who is involved in trafficking but has previously been exploited or trafficked themselves, this should be dealt with by placing that offender in the lowest category of offending rather than treating previous exploitation as mitigation (see discussion at page 88).

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

Mental disorder or learning disability, where linked to the commission of the offence

Victims willingly travelled to/out of/within the country and engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

Sentence levels for trafficking

The Council has taken a different approach to categories of offending from the previous SGC guidelines which recommends in the top category a starting point of 6 years' custody with a range of 4–9 years. The Council proposes to revise this to a starting point of 8 years' custody with a range of 6–10 years. Although this is higher than the existing SGC guidelines it reflects sentencing practice; between 2007–2011, around 30 per cent of people received a sentence of more than 6 years and 6 per cent of people over 9 years.⁹⁶

The current SGC guidelines do not distinguish between types of offender; this means that the head of a trafficking operation where victims have been coerced would be faced with a 6 years' custody starting point but an offender who has been coerced or exploited themselves and involved in a very limited way would also face the same starting point. The Council believes there should be a greater acknowledgment of differences in types of offenders and is therefore recommending that the range of sentence starting points and ranges is more nuanced and wider than under the current guidelines.

Q60

Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

The proposed sentence levels are:

	A	B	C
Category 1	Starting point 8 years' custody	Starting point 6 years' custody	Starting point 18 months' custody
	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 26 weeks' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community order – 18 months' custody

Q61

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Section eight: Offences against those with a mental disorder

This section considers a number of offences designed to protect some of society's most vulnerable adults who have a mental disorder.⁹⁷ The Sexual Offences Act 2003 (SOA 2003) overhauled previous legislation in this area⁹⁸ and introduced a number of new offences, for example, offences committed by care workers. The offences against those with a mental disorder are split into three categories. These are:

- offences against a person with a mental disorder impeding choice, Sexual Offences Act 2003 – sections 30–33. This covers individuals whose mental functioning is so impaired at the time of the sexual activity that they are unable to refuse;
- offences against those who have the capacity to consent to sexual activity but have a mental disorder which makes them vulnerable to inducement, threat or deception, Sexual Offences Act 2003 – sections 34–37;
- offences by care workers against those with a mental disorder, Sexual Offences Act 2003 – sections 38–41.

This is a complex area due to the different levels of mental disorder which need to be established before a particular offence can be charged. There is a very small number of these offences prosecuted⁹⁹ but this may belie the fact that many more offences occur than are reported to the police and result in prosecution.

The guideline can only, however, address those cases where there has been a conviction and there is an offender to be sentenced.

Because of the low volume of offences it is important that sentencers are given appropriate guidance on these offences.

The legislation does not intend to criminalise all sexual activity that someone with a mental disorder might engage in and is not intended to restrict the right of a person to engage in sexual relationships; it does, however, seek to protect vulnerable people when this sexual activity is founded on exploitation and abuse.

Offences against a person with a mental disorder impeding choice

The offences discussed in this section all relate to someone with a mental disorder that impedes choice i.e. the victim lacks the capacity to choose whether to agree to the activity. This could be because the victim lacks sufficient understanding of the nature of the activity or the reasonably foreseeable consequences of what is being done, or it could be the victim is unable to communicate their choice to the offender.

The current Sentencing Guidelines Council (SGC) guidelines deal with mental disorder impeding choice and engaging a victim in sexual activity through inducement, threat or deception as one guideline. The Council is consulting on whether

⁹⁷ The Sexual Offences Act uses the same definition of “mental disorder” as the Mental Health Act 1983 which has now been amended by the Mental Health Act 2007 S1(1) to include “any disorder or disability of the mind”

⁹⁸ Sexual Offences Act 1956

⁹⁹ In 2011 22 people were sentenced for ss.30–33 offences; no one was sentenced for ss.34–37 offences; eight people were sentenced for ss.38–41 offences

to deal with these offences separately rather than combining them and is recommending that they should be covered by separate guidelines. The reasoning is that where a victim is unable to refuse, then in practical, if not legal, terms this is likely to have a similar impact to a lack of consent in cases where the victim does not have a mental disorder. The Council is therefore proposing that the guideline for offences where there is a mental disorder impeding choice should adopt a similar structure to the guidelines for rape, assault by penetration and sexual assault – see discussion at section four. However, for the mental disorder offences, inducement, threat or deception will often involve offender behaviours that are more akin to grooming and exploitation as set out in the sexual activity with a child guideline – see section five. This may lead to the appearance of a victim having ‘agreed’ to the activity but the reality is that any apparent agreement will have been obtained by exploitation. The Council would be interested in views on this suggested approach.

Q62

Do you agree that the offences concerning a victim with a mental disorder impeding choice should be treated separately from victims who engage in sexual activity due to inducement, threat or deception? If not, please give reasons.

Sexual activity with a person with a mental disorder impeding choice, Sexual Offences Act 2003 – section 30

and

Causing or inciting a person with a mental disorder impeding choice to engage in sexual activity, Sexual Offences Act 2003 – section 31

Maximum sentence:

If penetration, life imprisonment

**If no penetration, 14 years’ custody
(full guidelines page 285)**

This offence occurs where an offender who is aware that the victim has a mental disorder deliberately sexually touches the victim who is unable to refuse because of the mental disorder; it also occurs where the offender causes or incites the victim to engage in sexual activity with either the offender or a third party. This offence covers both penetrative and non-penetrative sexual activity.

STEP ONE

Determining the offence category

The first step the court will take is to consider the principal factual elements of the offence. Although this offence involves a wide range of sexual touching, the Council has identified what it believes will be the principal features of harm to the victim and culpability of the offender. Many of these factors have been discussed before under the rape and assault offences and the discussion is referenced below:

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of sexual activity • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home or residence
Category 3	Factor(s) in categories 1 and 2 not present

Category 3 does not include any factors. This is to reflect the inherent harm caused by offences of this type without any other factors being present.

Category 2 builds upon the harm that is a consequence of the sexual activity and lists factors that have already been discussed under the rape guideline at page 16.

- ‘Pregnancy or STI as a consequence of sexual activity’ is included and a discussion of this factor can be found at page 16. As this offence involves both penetrative and non-penetrative activity there may be instances of sexual touching that would be comparable to sexual assault where this factor will never be pertinent but it is included to cover the consequences of penetrative activity and the increased harm this would cause to an already vulnerable victim.
- ‘Additional degradation/humiliation’ – see discussion at page 17.
- ‘Abduction/detention’ – see discussion at page 17.
- ‘Prolonged/sustained incident’ – see discussion at page 17.

- ‘Use of violence’ – as with other discussions in this consultation it is acknowledged that serious offending can and does occur without the use of violence. An absence of violence will not mitigate or lessen the offence but where violence is present, this will increase the mental harm to the victim through fear and also will result in physical harm, which may in itself lead to longer-term consequences.
- ‘Context of habitual sexual abuse’ – see discussion at page 18.
- ‘Forced entry into victim’s home or residence’ – see discussion at 18. This can be particularly harmful in situations where the victim is in residential care due to the degree or nature of their mental disorder and the offender has forced entry into their room in order to commit the offence. The offender may also gain entry to the victim’s room through deception as to the purpose of their visit. The Council is interested in views on whether the wording needs to be widened to encompass entry by force **or** deception.

Category 1 adopts the same approach as seen in rape and assault by penetration at pages 18 and 28. This guideline also reflects that there are degrees of severity in the factors found in categories 1 and 2 and also that combinations of the factors may lead to heightened harm. The sentencer will therefore be left to assess the case on the facts before them.

Culpability

As with the harm factors the culpability factors stated below are the same as those for an offender found guilty of rape. Where there has been previous relevant discussion this is highlighted below:

Culpability**A**

Significant degree of planning

Member of group or gang during commission of offence

Use of alcohol/drugs on the victim to facilitate the offence

Abuse of position of trust

Recording of the offence

Stalking/harassment of victim

Previous violence against victim

Offence committed in course of burglary

Deliberate isolation of victim

Use of a weapon to frighten or injure

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

B

Factor(s) in category A not present

Culpability B reflects the inherent culpability involved in the commission of any offence of this type. Any offender convicted of this offence will have taken a deliberate decision to abuse someone in a highly vulnerable position.

Culpability A lists factors that may further exacerbate the very high levels of culpability demonstrated by commission of this offence.

- 'Significant degree of planning' – see discussion at page 20.
- 'Member of group or gang during commission of offence' – see discussion at page 20.
- 'Use of alcohol/drugs on the victim to facilitate the offence' – see discussion at page 21. It is particularly culpable for an offender to use drugs to alter the effects of prescribed medication by the administration

of other drugs, or to use alcohol or drugs to alter the victim's behaviour.

- 'Abuse of position of trust' – there are specific offences relating to care workers who abuse their position of trust (sections 38–41, see discussion at page 120) but the definition of 'abuse of trust' within the context of culpability is wider than the statutory definition used for those offences. In this context it can include, for example, a trusted family member.
- 'Recording of the offence' – see discussion at page 21.
- 'Stalking/harassment of victim' – see discussion at page 21.
- 'Previous violence against victim' – see discussion at page 21.
- 'Offence committed in course of burglary' – see discussion at page 21.
- 'Deliberate isolation of victim' – covers situations where the already vulnerable victim is deliberately isolated by the offender and prevented from obtaining help or assistance.
- 'Use of a weapon to frighten or injure' – see discussion at page 22.
- 'Offence racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)' – see discussion at page 22.

Q63

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO**Starting point and category range**

Once the category of case has been determined the court will look at a non-exhaustive list of aggravating and mitigating factors in order to identify any other factors which have not been considered at step one that might aggravate or mitigate the offence. This would lead the court to decide whether to move up or down from the starting point.

The table below sets out the proposed aggravating factors:

Aggravating factors*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

Location of offence

Timing of offence

Victim compelled to leave their home, institution, hospital, etc (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Presence of others, especially children

Commission of offence whilst under the influence of alcohol or drugs

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.

- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Victim compelled to leave their home, institution, hospital, etc (including victims of domestic violence)’. In relation to the current offence, the wording has been widened also to mean someone compelled to move from their care home or institution they are in as a result of the offence.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Presence of others, especially children’ – see discussion at page 24.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

The mitigating factors proposed have already been discussed in some detail at page 24. The list of mitigating factors is non-exhaustive and is set out below.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

Offender intervenes to stop the sexual activity taking place

* In the context of serious sexual offences good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

Q64 Do you agree with the proposed aggravating and mitigating factors at step two for these offences? If not, please specify what you would add or remove and why.

Sentence levels for sexual activity with a person with a mental disorder impeding choice

As set out at page 113 if a victim is unable to refuse by virtue of their mental disorder the

Council is proposing that these offences should be treated as severely as the offences where there is no consent. The victim is likely to be very vulnerable by virtue of their mental disorder and it is proposed that the sentence starting points and ranges should reflect this vulnerability. As the offence deals with both penetrative and non-penetrative activity, two tables are included to distinguish between each type. As the penetrative activity will include both penile and other forms of penetration the sentence ranges proposed are wider than those found in the rape guidelines at page 27 to reflect this.

Where offence involves penetration

	A	B
Category 1	Starting point 16 years' custody	Starting point 14 years' custody
	Category range 14 – 20 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 13 years' custody	Starting point 10 years' custody
	Category range 8 – 17 years' custody	Category range 5 – 13 years' custody
Category 3	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 6 – 13 years' custody	Category range 5 – 11 years' custody

The sentence starting points and ranges also reflect the inherent vulnerability of the victim.

Where offence did not involve penetration

	A	B
Category 1	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 4 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 1 – 5 years' custody	Category range High level community order – 3 years' custody
Category 3	Starting point 1 year's custody	Starting point High level community order
	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody

Q65

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated please give reasons why.

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice, Sexual Offences Act 2003 – section 32 and Causing a person with a mental disorder impeding choice to watch a sexual act, Sexual Offences Act 2003 – section 33

Maximum sentence: 10 years' custody

These offences replicate the offence behaviours in sections 11 and 12 of the SOA 2003 which involve engaging in sexual activity in the presence of a child and causing or inciting a child to watch a sexual act. These offences are discussed at page 60. In the last 10 years there have been five cases of the section 32 offence (engaging in sexual activity in the presence of a person with a mental disorder impeding choice) sentenced; the section 33 offence has never been sentenced.

The Council's proposed approach is to use the section 11 and 12 guidelines as a template for the offence categories and sentence levels. The Council acknowledges that there are differences between activity involving children and vulnerable adults; however, both groups are vulnerable and a similar approach to that taken for the section 11 and 12 offences is therefore recommended. This means that harm will be predicated on the extreme nature of the activity which the victim has had to view and the culpability factors focus on exploitative and manipulative behaviour on the part of the offender.

Sentence levels proposed also equate to those for the child sex offences involving sexual activity in the presence of a child (section 11, please refer to page 64) and causing a child to watch a sexual act (section 12, please refer to page 64). The full guideline can be viewed at page 291.

Q66

Do you agree with the Council's approach to the guideline on engaging in sexual activity in the presence of a person with a mental disorder impeding choice or causing that person to watch a sexual act?

Offences involving inducement, threat and deception against a person with a mental disorder

The next category of offences deals with those with a mental disorder which makes a person vulnerable to agreeing to engage in sexual activity through inducement, threat or deception. This category of offences has only seen two cases sentenced in the last 10 years; one case involved inducement, threat and deception to procure sexual activity (section 34) and the other of causing a person to agree to or engage in sexual activity by inducement, threat or deception (section 35). Engaging in sexual activity in the presence of or causing a person to view sexual activity by inducement, threat or deception has never been sentenced.

Inducement, threat or deception to procure sexual activity with a person with a mental disorder, Sexual Offences Act 2003 – section 34

and

Causing a person with a mental disorder to engage in sexual activity by inducement, threat or deception, Sexual Offences Act 2003 – section 35

Maximum sentence: 14 years' custody

Procuring sexual activity through inducement, threat and deception and causing a person to agree to engage in sexual activity by inducement, threat or deception are offences which the Council proposes to approach in a similar way to the section 9 and 10 offences of engaging in sexual activity with a child (discussed at page 45). All these offences share a statutory maximum of 14 years. In common with the offences involving children, the victim may appear to have acquiesced to sexual activity but that has occurred due to exploitation or manipulation by the offender. In the offences involving children, harm is linked to the sexual activity that has been engaged in (with penetrative sexual activity treated as the highest level of harm); culpability for those offences concentrates on the exploitation and manipulation employed by the offender in order to procure the sexual activity. The same approach is proposed for these offences.

It is also proposed that the same sentence starting points and ranges are used for this offence as are used for the section 9 and 10 offences. The full guideline can be viewed at page 297.

Q67

Do you agree with the Council's approach to the guideline on procuring sexual activity through inducement, threat or deception and causing the person to engage in sexual activity by inducement, threat or deception?

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder, Sexual Offences Act 2003 – section 36

and

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception, Sexual Offences Act 2003 – section 37

Maximum sentence: 10 years' custody

These offences have never been used but the offending behaviours are the same as for the section 32 and 33 offences discussed at page 118. It is therefore proposed to adopt the same approach and the full guideline can be found at page 303.

Q68

Do you agree with the Council's approach to the guideline on engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder and of causing a person with a mental disorder to watch a sexual act by inducement, threat or deception?

Offences relating to care workers

The last category of cases involves offences committed by care workers¹⁰⁰ against people with a mental disorder. As explained in Rook and Ward on Sexual Offences:

“The purpose of these provisions is to protect a person with a mental disorder who has the capacity to consent but who may be particularly vulnerable to exploitative behaviour and may agree to sexual activity because of dependence upon their carer.”¹⁰¹

This type of offence has much in common with the abuse of trust offences that are discussed at page 69. The offender, in the course of their employment or otherwise, is involved in the care of the victim and as such is in a position of trust and power in relation to the victim. Under these provisions it is not necessary for the victim to have a mental disorder such that they are unable to refuse and the victim may maintain that the activity is consensual. The offence is, however, designed to protect a vulnerable victim who develops an emotional dependency on or attachment to the person caring for them which is exploited by the offender.

Care workers: sexual activity with a person with a mental disorder, Sexual Offences Act 2003 – section 38

and

Care workers: Causing or inciting sexual activity, Sexual Offences Act 2003 – section 39

Maximum sentence:

if penetration, 14 years’ custody

if no penetration, 10 years’ custody

(full guidelines page 309)

These offences are committed where the offender sexually touches a person with a mental disorder who is in their care or causes or incites a person with a mental disorder to engage in sexual activity with either the offender or a third party.

STEP ONE

Determining the offence category

The first step the court will take is to consider the principal factual elements of the offence. As with the abuse of trust offences discussed at page 69, harm is determined by the type of sexual activity that has taken place. This is because the victim may be reluctant or unable to articulate any harm done to them and may regard themselves as being in a genuine relationship with the offender. The Council therefore propose that harm equates to the type of sexual activity and has noted that the legislation creates a higher statutory maximum of 14 years’ custody for penetrative activity than for non-penetrative activity which carries a maximum of 10 years’ custody.

The proposed harm factors are:

¹⁰⁰ s.42 Sexual Offences Act 2003

¹⁰¹ *Rook and Ward on Sexual Offences Law and Practice* 4th edition para 7.165

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Factor(s) in categories 1 and 2 not present

Culpability

The culpability factors are also adapted from the abuse of trust guideline and discussion of these factors can be found at page 71. It will be noted that one change from the abuse of trust guideline is that ‘vulnerable victim targeted’ has been removed because the victim will always be vulnerable and this is built into the sentencing starting points and ranges discussed at page 122.

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Sexual images of victim recorded, retained, solicited or shared
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

Q69

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors not already considered at step one which would aggravate or mitigate the offence. At step two the list of aggravating and mitigating factors is non-exhaustive and so the most common are identified to assist sentencers. This leads the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range.

The aggravating factors have been adapted from the abuse of trust factors and a discussion of the factors can be found at page 72.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Victim required to move care home, institution, hospital, etc as a result of relationship

Failure of offender to respond to previous warnings about the activity

Commission of offence whilst under the influence of alcohol or drugs

Mitigation

The mitigating factors are the same as for the abuse of trust offences and a discussion of the factors can be found at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Offender voluntarily stops the sexual activity taking place

Q70 Do you agree with the aggravating and mitigating factors proposed at step two? If not, please specify which you would add or remove and why.

Sentence levels for ‘care workers: sexual activity with a person with a mental disorder’ and ‘care workers: causing or inciting sexual activity’

Although the guideline is closely modelled on the abuse of trust guideline the Council is consulting on the basis that the starting points and sentence levels should be higher than those for the abuse of trust offence which, as stated at page 70, will ordinarily apply to 16 and 17 year olds. This is because there is potentially a wider range of vulnerability when the offender has a mental disorder.

	A	B
Category 1	Starting point 3 years’ custody	Starting point 18 months’ custody
	Category range 2 – 5 years’ custody	Category range 1 – 2 years’ custody
Category 2	Starting point 1 year’s custody	Starting point 26 weeks’ custody
	Category range 26 weeks’ – 18 months’ custody	Category range High level community order – 1 year’s custody
Category 3	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 26 weeks’ custody	Category range Low level community order – High level community order

Q71 Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Care workers: sexual activity in the presence of a person with a mental disorder, Sexual Offences Act 2003 – section 40

and

Care workers: causing a person with a mental disorder to watch a sexual act, Sexual Offences Act 2003 – section 41

Maximum sentence: 7 years' custody

There have only been five offenders sentenced under these sections over the last five years. As the offending behaviours are the same as for the equivalent offences set out at page 118 it is proposed to adopt the same approach and sentencing levels as for the abuse of position of trust offences involving sexual activity in the presence of a child (section 18, please refer to page 74) and causing a child to watch a sexual act (section 19, please refer to page 74). The full guideline can be found at page 315.

Q72

Do you agree with the Council's approach to the guideline on care workers: sexual activity in the presence of a person with a mental disorder and causing a person with a mental disorder to watch a sexual act?

Section nine: Other sexual offences

The offences to be dealt with in this section are:

- exposure
- voyeurism
- sex with an adult relative
- preparatory offences (administering a substance with intent; committing an offence with intent to commit a sexual offence; trespass with the intent to commit a sexual offence)

This section will also highlight the approach that the Council intends to take in relation to offences committed a long time ago, which will be referred to as historic sexual offences.

Exposure, Sexual Offences Act 2003 – section 66

Maximum sentence: 2 years' custody (full guideline page 321)

The offence of exposure is committed when a person intentionally exposes their genitals and intends that someone will see them and be caused alarm and distress. The Council is proposing to deal with this offence by identifying circumstances when harm to the victim and culpability of the offender would be raised, an approach already proposed for the grooming offence at page 65.

The proposed categories would therefore be:

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Exposure without raised harm or culpability factors present

STEP ONE Determining the offence category

In the current Sentencing Guidelines Council (SGC) guidelines the only factors identified are the basic offence and a repeat offender. The new guidelines deal with previous convictions at step two and so reference to repeat offenders is dealt with there rather than at step one. The list of factors at step one is an exhaustive list and the Council has identified the following factors.

Factors indicating raised harm

Victim followed/pursued

Offender masturbated

Factors indicating raised culpability

Vulnerable victim targeted

Abuse of position of trust

Threats of violence/threatening or violent sexual language

Harm

- 'Victim followed/pursued' would increase harm to the victim as this would increase the sense of fear and menace they experienced.
- 'Offender masturbated' – where the offender masturbates in front of the victim in addition to exposing their genitalia this is likely to increase the shock and disgust felt by the victim.

Culpability

- ‘Vulnerable victim targeted’ would increase the offender’s culpability as they have deliberately sought out someone who may be less able to deal with, or may be more affected by the offender’s action. The definition of what amounts to vulnerability is quite wide and includes, for example, youth, old age or disability.
- ‘Abuse of position of trust’ – as with other offences, where an offender has exploited a position of trust in order to commit an offence. The Council would be interested in views as to whether this is a common enough factor to be included.
- ‘Threats of violence/ threatening or violent sexual language’ – whilst the offence of exposure is inherently upsetting, where the offender uses deliberately threatening or explicit threatening language to further intimidate or frighten the victim this increases his culpability.

Q73

Do you agree with the harm and culpability factors proposed at step one? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Once the category and starting point has been decided, the court will look at aggravating and mitigating factors to consider the wider context of the offence and decide whether the sentence should move up or down from the starting point. The factors at this stage are non-exhaustive. Where factors have been discussed previously this is indicated below. New factors are explained in full.

Aggravating factors

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

Location of the offence

Timing of the offence

Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of the offence’ – the wording is deliberately drafted widely so that it can encompass, for example, an offender who deliberately chooses an isolated location, or one who deliberately chooses a playground or a school to commit the offence.
- ‘Timing of the offence’ is drafted widely so that it can be used in any situation where it makes the offence worse.
- ‘Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ – see discussion at page 24.
- ‘Offence committed whilst on licence’ – see discussion at page 24.

Mitigation

A full discussion of the mitigating factors set out below can be found at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q74

Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.

Sentence levels

The maximum sentence for this offence is 2 years. The current SGC guideline has two categories, 'basic offence' and 'repeat offender', with a 12 week custodial starting point within a 4–26 week range. In 2011, 6.8 per cent of offenders were sentenced above the current ranges. The Council is proposing that there are some offences where a sentence greater than 26 weeks may need to be available to a sentencer as an option, for example, where there are vulnerable victims or there is targeting of children. It is therefore proposing to change the highest starting point to 26 weeks' custody with a range from 12 weeks to 1 year's custody.

The proposed sentencing starting points and ranges are below:

Category 1	Starting point 26 weeks' custody
	Category range 12 weeks' – 1 year's custody
Category 2	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point Medium level community order
	Category range Band A fine – High level community order

Q75

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Voyeurism, Sexual Offences Act 2003 – section 67

Maximum sentence: 2 years’ custody (full guideline page 327)

The offence of voyeurism is committed if, for the purposes of sexual gratification, an offender observes or records a person doing a private act and the offender knows that the person does not consent to being observed or recorded. It also includes a person who operates equipment so that a third person can observe a private act.

This is a type of offending which has developed with the greater prevalence of recording equipment and the ease of sharing and distributing images electronically.

STEP ONE

Determining the offence category

It is proposed that the categories of offence are the same as those used for exposure.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Voyeurism without raised harm or culpability factors present

At step one an exhaustive list of harm and culpability factors are used to determine which category the case should fall into. The following factors have been identified:

Factors indicating raised harm

Image(s) available to be viewed by others

Victim observed or recorded in their own home

Factors indicating raised culpability

Image(s) recorded

Abuse of position of trust

A significant degree of planning or organisation

Harm

- ‘Image(s) available to be viewed by others’. The NatCen research conducted for the Sentencing Council reported that:

“In the case of voyeurism, making or storing images was felt to be a particular violation, as the images could continue to be accessed long after the offence, effectively humiliating the victim each time they were viewed.”¹⁰²

Where a permanent record of the image has been made, the victim will be subject to ongoing humiliation and anxiety about others viewing and accessing the image thereby increasing the harm caused by the offence.

- ‘Victim observed or recorded in their own home’. This factor is designed to deal with the increased harm caused by the victim no longer feeling safe in their own home and having the knowledge of intrusion.

Culpability

- ‘Image(s) recorded’ deals with the increased culpability of an offender who records the victim.
- ‘Abuse of position of trust’. There may be cases where an offender has abused their position in order to observe or record people; for example, an offender who manages a leisure centre and sets up recording equipment in the female changing rooms, or a stepfather sets up recording equipment in the home to spy on a stepchild.
- ‘A significant degree of planning or organisation’ is a factor that the Council proposes should increase culpability as the offender will have put forethought into how to observe the individual(s) and may also have been involved in setting up recording equipment.

Q76 Do you agree with the harm and culpability factors at step one? If not, please specify which you would add or remove and why.

STEP TWO
Starting point and category range

Having identified the appropriate category at step one, the court considers the starting point and identifies whether there are any additional factors not already considered at step one which could aggravate or mitigate the offence. The list of factors is non-exhaustive but the factors listed are intended to be those that will be encountered most commonly. Some of the factors have already been discussed in previous sections and where this is the case the reference to that discussion is given.

Aggravating factors

<i>Statutory aggravating factors</i>
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
<i>Other aggravating factors</i>
Placing images where there is the potential for a high volume of viewers
Period over which images were made or distributed
Image(s) circulated to people known to victim
Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Attempts to dispose of or conceal evidence
Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.

- ‘Placing images where there is the potential for a high volume of viewers’. This does not rely on establishing how many people actually saw the pictures but is based on the potential for it to be viewed; for example, an offender places the images on a website or a social networking site which has a high volume of access.
- ‘Period over which images were made or distributed’ demonstrates a pattern of offending on the part of the offender.
- ‘Image(s) circulated to people known to victim’ may increase the distress and humiliation felt by the victim.
- ‘Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Offence committed whilst on licence’ – see discussion at page 24.

Mitigation

The suggested mitigating factors have already been discussed at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q77

Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.

Sentence levels

The proposed sentence levels are given below. They are very similar to those for exposure but it will be seen that the top of the range for category 1 is higher than for exposure. The Council feels that a higher sanction should be available for voyeurism where the offence has involved the aggravating factors of recording and/or distribution of images.

Category 1	Starting point 26 weeks' custody
	Category range 12 weeks' – 18 months' custody
Category 2	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point Medium level community order
	Category range Band A fine – High level community order

Q78

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Sex with an adult relative (penetration), Sexual Offences Act 2003 – section 64 and Sex with an adult relative (consenting to penetration), Sexual Offences Act 2003 – section 65

Maximum sentence: 2 years' custody (full guidelines page 333)

These offences occur when consenting adults who are closely related engage in penetrative sexual activity. The definition of 'relative' for the purposes of these subsections (set out at sections 64 and 65 of the Sexual Offences Act 2003) includes: parent, grandparent, child, grandchild, brother, sister, half-brother, half-sister, uncle, aunt, niece or nephew. It also includes adoptive parents and children.

If a child under 18 is involved then this would be dealt with as sexual activity with a child family member under section 25 Sexual Offences Act 2003 (discussed at page 54). The section 25 offence has a much wider definition of 'family member' and carries a maximum penalty of 14 years' imprisonment as opposed to 2 years for this offence.

There are two ways in which this offence can be charged; one deals with the person who has carried out the penetration and the other with the person who has consented to the penetration. This split ensures that both parties can be charged, typically with the male relative charged with penetration and the female relative with consenting to penetration.

The format proposed for this guideline mirrors that for exposure and voyeurism discussed above so the categories will be:

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Sex with an adult relative without raised harm or culpability factors present

STEP ONE**Determining the offence category**

At step one the court will look at an exhaustive list of harm and culpability factors to determine the category the offence falls into.

Harm

The factors indicating increased harm that have been identified are:

Factors indicating raised harm

Context of habitual exploitation

Child conceived as a result of the sexual activity

- ‘Context of habitual exploitation’. Where it is established that one of the parties has been subject to sexual exploitation in the past this will increase and exacerbate the harm done even where both parties maintain that they agreed to the sexual activity. This is because the apparent acquiescence by one party to sexual activity could be as a result of the damage done and conditioning when they were previously exploited.
- ‘Child conceived as a result of the sexual activity’ focuses on the emotional and social harm caused to the child whose parents are close blood relatives.

Culpability

The factors identified as indicating raised culpability are:

Factors indicating raised culpability

Evidence of grooming

Use of threat (including blackmail)

- ‘Evidence of grooming’ and ‘use of threat (including blackmail)’ – even where both parties maintain that they have agreed to the sexual activity, where there is evidence that one of the parties has groomed or threatened the other, this increases their culpability.

Q79

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO**Starting point and category range**

Once the category has been determined the court will look at a non-exhaustive list of aggravating and mitigating factors in order to see if there are any other factors that have not been considered at step one that might aggravate or mitigate the offence. This would lead the court to decide whether to move up or down from the starting point.

The table below sets out the proposed aggravating factors:

Aggravating factors*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 respond to previous warnings about the relationship

Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure to comply with current court orders

Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Failure to respond to previous warnings about the relationship’ is included as there may have been attempts to address the behaviour before involving the criminal justice system.
- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.

Mitigation

The mitigating factors set out below have already been considered and discussed at page 24.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

Q80 Do you agree with the proposed aggravating and mitigating factors? If not, please state which you would add or remove and why.

Sentence levels

The suggested starting points and category ranges are:

Category 1	Starting point 1 year’s custody
	Category range 26 weeks’ – 2 years’ custody
Category 2	Starting point High level community order
	Category range Medium level community order – 1 year’s custody
Category 3	Starting point Medium level community order
	Category range Fine – High level community order

Where there are no signs of aggravation or exploitation then community orders are suggested as a better way to address offending behaviour and to focus the offender’s behaviour on the inappropriateness of the relationship.

Q81 Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Preparatory offences

There are three offences in the Sexual Offences Act 2003 that are designed to deal with activity that takes place in preparation for committing a sexual offence. These offences are:

- administering a substance with the intent to stupefy or overpower the victim so as to enable any person to engage in sexual activity with them (section 61);
- committing an offence to commit a relevant sexual offence (section 62); and
- trespass with intent to commit a relevant sexual offence (section 63).

These offences can be charged where no sexual offence took place but the offender's intention was that it would enable them to go on to commit a sexual offence.

Administering a substance with intent to stupefy or overpower, Sexual Offences Act 2003 – section 61

Maximum sentence: 10 years' custody (full guideline page 339)

This offence is committed when a person deliberately administers a substance to a victim knowing that the victim does not consent and the offender's intention is that the victim is stupefied or overpowered to the point that any person can engage in sexual activity with the victim without resistance. This covers situations where an alcoholic drink has been spiked with a drug or a soft drink spiked with alcohol or the victim is drugged in some other way, such as by inhalation of chloroform. If the substance is administered and the offender intends that they or anyone else can engage in sexual activity with the victim then the offence is committed.

It is intended to take the same approach to harm and culpability factors as has been set out for exposure and voyeurism (see above at page 124).

STEP ONE

Determining the offence category

At step one the court will assess an exhaustive list of harm and culpability factors to determine the category that the offence will fall into.

Factors indicating raised harm

In the current SGC guidelines the distinction depends on the nature of the offence that was to be committed; for example, an intention to carry out a rape or assault by penetration would result in the offender being placed in the highest category. Whilst this is an important factor, the Council believes that there are other factors which should also be taken into consideration. The proposed factors indicating greater harm are:

Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

- 'Abduction/detention' – where a victim is removed to a location they are unfamiliar with or is in any way detained following the administration of a substance, this will increase their sense of fear and disorientation and the harm caused to them.
- 'Additional degradation/humiliation of victim' – where it transpires that the victim has been humiliated or degraded in any way whilst insensible because of the administration of a substance, this may increase the psychological harm done to the victim when they discover what they have been subjected to.

Culpability

Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Breach of trust

Recording of victim

Member of group or gang during the commission of the offence

- ‘Vulnerable victim targeted’. This includes an offender who targets someone because of their vulnerability; for example, targeting a victim because of their youth, because they are isolated from their friends, or because they are mentally or emotionally vulnerable.
- ‘Intended sexual offence attracts a statutory maximum of life’ is worded slightly differently from the SGC factor of ‘intended offence is rape or assault by penetration’. The reason for this is to ensure that raised culpability could, if necessary, capture the other sexual offences that have a maximum sentence of life imprisonment; for example, sexual activity with a person with a mental disorder impeding choice and causing sexual activity without consent.
- ‘Breach of trust’ is included for cases where the offender has abused their position of trust to administer a substance; for example, where the offender is a barman and spikes the victim’s drink.
- ‘Recording of victim’ whilst they are insensible or under the influence of any substance increases the culpability of the offender.
- ‘Member of group or gang during the commission of the offence’ increases the culpability of the offender because it makes the experience worse for the victim.

Q82

Do you agree with the harm and culpability factors? If not, please state which you would add or remove and why.

STEP TWO

Starting point and category range

Once the category has been determined at step one the court will look at any additional factors that might aggravate or mitigate the offence and move the sentence up or down from the starting point. This is a non-exhaustive list of factors.

The proposed aggravating factors are:

Aggravating factors

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

Location of offence

Timing of offence

Significant degree of planning

Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure to comply with current court orders

Offence committed whilst on licence

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.

- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Significant degree of planning’ is included to cover situations where the offender has planned in detail the proposed sexual offence and administration of the substance.
- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.

Mitigation

The proposed mitigating factors have been discussed at page 24.

The factor ‘offender intervenes to stop the sexual activity taking place’ is included, as it is in the SGC guideline and elsewhere in these guidelines, to reflect situations where the offender changes their mind rather than something or someone external intervening to prevent the escalation of the offence. The Council is interested in views on whether this mitigation factor is appropriate for this offence.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Offender intervenes to stop the sexual activity taking place

Q83 Do you agree with the aggravating and mitigating factors? If not, pleased say which you would add or remove and why.

Sentence levels

The proposed sentence levels for these cases are:

Category 1	Starting point 6 years’ custody
	Category range 4 – 9 years’ custody
Category 2	Starting point 4 years’ custody
	Category range 3 – 7 years’ custody
Category 3	Starting point 2 years’ custody
	Category range 1 – 5 years’ custody

The statutory maximum for this offence is 10 years’ custody.

Q84 Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Committing an offence with intent to commit a sexual offence, Sexual Offences Act 2003 – section 62

Maximum sentence:

If offence committed by kidnapping or false imprisonment, life imprisonment

Otherwise, 10 years' custody

This offence is wide as it covers an offender who commits **any** offence with the intention of committing a sexual offence; for example, it would include an offender who assaults a victim by punching them in the face with the intention of raping them.

As this is such a wide ranging offence the approach of the current SGC guideline is to state that:

“The starting point and sentencing range should be commensurate with that for the preliminary offence actually committed, but with an enhancement to reflect the intention to commit a sexual offence.

The enhancement will need to be varied depending on the nature and the seriousness of the intended sexual offence, but **2 years** is suggested as a suitable enhancement where the intent was to commit rape or an assault by penetration.”

The Council is consulting on adopting the same approach by using the sentence for the substantive offence as the starting point and then inflating the sentence to reflect the further sexual offence that was intended.

The Council is interested in whether this approach gives sentencers enough guidance or whether it is felt further guidance is needed.

Q85

Do you agree with the approach to committing an offence with the intention of committing a sexual offence? If not, please give reasons why.

Trespass with intent to commit a sexual offence, Sexual Offences Act 2003 – section 63

Maximum sentence: 10 years' custody (full guideline page 345)

This offence is committed when someone trespasses on any premises intending to commit a sexual offence.

It is proposed to use a similar approach to that discussed above for administering a substance with intent – see page 132.

STEP ONE

Determining the offence category

Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

Forced entry into victim's home

- ‘Abduction/detention’ in this context could arise if, for example, the victim is forcibly detained in their home following the trespass.
- ‘Additional degradation/humiliation of victim’ – see discussion at page 17.
- ‘Forced entry into victim's home’ – although this offence concerns trespass it can be trespass on any premises not just the victim's home and entry does not need to be forced but needs to be without the consent of the owner of the premises. Where, however, the trespass does involve forced entry into the victim's home, this may increase the psychological harm done to the victim.

Culpability

Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Member of group or gang during the commission of the offence

- ‘Vulnerable victim targeted’ – see discussion at page 133.
- ‘Intended sexual offence attracts a statutory maximum of life’ – see discussion at page 133.
- ‘Member of group or gang during the commission of the offence’ – see discussion at page 133.

Q86

Do you agree with the harm and culpability factors? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category range

Once the category has been determined at step one the court will look at any additional factors that might aggravate or mitigate the offence and move the sentence up or down from the starting point. This is a non-exhaustive list of factors and it is proposed to replicate the factors that have been used for administering a substance with intent:

Aggravating factors

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

Location of offence

Timing of offence

Significant degree of planning

Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure to comply with current court orders

Offence committed whilst on license

- ‘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’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Significant degree of planning’ is included to cover situations where the offender has planned in detail the proposed sexual offence and administration of the substance.

- ‘Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on license’ – see discussion at page 24.

Mitigation

The mitigating factors proposed are the same as for administering a substance with intent (see discussion at page 24):

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence
Offender intervenes to stop the sexual activity taking place

Q87

Do you agree with the aggravating and mitigating factors at step two for this offence? If not, please specify what you would add or remove and why.

Sentence levels

The proposed sentence levels for this offence are in line with those for administering a substance with intent:

Category 1	Starting point 6 years' custody
	Category range 4 – 9 years' custody
Category 2	Starting point 4 years' custody
	Category range 3 – 7 years' custody
Category 3	Starting point 2 years' custody
	Category range 1 – 5 years' custody

Q88

Please give your views on the proposed sentence levels (starting points and ranges) for this offence. If you disagree with the levels stated, please give reasons why.

Historic sexual offences

There are cases when sexual offences will not have been reported by the victim until many years after the event. These are often referred to as historic sexual offences. This does not diminish the impact on the victim or the pain and suffering caused to them.

The challenge for sentencers when faced with an offence committed before the Sexual Offences Act 2003 came into force is how to ensure the proper sentence is given. The Lord Chief Justice set out guidance in the case *R v Hall*¹⁰³ confirming that the court will be limited to the maximum sentence that would have been available when the offence was committed but, given those constraints, the court should think about the current purposes of sentencing and base the sentencing on the principles that would apply now. This would include looking at any

sentencing guidelines that are in use today. The court should not seek to establish the likely sentence that would have applied at the time when the offence was actually committed.

The Council proposes to add a table to the guidelines as an annex which would set out the statutory limits which would have applied at the time of an offence so that sentencers are aided in sentencing.

Q89

Do you agree with the addition of an annex to the sentencing guidelines which sets out a comparison of the sentences available under old laws and what the equivalent offences and sentences would be under the Sexual Offences Act 2003?

¹⁰³ *R v Hall and others* [2011] EWCA Crim 2753

Section ten: Offences committed by offenders under the age of 18

Part 7 of the existing Sentencing Guidelines Council (SGC) guidance includes guidelines for six sexual offences committed by offenders **under** the age of 18. These offences are:

- Sexual activity with a child, Sexual Offences Act 2003 – section 13 (section 9 for adult offenders);
- Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003 – section 13 (section 10 for adult offenders);
- Sexual activity with a child family member, Sexual Offences Act 2003 – section 25
- Inciting a child family member to engage in sexual activity, Sexual Offences Act 2003 – section 26
- Engaging in sexual activity in the presence of a child, Sexual Offences Act 2003 – section 13 (section 11 for adult offenders); and
- Causing a child to watch a sexual act, Sexual Offences Act 2003 – section 13 (section 12 for adult offenders).

All of these offences have a lower statutory maximum sentence of 5 years' imprisonment but, in all other respects, are equivalent to the adult offences discussed in section five involving sexual activity with a child or sexual activity with a child family member. The Council has decided to include these draft guidelines to ensure proportionate sentencing between adult and youth offenders.

The Council proposes that the format and structure of the young offender guidelines are based on the equivalent adult guidelines. This is complex as the Council has had to consider the different sentencing framework which operates under the youth justice system. This provides different sentencing options and obliges the court to approach the sentencing exercise in a different way to adult offenders. The Council has taken into account the following statutory principles of sentencing youths:

- that the principal aim of the youth justice system is to prevent offending by children and young persons;¹⁰⁴ and
- that the court is obliged to have regard to the welfare of the offender.¹⁰⁵

Many young offenders are dealt with in the youth court which is designed to address the needs of young offenders, witnesses and victims. When sentencing a young offender the sentencing options available to the court are different from those available for adults and the maximum sentence the youth court can pass is a two year detention and training order; for example, where the offender is of good character and the court does not impose a custodial sentence, the youth court is required to make a referral order under which the offender will be referred to a Youth Offender Panel which will then take appropriate action, including by way of restorative justice.¹⁰⁶ The youth court can also

¹⁰⁴ s.37 Crime and Disorder Act 1998

¹⁰⁵ s.44 Children and Young Persons Act 1933; for further information on the youth justice system refer to <http://www.justice.gov.uk/youth-justice> and the *Overarching Principles – Sentencing Youths Definitive Guideline*, Sentencing Guidelines Council, http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf

¹⁰⁶ ss.16 and 17 Powers of Criminal Courts (Sentencing) Act 2000

impose youth rehabilitation orders which are community based sentences within which various requirements can be made.

A particular feature of the youth justice system is that custody is considered as a last resort. As these rules are determined by legislation, they are outside the scope of the consultation but they are important in understanding how a sentencing court must approach a sentencing exercise.

The type of sexual activity that falls within the scope of child sex offences is broad. It is a difficult and sensitive area of the law when dealing with offenders under 18 as it includes both inappropriate and exploitative sexual behaviour but could also include offences committed as part of non-exploitative sexual experimentation between two young people. Section 13 would, for example, include a 17 year old who exploits and gives alcohol to a 13 year old and coerces her into performing oral sex. It would, however, also cover a 16-year-old boy in a sexual relationship with a 15-year-old girl where there is no exploitation.

Whether individual cases are prosecuted is a matter for the prosecution who will have to decide whether it is in the public interest to charge a young person. The CPS guidance, in respect of this offence, states:

“It should be noted that where both parties to sexual activity are under 16, then they may both have committed a criminal offence. However, the overriding purpose of the legislation is to protect children and it was not Parliament’s intention to punish children unnecessarily or for the criminal law to intervene where it was wholly inappropriate. Consensual sexual activity between, for example, a 14 or 15 year old and a teenage partner would not normally require criminal proceedings

in the absence of aggravating features. The relevant considerations include:

- the respective ages of the parties;
- the existence and nature of any relationship;
- their level of maturity;
- whether any duty of care existed;
- whether there was a serious element of exploitation.”¹⁰⁷

As set out in the discussion of the adult offences (at page 45) the offence of sexual activity with a child will normally be charged when the victim is aged between 13 and 15 in circumstances in which the victim maintains s/he agreed to the sexual activity. Where other situations arise, prosecutors will consider the appropriate charges to bring against the offender.

Q90

Do you agree that guidelines for these six offences committed by offenders under the age of 18, included in the current SGC guideline, should be included? If you disagree, please give reasons.

¹⁰⁷ http://www.cps.gov.uk/legal/v_to_z/youth_offenders/index.html#a29

Sexual activity with a child, Sexual Offences Act 2003 – section 13 (with reference to section 9);

and

Causing or inciting a child to engage in sexual activity, section 13 (with reference to section 10)

Maximum sentence: 5 years' custody (full guidelines page 351)

These offences are identical to the adult offences (sections 9 and 10) discussed at page 45 save that they are committed by offenders aged under 18. The Council is consulting on the basis that the young offender guideline for these offences is structured in a similar way to the adult guideline with a step-by-step approach, but reflects the lower statutory maximum and the different options available when sentencing youths.

Unlike the existing SGC guidance, which contains separate, but very similar, guidelines for young offenders convicted of sexual activity with a child (with reference to section 9) and causing or inciting a child to engage in sexual activity (with reference to section 10), the Council is consulting on providing guidance for both types of offending within one guideline, mirroring the structure of the adult guideline which is set out at page 215.

Q91

Do you agree that both offences should be contained in one guideline? If not, please state your reasons.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. Both offences deal with penetrative and non-penetrative sexual activity and therefore encompass a wide range of sexual touching and sexual activity as previously discussed at page 46.

In other guidelines, the Council has moved away from determining sentence levels solely in terms of the sexual activity which has taken place. For these offences, however, the Council is consulting on the basis that harm is determined by reference to the sexual activity that has taken place. The reason for this is that, in this offence, the child may not see themselves as a victim and may not be conscious of harm having been done to them. They may be reluctant to articulate or recognise the psychological or emotional harm that has been done to them. The Council therefore suggests that harm must be correlated to the nature of the sexual activity, because where penetrative activity has taken place this will generally be more harmful and corrupting to the child than non-penetrative sexual activity. The suggested categorisation is set out below and is the same as that for the adult offence (at page 47).

Harm

Category 1

- Penetration of vagina or anus (using body or object)
- Penile penetration of mouth
In either case by, or of, the victim

Category 2 Masturbation by, or of, the victim

Category 3 Other sexual activity

Category 3 covers sexual activity that does not involve penetration or masturbation.

Category 2 involves masturbation. The Council is consulting on this as an analysis of case law highlights the fact that masturbation is involved in a large volume of cases currently being sentenced by the courts.

Category 1 involves penetrative activity which could be penile, or by an object or other body part if it is of the vagina or anus, or penile penetration of the mouth. The Council has placed penetrative activity in the highest category because the consequences of this type of activity can be the most harmful to victims.

Culpability

The Council has adapted the culpability factors from the adult guideline to reflect the fact that both parties are young people. The culpability factors centre around whether the activity is exploitative, coercive or bullying and whether peer pressure has been used to gain acquiescence to the sexual activity.

Culpability

A

Use of gifts/bribes to coerce the victim

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Abuse of position of trust

Sexual images of victim recorded, retained, solicited or shared

Vulnerable victim targeted

Member of group or gang during commission of offence

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

Factor(s) in category A not present

Culpability B has no factors listed, as with previous guidelines. It is envisaged that the type of offender who would fall into this category is one who is in an unlawful and inappropriate relationship with their victim and there are no signs of exploitation.

Culpability A lists factors which demonstrate that the offender has manipulated or coerced the victim or where there is disparity due to the offender's position in relation to the child. The specific factors that have been listed are:

- 'Use of gifts/bribes to coerce the victim' – it is acknowledged that gifts can be used as a genuine part of a non-exploitative friendship but this factor would apply where gifts have been used as a means of coercion or control. This would be determined on the facts before the court.
- 'Use of threat (including blackmail)' – see discussion at page 40.
- 'Use of alcohol/drugs on victim to facilitate the offence' – see discussion at page 40.
- 'Abuse of position of trust' – this has been included as a factor but it is recognised that this factor will not be as pertinent when there are two young people involved as it will be when there is an adult offender and a child victim. There may still be instances where, for example, a 17 year old has been asked to look after a 13 year old whilst the parents are out and they abuse the trust that has been placed in them. The Council is interested in views as to whether abuse of trust is a principal factor when both parties are young and whether there is justification for keeping this factor at step one for this offence.
- 'Sexual images of victim recorded, retained, solicited or shared'. This has been adapted from 'recording of the offence' which is found in the rape and assault guidelines. This is deliberate as, in the commission of these offences, the offender may have persuaded the victim to take naked pictures of themselves on a mobile phone and send them to the offender. The practice of "sexting", which refers to exchanging sexual messages or images through mobile phones or the internet, has been the subject of a

recent report commissioned for the NSPCC.¹⁰⁸ The report highlights the fact that activity is often coercive and linked to harassment, bullying and even violence. The summary to the report states:

“...status can be achieved in new ways through technology. This can involve soliciting, collecting and distributing peer produced sexualised images of girls, which operate as a form of commodity or currency.”

- ‘Vulnerable victim targeted’ – see discussion at page 40.
- ‘Member of group or gang during commission of offence’ – see discussion at page 20.
- ‘Offence racially or religiously aggravated’, ‘offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)’ and ‘offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)’ – see discussion at page 22.

Q92

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category ranges

The starting points in the existing SGC guidance are based on a sentence for a 17-year-old first-time offender who has pleaded not guilty. The Council is recommending that the sentencing starting points and ranges in all the under 18 draft guidelines should not be based on a specific age but rather that the sentencing court should take the age of the young offender into account at step two, having first established the harm and culpability arising from the offence.

Q93

Do you agree that the starting point should not be based on the age of the offender? If you disagree, please give reasons.

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. This would then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

The sentencing options available to courts where the offender is under 18 are set out in statute. The Council intends to annex a table which sets out those options to assist practitioners and would welcome views on whether such an approach would be helpful.

Although the list of factors at step two is non-exhaustive the Council’s intention is to highlight factors that are likely to be relatively common to ensure they are considered by all courts.

¹⁰⁸ *A qualitative study of children, young people and ‘sexting’* A report prepared for the NSPCC, Jessica Ringrose (Institute of Education, London), Rosalind Gill (King’s College, London), Sonia Livingstone (London School of Economics), Laura Harvey (Open University), May 2012

The table below sets out the proposed aggravating factors for the offence of sexual activity with a child and causing/inciting sexual activity.

Where the factors have already been discussed the reference to the relevant discussion is given. Any new factors are explained in full below.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Failure of young offender to respond to previous warnings about his/her behaviour

Commission of offence whilst under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the

prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.

- ‘Pregnancy or STI as a consequence of sexual activity’ – see discussion at page 50.
- ‘Failure of offender to respond to previous warnings about his/her behaviour’ has been included because there may be instances where a young offender has been warned, for example by the victim’s parents, about the inappropriate nature of the relationship but they have persisted with it.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.

Mitigation

There are a number of mitigating factors that the Council is consulting on. The sensitivity of mitigating factors combined with the importance of giving them proper consideration in this consultation, is discussed in further detail in page 24.

Where the factors have already been discussed in previous sections the reference to the relevant discussion is given. Any new factors are explained in full below. The list of mitigating factors is non-exhaustive.

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

Age and/or lack of maturity of the young offender

Mental disorder or learning disability, where linked to the commission of the offence

Young offender intervenes to stop the sexual activity taking place

- ‘No previous convictions or no relevant/recent convictions’ – see discussion at page 25.
- ‘Remorse’ – see discussion at page 25.
- ‘Previous good character and/or exemplary conduct’ has been included but the Council is interested in views on whether this factor would apply in the same way to youths as to adult offenders. Previous convictions will already have been taken into account and it may be more difficult for a child to demonstrate the development of ‘good character’ than for an adult, as the child will have less experience to draw upon and they may still be developing in terms of maturity and character.
- ‘Determination and/or demonstration of steps taken to address sexual behaviour’ – see discussion at page 51.
- ‘Age and/or lack of maturity of the young offender’ – see discussion at page 26. This is a key mitigating factor in the youth justice system and would usually operate along a sliding scale providing greater mitigation to a 12 year old of average maturity than for a 17 year old with average maturity.
- ‘Mental disorder or learning disability, where linked to the commission of the offence’ – see discussion at page 26.
- ‘Young offender intervenes to stop the sexual activity taking place’ is a factor that has been included to deal with situations where sexual activity is incited but does not, in fact, take place because the offender causes the activity to cease. This would not apply where the offence did not take place through the intervention of a third party, for example, a parent.

Q94

Do you agree with the aggravating and mitigating factors proposed at step two for these offences? If not, please specify which you would add or remove and why.

Sentence levels

As set out at page 146, these offences encapsulate a wide range of activity and therefore the ranges must be broad enough to allow sentencers to reflect this. The proposed ranges and starting points include both custodial and non-custodial options. The custodial sentence proposed is a detention and training order, with a 12 month starting point proposed for a category 1A offence, reflecting the exploitative or coercive nature of the offence, and a 4 month starting point for a category 1B offence reflecting the harm that may be caused by penetrative activity. The Council recognises that a 4 month starting point, being the shortest period allowed under law, may be problematic for several reasons including what could be achieved in a custodial sentence in that length of time. Therefore, a youth and rehabilitation order with suitable requirements may be more appropriate. The Council would welcome views on these issues. However, in appropriate cases where there is no evidence of exploitation or grooming, the Council is also recommending community sentences (youth rehabilitation orders). The sentencing options are very broad because of the different principles and statutory provisions that apply to courts sentencing youths (as discussed at page 139), which will often depend on the age of the youth offender. This is why no levels or types of youth rehabilitation orders are specified, unlike for adult community orders in the draft guideline for adults. This approach provides the most flexibility for the court to exercise its discretion.

For offenders under 18, the sentencer must also pass a sentence that will best ensure the young person does not reoffend (whilst recognising that in some circumstances custody cannot be avoided). In particular cases, the court may, therefore, decide that a youth rehabilitation order with suitable requirements (including intensive supervision and surveillance)

designed to address the young offender’s sexual behaviour, in addition to punishing him, is a suitable alternative to a custodial sentence, to be served in the community.

The proposed new sentence levels are set out below.

	A	B
Category 1	Starting point 12 months’ detention and training order	Starting point 4 months’ detention and training order
	Category range Youth rehabilitation order – 24 months’ detention and training order	Category range Youth rehabilitation order – 12 months’ detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months’ detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

Q95 Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Engaging in sexual activity in the presence of a child, Sexual Offences Act 2003 – section 13 (with reference to section 11);

and

Causing a child to watch a sexual act, Sexual Offences Act 2003 – section 13 (with reference to section 12)

Maximum sentence: 5 years' custody (full guidelines page 357)

These offences are identical to the adult offences (sections 11 and 12, Sexual Offences Act 2003 (SOA 2003)) discussed at page 60 save that they are committed by those aged under 18. The Council is also recommending that the young offender guideline for these offences is structured in a similar way to the adult guideline with a step by step approach, but tailored to reflect the lower statutory maximum of 5 years' custody.



Do you agree that both offences should be contained in one guideline? If not, please state your reasons.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. These offences deal with engaging in, and watching of, both penetrative and non-penetrative sexual activity and therefore encompass a wide range of offending.

For these offences the Council is consulting on the basis that harm is determined by reference to the sexual activity that has taken place or been viewed. The reasons for this are discussed at page 61. The suggested categorisation is set out below and many of the factors are the same as for the adult offence (at page 61) but where

there are differences they are set out below. An adult showing child pornography or engaging in sexual activity in the presence of a child, may be doing so as part of the grooming process, to desensitise the child to sexual imagery. It is less likely that a young person will be grooming or using pornography in quite the same way but it may still be used by a young offender as part of a process of coercion, bullying and harassment of the victim.

Harm	
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> penetration of vagina or anus (using body or object) penile penetration of the mouth masturbation
Category 3	None of the factors in categories 1 and 2 are present

Category 3 – see discussion at page 61.

Category 2

- 'Engaging in or causing a victim to view images or view live sexual activity involving: penetration of vagina or anus (using body or object); penile penetration of the mouth; masturbation' – see discussion at page 61.

Category 1

- 'Causing victim to view extreme pornography' – see discussion at page 61.
- 'Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal' – see discussion at page 61.

In the adult guideline the factor 'causing victim to view indecent/prohibited images of children' placed an offender in category 1. This has been

removed from the young offenders guideline because the prevalence of ‘sexting’ (see page 142) and the way in which children are using technology to exchange images with each other, would otherwise mean that too many young offenders would be placed in category 1. The exchange of sexual images between children is a difficult area but the Council considers that children exchanging and showing pictures of themselves or children of the same age to other similarly aged children, should not be in the same category as an adult showing a child indecent images of other children. The Council would be interested in views on this issue.

Culpability

Culpability has been adapted from the adult guideline and many of these factors have already been discussed under sexual activity committed by an offender under 18 at page 142.

Culpability

A

Use of gifts/bribes to coerce the victim

Use of threat (including blackmail)

Use of alcohol/drugs on victim to facilitate the offence

Abuse of position of trust

Vulnerable child targeted

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

B

None of the factors in category A present

Culpability B has no factors listed as the culpability level reflects the inherent abusive and corruptive effects of exposing a child to sexual imagery or sexual activity.

Culpability A lists factors that demonstrate an offender has manipulated, exploited or coerced the victim.

- ‘Use of gifts/bribes to coerce the victim’ – see discussion at page 142.
- ‘Use of threat (including blackmail)’ – see discussion at page 40.
- ‘Use of alcohol/drugs on victim to facilitate the offence’ – see discussion at page 40.
- ‘Abuse of position of trust’ – see discussion at page 142.
- ‘Vulnerable child targeted’ – see discussion at page 40.
- ‘Offence racially or religiously aggravated’, ‘offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)’ and ‘offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)’ – see discussion at page 22.

Q97

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO**Starting point and category ranges**

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. These then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

Although the list of factors at step two is non-exhaustive the Council's intention is to highlight factors that are likely to be relatively common to ensure they are considered by all courts.

The table below sets out the proposed aggravating factors.

Aggravating factors*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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Failure of young offender to respond to previous warnings about his/her behaviour

Commission of offence whilst young offender under the influence of alcohol or drugs

Please refer to the discussion of sexual activity with a child by young offenders at page 144 and of the equivalent adult offence at page 49 for further explanation of these aggravating factors.

Mitigation

There are also a number of mitigating factors that the Council is consulting on. The sensitivity of mitigating factors, and the importance of giving them due consideration in this consultation, is discussed in further detail in page 24.

The Council is consulting upon the same mitigating factors as for sexual activity with a child when committed by a young offender (see page 144).

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

Age and/or lack of maturity of the young offender

Mental disorder or learning disability, where linked to the commission of the offence



Do you agree with the proposed aggravating and mitigating factors at step two for these offences? If not, please specify what you would add or remove and why.

Sentence levels

As set out at page 147, these offences encapsulate a wide range of activity and therefore the ranges must be broad enough to allow sentencers to reflect this. The proposed ranges and starting points include both

custodial and non-custodial options. The custodial sentence proposed is a detention and training order, with an 8 month starting point proposed for a category 1A offence, reflecting the more extreme nature of the offence, and a 4 month starting point for a category 1B offence. The Council recognises that a 4 month starting point, being the shortest period allowed under law, may be problematic for several reasons including what could be achieved in a custodial sentence in that length of time. Therefore, a youth and rehabilitation order with suitable requirements may be more appropriate. The Council would welcome views on these issues. However, in appropriate cases where there is no evidence of exploitation or grooming, the Council is also recommending community sentences (youth rehabilitation orders). The sentencing options are very broad because of the different principles and statutory provisions that apply to courts sentencing youths (as discussed at page 139), which will often depend

on the age of the youth offender. This is why no levels or types of youth rehabilitation orders are specified, unlike for adult community orders in the draft guideline for adults. This approach provides the most flexibility for the court to exercise its discretion.

For offenders under 18, the sentencer must also pass a sentence that will best ensure the young person does not reoffend (whilst recognising that in some circumstances custody cannot be avoided). In particular cases, the court may, therefore, decide that a youth rehabilitation order with suitable requirements (including intensive supervision and surveillance) designed to address the young offender's sexual behaviour, in addition to punishing him, is a suitable alternative to a custodial sentence, to be served in the community.

The proposed new sentence levels are set out below.

	A	B
Category 1	Starting point 8 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 4 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

Q99

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Sexual activity with a child family member, Sexual Offences Act 2003 – section 25 (offender under 18);

and

Inciting a child family member to engage in sexual activity, Sexual Offences Act 2003 – section 26 (offender under 18)

Maximum sentence: 5 years' custody (full guidelines page 363)

These offences are identical to the adult offences discussed at page 54 save that when committed by those aged under 18 they have a lower statutory maximum of 5 years' custody. Unlike the offences discussed earlier in this section, the victim can be aged up to 17 years old; this higher age limit reflects the fact that the victim has a family relationship with the young offender. The statutory definition of family relationship includes brothers and sisters, cousins and step-brothers and step-sisters.¹⁰⁹ As with the offence of sexual activity with a child (section 13 at page 141) these offences may be committed in a broad range of scenarios, from those involving exploitative behaviour within a family to those involving inappropriate sexual experimentation. The Council recommends that the young offender guideline for these offences is structured in a similar way to the adult guideline with a step-by-step approach, but tailored to reflect the lower statutory maximum.

The existing SGC guideline contains one guideline for both of these offences and the Council is recommending that this approach is maintained.

Q100

Do you agree that both offences should continue to be dealt with in one guideline? If not, please state your reasons.

STEP ONE

Determining the offence category

The first step that the court will take is to consider the main factual elements of the offence. These offences deal with both penetrative and non-penetrative sexual activity and therefore encompass a wide range of sexual touching and sexual activity.

As set out in the discussion at page 47, the Council has generally moved away from determining sentence levels solely in terms of the sexual activity which has taken place. For these offences, however, the Council is consulting on the basis that harm is determined by reference to the sexual activity that has taken place. The reason for this is that, in this offence, the child may not see themselves as a victim and may not be conscious of harm having been done to them. They may be reluctant to articulate or recognise the psychological or emotional harm that has been done to them. The Council therefore suggests that harm must be correlated to the nature of the sexual activity, because where penetrative activity has taken place this will generally be more harmful and corrupting to the child than non-penetrative sexual activity. The suggested categorisation is set out below and is the same as that for the adult offence (at page 55).

Harm

Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Category 3 involves sexual activity that does not involve penetration or masturbation.

¹⁰⁹ Defined by s.27 SOA 2003

Category 2 involves masturbation. The Council is consulting on this as an analysis of case law highlights the fact that masturbation is involved in a large volume of cases currently being sentenced by the courts.

Category 1 involves penetrative activity which could be penile, or by an object or other body part if it is of the vagina or anus, or penile penetration of the mouth. The Council has placed penetrative activity in the highest category because the consequences of this type of activity are the most harmful to victims.

Culpability

The proposed factors are set out below.

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Sexual images of victim recorded, retained, solicited or shared
Vulnerable child targeted
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

Culpability B has no factors listed, as with previous guidelines. It is envisaged that the type of sexual activity would involve an unlawful and inappropriate relationship between the offender and the victim where there are no signs of exploitation.

Culpability A lists factors which demonstrate that the offender has manipulated or coerced the victim or where there is disparity due to the young offender's position in relation to the child. The specific factors that have been listed are:

- 'Use of gifts/bribes to coerce the victim' – see discussion at 48.
- 'Use of threat (including blackmail)' – see discussion at page 40.
- 'Use of alcohol/drugs on victim to facilitate the offence' – see discussion at page 40.
- Abuse of position of trust is included as there may be instances where, for example, an older sibling has been entrusted with the care of a younger sibling and has abused that trust. Unlike the adult offence discussed at page 54 there is no assumed breach of trust in the starting points and ranges at page 155 when the offender is young themselves; the offender will not automatically be in a position of trust or responsibility over the victim.
- 'Sexual images of victim recorded, retained, solicited or shared' – see discussion at page 48.
- 'Vulnerable child targeted' – see discussion at page 40.
- 'Offence racially or religiously aggravated racially or religiously aggravated', 'offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)' and 'offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)' have all been included for the sake of consistency but the Council would be interested in whether these would be pertinent in the context of family members.

The culpability A factors are similar to those for sexual activity with a child committed by young offenders (discussed at page 141). The ‘member of group or gang during commission of offence’ factor has not been included as the Council believes this factor would be less relevant when dealing with offences between family members, but would be interested in views on this point.

Q101

Do you agree with the harm and culpability factors proposed at step one for these offences? If not, please specify which you would add or remove and why.

STEP TWO

Starting point and category ranges

Having identified the appropriate category at step one, the court considers the starting point and is then asked to identify whether there are any additional factors that have not already been considered at step one which might either aggravate or mitigate the offence. These then lead the court to decide whether the sentence should be adjusted upwards or downwards within the relevant range from the starting point set out in the guideline.

Although the list of factors at step two is non-exhaustive the Council’s intention is to highlight factors that are likely to be relatively common to ensure they are considered by all courts.

The table below sets out the proposed aggravating factors.

Where the factors have already been discussed the reference to the relevant discussion is given. Any new factors are explained in full below.

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Failure of young offender to respond to previous warnings about his/her behaviour

Commission of offence whilst under the influence of alcohol or drugs

- ‘Previous convictions’ and ‘offence committed whilst on bail’ – see discussion at page 23.
- ‘Location of offence’ and ‘timing of offence’ – see discussion at page 24.
- ‘Failure to comply with current court orders’ and ‘offence committed whilst on licence’ – see discussion at page 24.
- ‘Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution’ and ‘attempts to dispose of or conceal evidence’ – see discussion at page 24.
- ‘Pregnancy or STI as a consequence of sexual activity’ – see discussion at page 50.

- ‘Failure of young offender to respond to previous warnings about his/her behaviour’ is included as if, for example, parents discover that there has been sexual touching between two of their children, they may wish to try and resolve the behaviour within the family and warn the children before engaging the police.
- ‘Commission of offence whilst under the influence of alcohol or drugs’ – see discussion at page 24.
- ‘Determination and/or demonstration of steps taken to address sexual behaviour’ is discussed at page 51.
- ‘Age and/or lack of maturity of the young offender’ – see discussion at page 26. This is a key mitigating factor in the youth justice system and would usually operate along a sliding scale providing greater mitigation to a 12 year old of average maturity than for a 17 year old with average maturity.

Mitigation

There are also a number of mitigating factors that the Council is consulting on. The sensitivity of mitigating factors, and the importance of giving them proper consideration in this consultation, is discussed in further detail in page 24.

Where the factors have already been discussed in previous sections the reference to the relevant discussion is given. Any new factors are explained in full below. The list of mitigating factors is non-exhaustive.

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity of the young offender
Mental disorder or learning disability, where linked to the commission of the offence

- ‘No previous convictions or no relevant/recent convictions’ – see discussion at page 25.
- ‘Remorse’ – see discussion at page 25.
- ‘Previous good character and/or exemplary conduct’ is discussed at page 25.

- ‘Mental disorder or learning disability, where linked to the commission of the offence’ – see discussion at page 26.

Sentence levels

As set out at page 155, these offences encapsulate a wide range of activity and therefore the ranges must be broad enough to allow sentencers to reflect this. The proposed ranges and starting points include both custodial and non-custodial options. The custodial sentence proposed is a detention and training order, with a 12 month starting point proposed for a category 1A offence, reflecting the exploitative or coercive nature of the offence, and a 4 month starting point for a category 1B offence reflecting the harm that may be caused by penetrative activity. The Council recognises that a 4 month starting point, being the shortest period allowed under law, may be problematic for several reasons including what could be achieved in a custodial sentence in that length of time. Therefore, a youth and rehabilitation order with suitable requirements may be more appropriate. The Council would welcome views on these issues. However, in appropriate cases where there is no evidence of exploitation or grooming, the Council is also recommending community sentences (youth rehabilitation orders). The sentencing options are very broad because of the different principles and statutory provisions that apply to courts sentencing youths (as discussed at page 139), which will often depend on the age of the youth offender. This is why no levels or types of youth

rehabilitation orders are specified, unlike for adult community orders in the draft guideline for adults. This approach provides the most flexibility for the court to exercise its discretion.

For offenders under 18, the sentencer must also pass a sentence that will best ensure the young person does not reoffend (whilst recognising that in some circumstances custody cannot be avoided). In particular cases, the court may,

therefore, decide that a youth rehabilitation order with suitable requirements (including intensive supervision and surveillance) designed to address the young offender's sexual behaviour, in addition to punishing him, is a suitable alternative to a custodial sentence, to be served in the community.

The proposed sentence levels are set out below.

	A	B
Category 1	Starting point 12 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 24 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

Q102

Please give your views on the proposed sentence levels (starting points and ranges) for these offences. If you disagree with the levels stated, please give reasons why.

Annex A:

Summary of consultation questions

Section four: Rape and assault offences

- Q1** Do you agree with the approach to harm and culpability proposed for the rape guideline in order to reflect the fact that all rape involves harm to the victim and a high level of culpability?
- Q2** Do you agree with the harm and culpability factors proposed at step one for rape? If not, please specify which you would add or remove and why.
- Q3** Do you agree with the aggravating and mitigating factors proposed at step two for the offence of rape? If not, please specify which you would add or remove and why.
- Q4** Please give your views on the proposed sentence levels (starting points and ranges) for the offence of rape. If you disagree with the levels stated, please give reasons why.
- Q5** Do you agree that assault by penetration and rape should be treated separately in the guideline?
- Q6** Do you agree with the harm and culpability factors proposed for assault by penetration? If not, please specify which you would add or remove and why.
- Q7** Do you agree with the aggravating and mitigating factors proposed for assault by penetration? If not, please specify which you would add or remove and why.
- Q8** Please give your views on the proposed sentence levels (starting points and ranges) for assault by penetration. If you disagree with the levels stated, please give reasons why.
- Q9** Do you agree with the harm and culpability factors proposed at step one for sexual assault? If not, please specify which you would add or remove and why.
- Q10** Do you agree with the aggravating and mitigating factors proposed at step two for sexual assault? If not, please specify which you would add or remove and why.

Q11 Please give your views on the proposed sentence levels (starting points and ranges) for the offence of sexual assault. If you disagree with the levels stated, please give reasons why.

Q12 Do you agree with the Council's approach to the guideline on sexual activity without consent?

Section five: Offences where the victim is a child

Q13 Do you agree with the harm and culpability factors proposed at step one for rape of a child under 13? If not, please specify which you would add or remove and why.

Q14 Do you agree with the aggravating and mitigating factors proposed at step two for rape of a child under 13? If not, please specify which you would add or remove and why.

Q15 Do you agree with the narrative guidance for rape of a child under 13? If not, do you have other suggestions as to the wording?

Q16 Please give your views on the proposed sentence levels (starting points and ranges) for rape of a child under 13. If you disagree with the levels stated, please give reasons why.

Q17 Do you agree that the remaining under 13 offences should be treated separately from the 13 and over guidelines? If not, please give reasons.

Q18 Do you agree with the proposed guidelines for the remaining under 13 offences. If not, please specify which factors you would add or remove and why?

Q19 Do you believe that engaging in sexual activity with a child and causing or inciting a child to engage in sexual activity should be dealt with in the same guideline?

Q20 Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child? If not, please specify which you would add or remove and why.

Q21 Do you agree with the aggravating and mitigating factors proposed at step two for sexual activity with a child? If not, please specify which you would add or remove and why.

Q22 Please give your views on the proposed sentence levels (starting points and ranges) for the offences of engaging in sexual activity with a child and causing or inciting a child to engage in sexual activity. If you disagree with the levels stated, please give reasons why.

- Q23** Do you believe that engaging in sexual activity with a child family member and inciting a child family member to engage in sexual activity should be dealt with in the same guideline? If not, please give reasons.
- Q24** Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child family member and inciting a child family member to engage in sexual activity? If not, please specify which you would add or remove and why.
- Q25** Do you agree with the aggravating and mitigating factors proposed at step two for sexual activity with a child family member and inciting a child family member to engage in sexual activity? If not, please specify which you would add or remove and why.
- Q26** Please give your views on the proposed sentence levels (starting points and ranges) for sexual activity with a child family member and inciting a child family member to engage in sexual activity. If you disagree with the levels stated, please give reasons why.
- Q27** Do you believe that the offences of engaging in sexual activity in the presence of a child and causing a child to watch a sexual act should be dealt with in the same guideline? Please give reasons for your answer.
- Q28** Do you agree with the harm and culpability factors proposed at step one for engaging in sexual activity in the presence of a child and causing a child to watch a sexual act? If not, please specify which you would add or remove and why.
- Q29** Do you agree with the aggravating and mitigating factors at step two for engaging in sexual activity in the presence of a child and causing a child to watch a sexual act? Please give reasons for your answer.
- Q30** Please give your views on the proposed sentence levels (starting points and ranges) for engaging in sexual activity in the presence of a child and causing a child to watch a sexual act. If you disagree with the levels stated, please give reasons why.
- Q31** Do you agree with the format of the guideline for the offence of meeting a child following sexual grooming?
- Q32** Do you agree with the harm and culpability factors proposed at step one for the offence of meeting a child following sexual grooming? If not, please specify which you would add or remove and why.
- Q33** Please give your views on the proposed sentence levels (starting points and ranges) for the offence of meeting a child following sexual grooming. If you disagree with the levels stated, please give reasons why.
- Q34** Do you agree with the harm and culpability factors proposed at step one for abuse of trust: sexual activity with a child and abuse of trust: causing or inciting a child to engage in sexual activity? If not, please specify which you would add or remove and why.

- Q35** Do you agree with the aggravating and mitigating factors proposed at step two for abuse of trust: sexual activity with a child and abuse of trust: causing or inciting a child to engage in sexual activity? If not, please specify which you would add or remove and why.
- Q36** Please give your views on the proposed sentence levels (starting points and ranges) for abuse of trust: sexual activity with a child, and abuse of trust: causing or inciting a child to engage in sexual activity. If you disagree with the levels stated, please give reasons why.
- Q37** Do you agree with the harm and culpability factors proposed at step one for abuse of trust: sexual activity in the presence of a child, and abuse of trust: causing a child to watch a sexual act? If not, please specify which you would add or remove and why.
- Q38** Please give your views on the proposed sentence levels (starting points and ranges) for abuse of trust: sexual activity in the presence of a child, and abuse of trust: causing a child to watch a sexual act. If you disagree with the levels stated, please give reasons why.

Section six: Indecent images of children

- Q39** Do you agree with the proposed rationalisation of the current levels 1 to 5 of indecent images of children?
- Q40** Do you agree with the approach suggested to dealing with mixed collections of indecent images of children? If not, please state why.
- Q41** Do you agree with the use of role and the use of image levels A, B and C to determine the category of offence and the exclusion of volume at step one of the guideline for the indecent images offences? If not, please give reasons.
- Q42** Do you have any suggestions for how level C 'erotic posing' could be re-labelled within the guideline for the indecent images offences?
- Q43** Do you agree with the aggravating and mitigating factors proposed at step two for the indecent images offences? If not, please specify which you would add or remove and why.
- Q44** Please give your views on the proposed sentence levels (starting points and ranges) for the indecent images offences. If you disagree with the levels stated, please give reasons why.

Section seven: Exploitation offences

- Q45** Do you agree with the harm and culpability factors proposed at step one for the offences of causing/inciting and controlling prostitution? If not, please specify which you would add or remove and why.

- Q46 Do you agree with the aggravating and mitigating factors proposed at step two for the offences of causing/inciting and controlling prostitution? If not, please specify which you would add or remove and why.
- Q47 Please give your views on the proposed sentence levels (starting points and ranges) for the offences of causing/inciting and controlling prostitution? If you disagree with the levels stated, please give reasons why.
- Q48 Do you agree with the harm and culpability factors proposed at step one for keeping a brothel for prostitution? If not, please specify which you would add or remove and why.
- Q49 Do you agree with the aggravating and mitigating factors proposed at step two for keeping a brothel for prostitution? If not, please specify what you would add or remove and why.
- Q50 Please give your views on the proposed sentence levels (starting points and ranges) for keeping a brothel for prostitution. If you disagree with the levels stated, please give reasons why.
- Q51 Do you agree with the harm and culpability factors proposed at step one for the child prostitution or pornography offences? If not, please specify which you would add or remove and why.
- Q52 Do you agree with the aggravating and mitigating factors proposed at step two for the child prostitution or pornography offences? If not, please specify which you would add or remove and why.
- Q53 Do you prefer the approach of starting points and ranges within the guideline for the child prostitution or pornography offences that distinguish between those aged under 13, 13–15 and 16 and over, or do you favour referring the sentencer to the guideline on causing and inciting sexual activity or an alternative approach?
- Q54 Please give your views on the proposed sentence levels (starting points and ranges) for the child prostitution or pornography offences. If you disagree with the levels stated, please give reasons why.
- Q55 Do you agree that where sentencing an offender for paying for the sexual services of a child, it would be appropriate to refer the sentencer to the guidelines for ss.5-9 SOA 2003 if the victim is under 16?
- Q56 Do you agree with the harm and culpability factors proposed at step one for paying for the sexual services of a child? If not, please specify which you would add or remove and why.
- Q57 Do you agree with the aggravating and mitigating factors proposed at step two for paying for the sexual services of a child? If not, please specify what you would add or remove and why.

Q58 Please give your views on the proposed sentence levels (starting points and ranges) for paying for the sexual services of a child. If you disagree with the levels stated, please give reasons why.

Q59 Do you agree with the harm and culpability factors proposed at step one for the trafficking offences? If not, please specify which you would add or remove and why.

Q60 Do you agree with the aggravating and mitigating factors proposed at step two for the trafficking offences? If not, please specify which you would add or remove and why.

Q61 Please give your views on the proposed sentence levels (starting points and ranges) for the trafficking offences. If you disagree with the levels stated, please give reasons why.

Section eight: Offences against those with a mental disorder

Q62 Do you agree that the offences concerning a victim with a mental disorder impeding choice should be treated separately from victims who engage in sexual activity due to inducement, threat or deception? If not, please give reasons.

Q63 Do you agree with the harm and culpability factors proposed at step one for the offences of sexual activity with a person with a mental disorder impeding choice? If not, please specify which you would add or remove and why.

Q64 Do you agree with the proposed aggravating and mitigating factors at step two for the offences of sexual activity with a person with a mental disorder impeding choice? If not, please specify what you would add or remove and why.

Q65 Please give your views on the proposed sentence levels (starting points and ranges) for the offences of sexual activity with a person with a mental disorder impeding choice. If you disagree with the levels stated, please give reasons why.

Q66 Do you agree with the Council's approach to the guideline on engaging in sexual activity in the presence of a person with a mental disorder impeding choice or causing that person to watch a sexual act?

Q67 Do you agree with the Council's approach to the guideline on procuring sexual activity through inducement, threat or deception and causing a person with a mental disorder to engage in sexual activity by inducement, threat or deception?

Q68 Do you agree with the Council's approach to the guideline on engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder and of causing a person with a mental disorder to watch a sexual act by inducement, threat or deception?

Q69 Do you agree with the harm and culpability factors proposed at step one for offences relating to care workers? If not, please specify which you would add or remove and why.

Q70 Do you agree with the aggravating and mitigating factors proposed at step two for offences relating to care workers? If not, please specify which you would add or remove and why.

Q71 Please give your views on the proposed sentence levels (starting points and ranges) for offences relating to care workers. If you disagree with the levels stated, please give reasons why.

Q72 Do you agree with the Council's approach to the guideline on care workers: sexual activity in the presence of a person with a mental disorder and causing a person with a mental disorder to watch a sexual act?

Section nine: Other sexual offences

Q73 Do you agree with the harm and culpability factors proposed at step one for exposure? If not, please specify which you would add or remove and why.

Q74 Do you agree with the aggravating and mitigating factors proposed at step two for exposure? If not, please specify which you would add or remove and why.

Q75 Please give your views on the proposed sentence levels (starting points and ranges) for exposure. If you disagree with the levels stated, please give reasons why.

Q76 Do you agree with the harm and culpability factors proposed at step one for voyeurism? If not, please specify which you would add or remove and why.

Q77 Do you agree with the aggravating and mitigating factors proposed at step two for voyeurism? If not, please specify which you would add or remove and why.

Q78 Please give your views on the proposed sentence levels (starting points and ranges) for voyeurism. If you disagree with the levels stated, please give reasons why.

Q79 Do you agree with the harm and culpability factors proposed at step one for the sex with an adult relative offences? If not, please specify which you would add or remove and why.

Q80 Do you agree with the aggravating and mitigating factors proposed at step two for the sex with an adult relative offences? If not, please specify which you would add or remove and why.

- Q81** Please give your views on the proposed sentence levels (starting points and ranges) for the sex with an adult relative offences. If you disagree with the levels stated, please give reasons why.
- Q82** Do you agree with the harm and culpability factors proposed at step one for administering a substance with intent to stupefy or overpower? If not, please specify which you would add or remove and why.
- Q83** Do you agree with the aggravating and mitigating factors proposed at step two for administering a substance with intent to stupefy or overpower? If not, please specify which you would add or remove and why.
- Q84** Please give your views on the proposed sentence levels (starting points and ranges) for administering a substance with intent to stupefy or overpower. If you disagree with the levels stated, please give reasons why.
- Q85** Do you agree with the approach to committing an offence with the intention of committing a sexual offence? If not, please give reasons why.
- Q86** Do you agree with the harm and culpability factors proposed at step one for trespass with intent to commit a sexual offence? If not, please specify which you would add or remove and why.
- Q87** Do you agree with the aggravating and mitigating factors proposed at step two for trespass with intent to commit a sexual offence? If not, please specify which you would add or remove and why.
- Q88** Please give your views on the proposed sentence levels (starting points and ranges) for trespass with intent to commit a sexual offence. If you disagree with the levels stated, please give reasons why.
- Q89** Do you agree with the addition of an annex to the sentencing guidelines which sets out a comparison of the sentences available under old laws and what the equivalent offences and sentences would be under the Sexual Offences Act 2003?

Section ten: Offences committed by offenders under the age of 18

- Q90** Do you agree that guidelines for the six offences committed by offenders under the age of 18, included in the current SGC guideline, should be included? If you disagree, please give reasons.
- Q91** Do you agree that the offences of sexual activity with a child and causing/inciting a child to engage in sexual activity should be contained in one guideline? If not, please state your reasons.
- Q92** Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child and causing/inciting a child to engage in sexual activity? If not, please specify which you would add or remove and why.

- Q93 Do you agree that the starting points in the guideline for sexual activity with a child and causing/inciting a child to engage in sexual activity should not be based on the age of the offender? If you disagree, please give reasons.
- Q94 Do you agree with the aggravating and mitigating factors proposed at step two for sexual activity with a child and causing/inciting a child to engage in sexual activity? If not, please specify which you would add or remove and why.
- Q95 Please give your views on the proposed sentence levels (starting points and ranges) for sexual activity with a child and causing/inciting a child to engage in sexual activity. If you disagree with the levels stated, please give reasons why.
- Q96 Do you agree that the offences of sexual activity in the presence of a child and causing a child to watch a sexual act should be contained in one guideline? If not, please state your reasons.
- Q97 Do you agree with the harm and culpability factors proposed at step one for sexual activity in the presence of a child and causing a child to watch a sexual act? If not, please specify which you would add or remove and why.
- Q98 Do you agree with the aggravating and mitigating factors proposed at step two for sexual activity in the presence of a child and causing a child to watch a sexual act? If not, please specify which you would add or remove and why.
- Q99 Please give your views on the proposed sentence levels (starting points and ranges) for sexual activity in the presence of a child and causing a child to watch a sexual act. If you disagree with the levels stated, please give reasons why.
- Q100 Do you agree that the offences of sexual activity with a child family member and inciting a child family member to engage in sexual activity should continue to be dealt with in one guideline? If not, please state your reasons.
- Q101 Do you agree with the harm and culpability factors proposed at step one for sexual activity with a child family member and inciting a child family member to engage in sexual activity? If not, please specify which you would add or remove and why.
- Q102 Please give your views on the proposed sentence levels (starting points and ranges) for sexual activity with a child family member and inciting a child family member to engage in sexual activity. If you disagree with the levels stated, please give reasons why.

Annex B:

Background to guidelines

Sentencing Guidelines Council and Sentencing Advisory Panel

The Sentencing Council was created to bring together the functions of the two previous bodies, the Sentencing Guidelines Council (SGC) and Sentencing Advisory Panel (SAP), which have now been disbanded. In 2003, the SGC and the SAP had been established to work together to produce sentencing guidelines that encouraged consistency in sentencing throughout England and Wales and to support sentencers in their decision making. The SAP's role was to advise on sentencing guidelines for particular offences and other sentencing issues, and following a period of wide consultation and research if required, the panel would produce advice for the SGC to consider. The SGC would receive advice from the SAP and use this to formulate sentencing guidelines on the subject. The SGC would publish draft guidelines for consultation and then issue final guidelines for sentencers.

The Sentencing Council is a more streamlined body with a greater remit to take forward work on sentencing not only through improvements to guidelines but also through the development of a robust evidence base and engaging more with the public to improve understanding about sentences. The Council brings together wide experience in sentencing and comprises eight judicial members and six non-judicial members.

Statutory requirements

In producing these draft guidelines, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;

- the Council may review the guidelines and may revise them;¹¹⁰
- the Council must publish a resource assessment in respect of the guidelines;¹¹¹ and,
- the Council must monitor the operation and effect of its sentencing guidelines.¹¹²

Under the previous bodies (the SGC and SAP), courts had to “have regard to any guidelines which are relevant to the offender’s case”¹¹³ and give reasons if a sentence fell outside of the range.¹¹⁴ Section 125(a) of the Coroners and Justice Act 2009 states that, “every court must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case”. Therefore, courts are required to impose a sentence consistent with the guidelines, unless contrary to the interests of justice to do so. Therefore, the Sentencing Council is keen to ensure that the guidelines are as accessible as possible for sentencers.

When preparing sentencing guidelines, the Council must have regard to the following matters:

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing reoffending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.¹¹⁵

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.¹¹⁶

In order to achieve these requirements, the Council has considered case law on sexual offences where it is available, evidence on current sentencing practice and drawn on members’ own experience of sentencing practice. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more clarity on sentencing for the victims and the public, so that they too can have a better understanding of how a sentence has been reached.

The Council has had regard to these duties throughout the preparation of this draft guideline. In developing an understanding of the cost and effectiveness of different sentences, the Council has considered the available information and evidence and these are contained in the resource assessment which accompanies this consultation paper.

110 s.120 Coroners and Justice Act 2009

111 s.127(2) *ibid*

112 s.128(1) *ibid*

113 s.172(1) Criminal Justice Act 2003

114 s.174(2) *ibid*

115 s.120(11) Coroners and Justice Act 2009

116 s.127(3) *ibid*

Annex C:

Draft guideline

Applicability of the Guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. When issued as a definitive guideline, it will apply to all offenders aged 18 and older, who are sentenced on or after [date to be confirmed], regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case; and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

Structure, ranges and starting points

For the purposes of section 125(3) to (4) Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. As in earlier Sentencing Council definitive guidelines, this guideline adopts an offence based starting point. **Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases.** Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

List of guidelines

Rape	
Sexual Offences Act 2003 (section 1)	173
Assault by penetration	
Sexual Offences Act 2003 (section 2)	179
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Rape

Sexual Offences Act 2003 (section 1)

Triable only on indictment
Maximum: Life imprisonment

Offence range: 4 – 19 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- this is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences committed on or after such date, this is an offence listed in part 1 of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1 	A
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of rape • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home 	Significant degree of planning
Category 3	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Abuse of position of trust
		Recording of the offence
		Vulnerable victim targeted
		Stalking/harassment of victim
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		Offence racially or religiously aggravated
		Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
		Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
		B
		Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features set out below.

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 below.

	A	B
Category 1	Starting point 15 years' custody	Starting point 12 years' custody
	Category range 13 – 19 years' custody	Category range 10 – 15 years' custody
Category 2	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 9 – 13 years' custody	Category range 7 – 9 years' custody
Category 3	Starting point 7 years' custody	Starting point 5 years' custody
	Category range 6 – 9 years' custody	Category range 4 – 7 years' custody

The table below 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 starting point. **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.

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence.

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault by penetration

Sexual Offences Act 2003 (section 2)

Triable only on indictment
Maximum: Life imprisonment

Offence range: Community order – 19 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- this is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences committed on or after such date, this is an offence listed in part 1 of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1 	A
Category 2	<ul style="list-style-type: none"> • Penetration using large or dangerous object(s) • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home 	Significant degree of planning
Category 3	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Abuse of position of trust
		Recording of the offence
		Vulnerable victim targeted
		Stalking/harassment of victim
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		Offence racially or religiously aggravated
		Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
		Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
		B
		Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B
Category 1	Starting point 15 years' custody	Starting point 12 years' custody
	Category range 13 – 19 years' custody	Category range 10 – 15 years' custody
Category 2	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 – 13 years' custody	Category range 4 – 9 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 2 – 6 years' custody	Category range High level community order – 4 years' custody

The table below 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 starting point. **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.

When sentencing appropriate **category 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sexual assault

Sexual Offences Act 2003 (section 3)

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 7 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Use of violence • Abduction/detention of victim • Forced entry into victim's home
Category 2	<ul style="list-style-type: none"> • Touching of genitalia • Prolonged/sustained assault • Additional degradation/humiliation • Context of habitual sexual abuse
Category 3	Factor(s) in categories 1 and 2 not present

Culpability	
A	
Significant degree of planning	
Member of group or gang during the commission of the offence	
Use of alcohol/drugs on the victim to facilitate the assault	
Abuse of position of trust	

Recording of the offence
Vulnerable victim targeted
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Use of weapon to frighten or injure
Threats of violence/threatening or violent sexual language
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years 6 months' custody
	Category range 3 – 7 years' custody	Category range 2 – 4 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 4 years' custody	Category range High level community order – 2 years' custody
Category 3	Starting point 26 weeks' custody	Starting point High level community order
	Category range High level community order – 1 year's custody	Category range Medium level community order – 26 weeks' custody

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home (including victims of domestic violence)

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

- * In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence.

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Rape of a child under 13

Sexual Offences Act 2003 (section 5)

Triable only on indictment
Maximum: Life imprisonment

Offence range: 6 – 19 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- this is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences committed on or after such date, this is an offence listed in part one of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

When dealing with the statutory offence of rape of a child under 13, the court may be faced with a wide range of offending behaviour.

Sentencers should have particular regard to the fact that these offences are not only committed through force or fear of force but may include exploitative behaviour towards a child which should be considered to indicate high culpability.

The guideline is designed to deal with the majority of offending behaviour which deserves a significant custodial sentence; the starting points and ranges reflect the fact that such offending merits a significant custodial sentence. There may however be a relatively small number of cases where a lengthy community order with a requirement to participate in a sex offender treatment programme may be the best way of changing the offender's behaviour and of protecting the public by preventing any repetition of the offence, for example where the offender is himself young and particularly vulnerable.

Sentencers are reminded that if moving outside the guideline they must be satisfied that it would be contrary to the interests of justice to follow the guideline.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1 	A
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of rape • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home 	Significant degree of planning
Category 3	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Use of gifts/bribes to coerce the victim
		Evidence of grooming by offender
		Use of threat (including blackmail)
		Abuse of position of trust
		Recording of the offence
		Vulnerable child targeted
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		Offence racially or religiously aggravated
		Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
		Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
		B
		Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B
Category 1	Starting point 16 years' custody	Starting point 13 years' custody
	Category range 13 – 19 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 13 years' custody	Starting point 10 years' custody
	Category range 11 – 17 years' custody	Category range 8 – 13 years' custody
Category 3	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 8 – 13 years' custody	Category range 6 – 11 years' custody

The table below 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 starting point. **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.

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct*
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Severe psychological harm to the victim	Mental disorder or learning disability, where linked to the commission of the offence
Significant physical injury to the victim	
Location of offence	
Timing of offence	
Victim compelled to leave their home, school, etc	
Victim's education disrupted	
Failure to comply with current court orders	
Offence committed whilst on licence	
Exploiting contact arrangements with a child to commit an offence	
Presence of others, especially other children	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Commission of offence whilst offender under the influence of alcohol or drugs	

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault of a child under 13 by penetration

Sexual Offences Act 2003 (section 6)

Triable only on indictment
Maximum: Life imprisonment

Offence range: 2 – 19 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- this is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences committed on or after such date, this is an offence listed in part one of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Penetration using large or dangerous object(s) • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim's home
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Use of gifts/bribes to coerce the victim
Evidence of grooming by offender
Use of threat (including blackmail)
Abuse of position of trust
Recording of the offence
Vulnerable child targeted
Previous violence against victim
Offence committed in course of burglary
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B
Category 1	Starting point 16 years' custody	Starting point 13 years' custody
	Category range 13 – 19 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 11 years' custody	Starting point 8 years' custody
	Category range 7 – 15 years' custody	Category range 5 – 13 years' custody
Category 3	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 9 years' custody	Category range 2 – 6 years' custody

The table below 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 starting point. **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.

Aggravating factors*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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Victim's education disrupted

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

ASSAULT OF A CHILD UNDER 13 BY PENETRATION

Sexual assault of a child under 13

Sexual Offences Act 2003 (section 7)

Triable either way
Maximum: 14 years' custody

Offence range: Community order – 9 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for offences committed on or after such date, this is an offence listed in part one of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE
Determining the offence category

The court should determine which category of harm the offence falls into by reference only to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> Use of violence Abduction/detention of victim Forced entry into victim’s home 	A
Category 2	<ul style="list-style-type: none"> Touching of genitalia Prolonged/sustained incident Additional degradation/humiliation Context of habitual sexual abuse 	Significant degree of planning
Category 3	Factor(s) in categories 1 and 2 not present	Member of group or gang during commission of offence
		Use of alcohol/drugs on the victim to facilitate the offence
		Use of gifts/bribes to coerce the victim
		Evidence of grooming by offender
		Use of threat (including blackmail)
		Abuse of position of trust
		Recording of the offence
		Vulnerable child targeted
		Previous violence against victim
		Offence committed in course of burglary
		Use of a weapon to frighten or injure
		Offence racially or religiously aggravated
		Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
		Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
		B
		Factor(s) in category A not present

STEP TWO
Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B
Category 1	Starting point 6 years' custody	Starting point 4 years' custody
	Category range 4 – 9 years' custody	Category range 3 – 7 years' custody
Category 2	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 3 – 7 years' custody	Category range 1 – 4 years' custody
Category 3	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 2 years' custody	Category range High level community order – 1 year's custody

The table below 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 starting point. **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.

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Victim's education disrupted

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Causing or inciting a child under 13 to engage in sexual activity

Sexual Offences Act 2003 (section 8)

Triable only on indictment (if penetration involved)

– otherwise, triable either way

Maximum: Life imprisonment (if penetration involved)

– otherwise, 14 years' custody

Offence range: 1 – 17 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- this is a serious specified offence for the purposes of sections 224 and, where the offence involved penetration, 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences committed on or after such date, this is an offence listed in part one of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE
Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Penetrative sexual activity caused or incited • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Use of gifts/bribes to coerce the victim
Evidence of grooming by offender
Use of threat (including blackmail)
Abuse of position of trust
Recording of the offence
Vulnerable child targeted
Previous violence against victim
Offence committed in course of burglary
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO
Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B
Category 1	Starting point 13 years' custody	Starting point 11 years' custody
	Category range 11 – 17 years' custody	Category range 10 – 15 years' custody
Category 2	Starting point 8 years' custody	Starting point 6 years' custody
	Category range 5 – 10 years' custody	Category range 3 – 9 years' custody
Category 3	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody

The table below 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 starting point. **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.

Aggravating factors

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

Severe psychological harm to the victim

Significant physical injury to the victim

Pregnancy or STI as a consequence of sexual activity

Location of offence

Timing of offence

Victim compelled to leave their home, school, etc

Victim's education disrupted

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Presence of others, especially other children

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst offender under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct*

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

Mental disorder or learning disability, where linked to the commission of the offence

* In the context of this offence, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sexual activity with a child

Sexual Offences Act 2003 (section 9)

Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003 (section 10)

Triable only on indictment (if penetration involved)
– otherwise, triable either way
Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for offences committed on or after such date, these are offences listed in part 1 of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Use of gifts/bribes to coerce the child or other preparatory 'grooming' behaviours
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Sexual images of victim recorded, retained, solicited or shared
Vulnerable child targeted
Offender lied about age
Member of group or gang during commission of offence
Significant disparity in age
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 5 years' custody	Starting point 1 year's custody
	Category range 4 – 10 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 3 years' custody	Starting point 26 weeks' custody
	Category range 2 – 6 years' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 6 months' custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Exploiting contact arrangements with a child to commit an offence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Failure of offender to respond to previous warnings about the relationship

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

Offender voluntarily stops the sexual activity taking place

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sexual activity with a child family member

Sexual Offences Act 2003 (section 25)

Inciting a child family member to engage in sexual activity

Sexual Offences Act 2003 (section 26)

Triable only on indictment (if penetration involved)
– otherwise, triable either way
Maximum: 14 years' custody (if offender over 18)

Offence range: Community order – 8 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for offences committed on or after such date, these are offences listed in part one of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point. This offence involves those who have a family relationship with the victim and it should be assumed that the greater the abuse of trust within this relationship the more grave the offence.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Sexual images of victim recorded, retained, solicited or shared
Vulnerable child targeted
Significant disparity in age
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 6 years' custody	Starting point 3 years 6 months' custody
	Category range 4 – 8 years' custody	Category range 2 years 6 months' – 5 years' custody
Category 2	Starting point 4 years' custody	Starting point 18 months' custody
	Category range 2 – 6 years' custody	Category range 6 months' – 2 years 6 months' custody
Category 3	Starting point 1 year's custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Pregnancy or STI as a consequence of sexual activity	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence of a child

Sexual Offences Act 2003 (section 11)

Causing a child to watch a sexual act

Sexual Offences Act 2003 (section 12)

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for offences committed on or after such date, these are offences listed in part 1 of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Causing victim to view indecent/prohibited images of children Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> penetration of vagina or anus (using body or object) penile penetration of the mouth masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Vulnerable child targeted
Significant disparity in age of parties
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Commission of offence whilst offender under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Meeting a child following sexual grooming

Sexual Offences Act 2003 (section 15)

Triable either way
Maximum: 10 years' custody

Offence range: 1 – 7 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for offences committed on or after such date, this is an offence listed in part 1 of schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Grooming without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm
Child threatened (including blackmail)
Continued contact with victim despite victim’s attempts to terminate contact
Sexual images of victim exchanged
Vulnerable victim targeted
Child exposed to extreme sexual content for example, extreme pornography
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

Factors indicating raised culpability
Communication indicates penetrative sexual activity is intended
Lied about age/persona
Use of coercion through threats, gifts or bribes
Abuse of position of trust
Offender deliberately targets a child under the age of 13
Abduction or detention
More than one offender acting together

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Category 1	Starting point 4 years' custody
	Category range 3 – 7 years' custody
Category 2	Starting point 2 years' custody
	Category range 1 – 4 years' custody
Category 3	Starting point 18 months' custody
	Category range 1 year – 2 years 6 months' custody

The table below 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 starting point. **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.

Aggravating factors*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 comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Abuse of position of trust: sexual activity with a child

Sexual Offences Act 2003 (section 16)

Abuse of position of trust: causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003 (section 17)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 2 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth In either case by, or of, a child
Category 2	Masturbation by, or of, a child
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Sexual images of victim recorded, retained, solicited or shared
Vulnerable child targeted
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 18 months' custody	Starting point 1 year's custody
	Category range 1 – 2 years' custody	Category range 26 weeks' – 18 months' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Child required to move school, institution, home, hospital, etc as a result of relationship and/or adverse impact on child's education or training

Failure of offender to respond to previous warnings about the activity

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

Offender voluntarily stops the sexual activity taking place

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Abuse of position of trust: sexual activity in the presence of a child

Sexual Offences Act 2003 (section 18)

Abuse of position of trust: causing a child to watch a sexual act

Sexual Offences Act 2003 (section 19)

Triable either way

Maximum: 5 years' custody

Offence range: Community order – 2 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Causing victim to view indecent/prohibited images of children Engaging in or causing victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of the mouth Masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim or other preparatory 'grooming' behaviours
Use of threat (including blackmail)
Use of alcohol/drugs on the child to facilitate the offence
Vulnerable child targeted
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 18 months' custody	Starting point 1 year's custody
	Category range 1 – 2 years' custody	Category range 26 weeks' – 18 months' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the child reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Adverse impact on child's education or training	
Child required to move school, institution, home, hospital, etc as a result of activity	
Failure of offender to respond to previous warnings about activity	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter five of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Possession of indecent photograph of child

Criminal Justice Act 1988 (section 160)

Triable either way
Maximum: 5 years' custody

Offence range: Community order – 2 years' custody

Indecent photographs of children

Protection of Children Act 1978 (section 1(1))

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for offences committed on or after such date, this is an offence listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003 (in respect of section 1 Protection of Children Act 1978 only); and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE
Determining the offence category

The court should determine the offence category using the table below.

	Possession	Distribution*	Production**
Category A (previously levels 4 and 5)	Possession of images involving penetrative sexual activity	Sharing images involving penetrative sexual activity	Creating images involving penetrative sexual activity
	Possession of images involving sexual activity with an animal or sadism	Sharing images involving sexual activity with an animal or sadism	Creating images involving sexual activity with an animal or sadism
Category B (previously levels 2 and 3)	Possession of images involving non-penetrative sexual activity	Sharing of images involving non-penetrative sexual activity	Creating images involving non-penetrative sexual activity
Category C (previously level 1)	Possession of images of erotic posing	Sharing of images of erotic posing	Creating images of erotic posing

* Distribution includes possession with a view to distributing or sharing images.
 ** Production includes the taking or making of any image at source i.e. the original image.
 Making an image by simple downloading should be treated as possession for the purposes of sentencing.

In most cases the intrinsic character of the most serious of the offending images will initially determine the appropriate category. If, however, the most serious images are unrepresentative of the offender’s conduct a lower category may be appropriate. A lower category will not, however, be appropriate if the offender has produced or taken (i.e photographed) images of a higher category.

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	Possession	Distribution	Production
Category A	Starting point 1 year's custody	Starting point 3 years' custody	Starting point 6 years' custody
	Category range 26 weeks' – 2 years' custody	Category range 2 – 5 years' custody	Category range 4 – 9 years' custody
Category B	Starting point 26 weeks' custody	Starting point 1 year's custody	Starting point 2 years' custody
	Category range High level community order – 18 months' custody	Category range 26 weeks' – 2 years' custody	Category range 1 – 4 years' custody
Category C	Starting point High level community order	Starting point 13 weeks' custody	Starting point 18 months' custody
	Category range Medium level community order – 26 weeks' custody	Category range High level community order – 26 weeks' custody	Category range 1 – 3 years' custody

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors
<i>Statutory aggravating factors</i>
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
<i>Other aggravating factors</i>
Age and/or vulnerability of the child depicted*
Visible physical pain suffered by child depicted
Period over which images were possessed, made or distributed
Large volume of images possessed, distributed or produced/taken
Placing images where there is the potential for a high volume of viewers
Collection includes moving images
Attempts to dispose of or conceal evidence
Abuse of position of trust
Child depicted known to the offender
Active involvement in a network or process that facilitates or commissions the creation or sharing of indecent images of children
Deliberate or systematic searching for images portraying young children, category A images or the portrayal of familial sexual abuse
Systematic storage of collection

Mitigating factors
No previous convictions or no relevant/recent convictions
Remorse
Previous good character and/or exemplary conduct
Determination and/or demonstration of steps taken to address sexual behaviour
Age and/or lack of maturity where it affects the responsibility of the offender
Mental disorder or learning disability, where linked to the commission of the offence

* Age and/or vulnerability of the child should be given significant weight. In cases where the actual age of the victim is difficult to determine sentencers should consider the development of the child (infant, pre-pubescent, post-pubescent)

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children and inform him accordingly.

Deprivation of property

The court may order the offender be deprived of property used to commit crime or intended for that purpose.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Causing or inciting prostitution for gain

Sexual Offences Act 2003 (section 52)

Controlling prostitution for gain

Sexual Offences Act 2003 (section 53)

Triable either way
Maximum: 7 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Abduction/detention of prostitute(s) Violence used against prostitute(s) Sustained and systematic psychological abuse of prostitute(s) Prostitute(s) coerced or forced to participate in unsafe/particularly degrading sexual activity Prostitute(s) forced or coerced into seeing many 'customers' Prostitute(s) tricked/deceived into prostitution
Category 2	Factor(s) in category 1 not present

Culpability
A
Causing/inciting or controlling prostitution on significant commercial basis
Expectation of substantial financial gain
Abuse of position of trust/responsibility
Exploitation of prostitute(s) known to be trafficked
Significant involvement in limiting the freedom of prostitutes
B
Close involvement with prostitute(s) e.g. control of finances, choice of clients, working conditions, etc (where offender's involvement is not as a result of coercion)
C
Performs limited function under direction
Close involvement but engaged by pressure/intimidation/exploitation

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B	C
Category 1	Starting point 4 years' custody	Starting point 2 years 6 months' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	Starting point 2 years 6 months' custody	Starting point 1 year's custody	Starting point Medium level community order
	Category range 2 – 5 years' custody	Category range High level community order – 2 year's custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Failure to comply with current court orders	Mental disorder or learning disability, where linked to the commission of the offence
Offence committed whilst on licence	
Deliberate isolation of prostitute(s)	
Threats made to expose prostitute(s) to the authorities (immigration or police)	
Threats of harm to the prostitute's family/friends	
Prostitute(s) passport(s)/identity documents removed	
Prostitute(s) prevented from seeking medical treatment	
Use of drugs/alcohol or other substance to secure prostitute's compliance	
Food withheld	
Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates	
Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Confiscation order***

A confiscation order may be made in circumstances where the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct. These are lifestyle offences for the purposes of the applicable legislation.

Sexual offences prevention order (SOPO)

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Serious Crime Prevention Order (SCPO)

A SCPO may be made by the court if it is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Keeping a brothel used for prostitution

Sexual Offences Act 1956 (section 33A)

Triable either way
Maximum: 7 years' custody

Offence range: Community order – 6 years' custody

STEP ONE
Determining the offence category

The court should determine which category of culpability the offence falls into by reference **only** to the table below. The court should then determine whether any level A harm factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> • Brothel uses prostitute(s) under 18 • Abduction/detention of those working in brothel • Violence used against prostitute(s) working in brothel • Sustained and systematic psychological abuse of prostitute(s) working in brothel • Prostitute(s) working in brothel coerced or forced to participate in unsafe/particularly degrading sexual activity • Evidence prostitute(s) working in brothel forced or coerced into prostitution • Prostitute(s) working in brothel forced or coerced into seeing many ‘customers’ • Prostitute(s) working in brothel tricked/deceived into prostitution • Established evidence of community impact 	<p>A</p> <ul style="list-style-type: none"> Keeping brothel on significant commercial basis Involvement in keeping a number of brothels Expectation of substantial financial gain Abuse of position of trust/responsibility Exploitation of prostitute(s) known to be trafficked Significant involvement in limiting freedom of those working in brothel <p>B</p> <ul style="list-style-type: none"> Keeping/managing premises Close involvement with prostitute(s) e.g. control of finances, choice of client, working conditions, etc (where offender’s involvement is not as a result of coercion) <p>C</p> <ul style="list-style-type: none"> Performs limited function under direction Close involvement but engaged by pressure/intimidation/exploitation
Category 2	Factor(s) in category 1 not present	

STEP TWO
Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B	C
Category 1	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 2 – 5 years' custody	Category range High level community order – 18 months' custody
Category 2	Starting point 3 years' custody	Starting point 1 year's custody	Starting point Medium level community order
	Category range 2 – 5 years' custody	Category range 26 weeks' – 2 years' custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 1 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Threats made to expose prostitute(s) to the authorities (immigration or police)

Threats of harm to prostitute's family/friends

Prostitute(s) passed around by offender and moved to other brothels

Prostitute(s) passport(s)/identity documents removed

Prostitute(s) prevented from seeking medical treatment

Use of drugs/alcohol or other substance to secure prostitute's compliance

Food withheld

Earnings of prostitute(s) withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses or unreasonable interest rates

Any steps taken to prevent the prostitute(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

Mental disorder or learning disability, where linked to the commission of the offence

Prostitute(s) working in brothel engaged in prostitution without being pressured or corrupted by offender and exploitation minimal

STEP THREE**Consider any factors which indicate a reduction, such as 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**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 offending behaviour.

STEP SIX**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Confiscation order***

A confiscation order may be made in circumstances where the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.

Serious Crime Prevention Order (SCPO)

A SCPO may be made by the court if it is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Causing or inciting child prostitution or pornography

Sexual Offences Act 2003 (section 48)

Controlling a child prostitute or child involved in pornography

Sexual Offences Act 2003 (section 49)

Arranging or facilitating child prostitution or pornography

Sexual Offences Act 2003 (section 50)

Triable either way
Maximum: 14 years' custody

Offence range:	Victim aged under 13	1 – 13 years' custody
	Victim aged 13 – 15	26 weeks' – 11 years' custody
	Victim aged 16 – 17	Community order – 7 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for offences committed on or after such date, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of culpability the offence falls into by reference **only** to the table below. The court should then determine whether any level A harm factors are present in order to ascertain the starting point.

For cases that involve wide scale commercial and/or international activity sentences above the category range may be appropriate.

CHILD PROSTITUTION OR PORNOGRAPHY

Harm	
Category 1	<ul style="list-style-type: none"> Abduction/detention of victim Prostitution or pornography involves penetrative sexual activity Violence used against victim Victim coerced or forced to participate in unsafe/particularly degrading sexual activity Victim passed around by the offender to other adults and/or moved to other brothels Victim forced/coerced into prostitution or pornography Victim tricked/deceived into prostitution or pornography
Category 2	Factor(s) in category 1 not present

Culpability
A
Role in directing or organising child prostitution or pornography with an expectation of substantial financial or other gain
Abuse of position of trust/responsibility/power
Exploitation of victims known to be trafficked
Significant involvement in limiting the freedom of the victim
B
Close involvement with inciting, controlling, arranging or facilitating child prostitution or pornography (where offender’s involvement is not as a result of coercion)
C
Performs limited function under direction
Close involvement but engaged by pressure/intimidation/exploitation

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

		A	B	C
Category 1	U13	Starting point 10 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
		Category range 8 – 13 years' custody	Category range 6 – 11 years' custody	Category range 2 – 6 years' custody
	13–15	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 2 years 6 months' custody
		Category range 6 – 11 years' custody	Category range 4 – 8 years' custody	Category range 1 – 4 years' custody
	16–17	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
		Category range 3 – 7 years' custody	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	U13	Starting point 8 years' custody	Starting point 6 years' custody	Starting point 2 years' custody
		Category range 6 – 11 years' custody	Category range 4 – 9 years' custody	Category range 1 – 4 years' custody
	13–15	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
		Category range 4 – 9 years' custody	Category range 2 – 5 years' custody	Category range 26 weeks' – 2 years' custody
	16–17	Starting point 3 years' custody	Starting point 1 year's custody	Starting point 26 weeks' custody
		Category range 2 – 5 years' custody	Category range 26 weeks' – 2 years' custody	Category range High level community order – 1 year's custody

The table below 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 starting point. **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.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Deliberate isolation of victim

Vulnerability of victim

Threats made to expose victim to authorities, relatives or friends

Threats of harm to prostitute's family/friends

Victim's passport(s)/identity documents removed

Victim prevented from seeking medical treatment

Victim prevented from attending school

Use of drugs/alcohol/other substance to secure victims compliance

Food withheld

Earnings of victim withheld/kept by offender or evidence of excessive wage reduction or debt bondage, inflated travel or living expenses, etc

Victim manipulated into dependence on offender (e.g. physical, emotional, financial)

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

Mental disorder or learning disability, where linked to the commission of the offence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Confiscation order***

A confiscation order may be made in circumstances where the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct. These are lifestyle offences for the purposes of the applicable legislation.

Sexual offences prevention order (SOPO)

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Serious Crime Prevention Order (SCPO)

A SCPO may be made by the court if it is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Paying for the sexual services of a child

Sexual Offences Act 2003 (section 47)

Triable only on indictment (if involving penetration against victim under 16);
– otherwise, triable either way

Maximum:	Victim under 13 (penetrative)	Life imprisonment
	Victim under 13 (non-penetrative)	14 years' custody
	Victim aged 13–15	14 years' custody
	Victim aged 16–17	7 years' custody

Offence range: Victim aged 16–17 Community order – 5 years' custody

This guideline should only be used where the victim is aged 16 or 17 years old. If the victim is under 13 please refer to the guidelines for rape of a child under 13, assault by penetration of a child under 13, sexual assault of a child under 13 or causing or inciting a child under 13 to engage in sexual activity, depending on the activity involved in the offence.

If the victim is aged 13–15 please refer to the sexual activity with a child guideline.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- Where the offender is 16 or over – for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE
Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

This guideline should only be used where the victim is aged 16 or 17 years old.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> Activity involving violence Victim subjected to unsafe/particularly degrading sexual activity 	A
Category 2	<ul style="list-style-type: none"> Penetrative sexual activity Masturbation by, or of, the victim 	Abduction/detention of victim
Category 3	Other sexual activity	Sexual images of victim recorded, retained, solicited or shared
		Part of group or gang during commission of offence
		Threats made to victim (including to expose victim to authorities, relatives or friends)
		Offender aware that he is suffering from a sexually transmitted disease
		Offender aware victim has been trafficked
		B
		Factor(s) in category A not present

STEP TWO
Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below **for victims aged 16 or 17**. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 2 – 5 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody
Category 3	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 2 years' custody	Category range High level community order – 1 year's custody

The table below 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 starting point. **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.

When sentencing appropriate **category 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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 comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Protection for children and vulnerable adults

The court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Trafficking into the UK for sexual exploitation

Sexual Offences Act 2003 (section 57)

Trafficking within the UK for sexual exploitation

Sexual Offences Act 2003 (section 58)

Trafficking out of the UK for sexual exploitation

Sexual Offences Act 2003 (section 59)

Triable either way
Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE
Determining the offence category

The court should determine which category of culpability the offence falls into by reference **only** to the table below. The court should then determine whether any level A harm factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> Abduction/detention of victim Violence used against victim Sustained and systematic psychological abuse of victim Victim under 18 Victim coerced or forced to participate in unsafe/particularly degrading sexual activity Victim forced or coerced into prostitution Victim tricked/deceived as to purpose of visit 	<p>A</p> <p>Directing or organising trafficking on commercial scale and/or substantial influence on others in trafficking organisation/chain</p> <p>Expectation of substantial financial gain</p> <p>Abuse of position of trust/responsibility</p> <p>B</p> <p>Operational or management function within chain</p> <p>Involves others in operation whether by pressure/influence/intimidation or reward (and offender's involvement is not as a result of coercion)</p> <p>C</p> <p>Performs limited function under direction</p> <p>Engaged by pressure/intimidation/exploitation</p>
Category 2	Factor(s) in category 1 not present	

STEP TWO
Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

	A	B	C
Category 1	Starting point 8 years' custody	Starting point 6 years' custody	Starting point 18 months' custody
	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody	Category range 26 weeks' – 2 years' custody
Category 2	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 26 weeks' custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community order – 18 months' custody

The table below 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 starting point. **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.

When sentencing appropriate **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Failure to comply with current court orders	Mental disorder or learning disability, where linked to the commission of the offence
Offence committed whilst on licence	Victims willingly travelled to/out of/within the country and engaged in prostitution without being pressured or corrupted by offender and exploitation minimal
Deliberate isolation of victim(s)	
Victim(s) children left in home country due to trafficking	
Exploitation of victim(s) from particularly vulnerable backgrounds	
Threats made to expose victim(s) to the authorities (immigration or police)	
Threats of harm to the victim's family/friends	
Victim(s) previously trafficked/sold/passed around	
Victim(s) passport(s)/identity documents removed	
Victim(s) prevented from seeking medical treatment	
Use of drugs/alcohol or other substance to secure victim's compliance	
Food withheld	
Earnings of victim(s) withheld/kept by trafficker or evidence of excessive wage reduction, debt bondage, inflated travel or living expenses, unreasonable interest rates	
Any steps taken to prevent the victim(s) reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Confiscation order***

A confiscation order may be made in circumstances where the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct. These are lifestyle offences for the purposes of the applicable legislation.

Sexual offences prevention order (SOPO)

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Serious Crime Prevention Order (SCPO)

A SCPO may be made by the court if it is satisfied such an order would protect the public by preventing, restricting or disrupting the involvement of the offender in serious crime.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sexual activity with a person with a mental disorder impeding choice

Sexual Offences Act (section 30)

Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

Sexual Offences Act (section 31)

Triable only on indictment (if penetration involved); otherwise

Triable either way

Maximum: Life imprisonment (if penetration involved); otherwise
14 years' custody

Offence range: Community order – 20 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- these are serious specified offences for the purposes of section 224 and, where the offence involves penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences involving penetration, committed on or after such date, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Extreme violence • The extreme nature of one or more category 2 factors may elevate to category 1
Category 2	<ul style="list-style-type: none"> • Pregnancy or STI as a consequence of sexual activity • Additional degradation/humiliation • Abduction/detention • Prolonged/sustained incident • Use of violence • Context of habitual sexual abuse • Forced entry into victim’s home or residence
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Significant degree of planning
Member of group or gang during commission of offence
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Recording of the offence
Stalking/harassment of victim
Previous violence against victim
Offence committed in course of burglary
Deliberate isolation of victim
Use of a weapon to frighten or injure
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

Where offence involves penetration

	A	B
Category 1	Starting point 16 years' custody	Starting point 14 years' custody
	Category range 14 – 20 years' custody	Category range 11 – 17 years' custody
Category 2	Starting point 13 years' custody	Starting point 10 years' custody
	Category range 8 – 17 years' custody	Category range 5 – 13 years' custody
Category 3	Starting point 10 years' custody	Starting point 8 years' custody
	Category range 6 – 13 years' custody	Category range 5 – 11 years' custody

Where offence did not involve penetration

	A	B
Category 1	Starting point 7 years' custody	Starting point 4 years' custody
	Category range 4 – 9 years' custody	Category range 2 – 6 years' custody
Category 2	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 1 – 5 years' custody	Category range High level community order – 3 years' custody
Category 3	Starting point 1 year's custody	Starting point High level community order
	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody

The table below 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 starting point. **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.

When appropriate, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct*
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Location of offence	Mental disorder or learning disability, where linked to the commission of the offence
Timing of offence	Offender intervenes to stop the sexual activity taking place
Victim compelled to leave their home or institution (including victims of domestic violence)	
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Presence of others, especially children	
Commission of offence whilst under the influence of alcohol or drugs	

* In the context of these offences, generally good character and/or exemplary conduct should not be given significant weight and will not justify a substantial reduction of what would otherwise be the appropriate sentence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject..

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence of a person with mental disorder impeding choice

Sexual Offences Act 2003 (section 32)

Causing a person, with mental disorder impeding choice, to watch a sexual act

Sexual Offences Act 2003 (section 33)

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Causing victim to view extreme pornography • Causing victim to view indecent/prohibited images of children • Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of the mouth • Masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 34)

Causing a person with a mental disorder to engage in or agree to engage in a sexual activity by inducement, threat or deception

Sexual Offences Act 2003 (section 35)

Triable only on indictment (if penetration involved); otherwise
Triable either way

Maximum: Life imprisonment (if penetration involved); otherwise
14 years' custody

Offence range: Community order – 10 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- these are serious specified offences for the purposes of section 224 and, where the offence involves penetration, section 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003;
- for offences involving penetration, committed on or after such date, these are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003; and
- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of the mouth In either case by, or of, the victim
Category 2	Masturbation by or of the victim
Category 3	Other sexual activity

Culpability
A
Significant planning
Use of alcohol/drugs on the victim to facilitate the offence
Abuse of position of trust
Sexual images recorded, retained, solicited or shared
Member of group or gang during commission of the offence
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 5 years' custody	Starting point 1 year's custody
	Category range 4 – 10 years' custody	Category range High level community order – 2 years' custody
Category 2	Starting point 3 years' custody	Starting point 26 weeks' custody
	Category range 2 – 6 years' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 2 years' custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Age and/or lack of maturity where it affects the responsibility of the offender
Location of offence	Mental disorder or learning disability, where linked to the commission of the offence
Timing of offence	Offender intervenes to stop sexual activity taking place
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Pregnancy or STI as a consequence of the offence	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award a life sentence (section 224A or section 225(2)) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

Sexual Offences Act 2003 (section 36)

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

Sexual Offences Act 2003 (section 37)

Triable either way
Maximum: 10 years' custody

Offence range: Community order – 6 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> • Causing victim to view extreme pornography • Causing victim to view indecent/prohibited images of children • Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of the mouth • Masturbation
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 4 years' custody	Starting point 2 year's custody
	Category range 3 – 6 years' custody	Category range 1 – 3 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 1 – 3 years' custody	Category range High level community order – 18 months' custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – Medium level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Care workers: sexual activity with a person with a mental disorder

Sexual Offences Act 2003 (section 38)

Care workers: causing or inciting sexual activity

Sexual Offences Act 2003 (section 39)

Triable only on indictment (if penetration involved);
– otherwise, triable either way

Maximum: 14 years' custody (if penetration involved); otherwise
10 years' custody

Offence range: Community order – 5 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- or convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Factor(s) in categories 1 and 2 not present

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on the victim to facilitate the offence
Sexual images of victim recorded, retained, solicited or shared
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 2 – 5 years' custody	Category range 1 – 2 years' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range Medium level community order – 1 year's custody
Category 3	Starting point Medium level community order	Starting point Medium level community order
	Category range Low level community order – 26 weeks' custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When appropriate sentencing **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

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

Location of offence

Timing of offence

Failure to comply with current court orders

Offence committed whilst on licence

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Attempts to dispose of or conceal evidence

Pregnancy or STI as a consequence of sexual activity

Victim required to move care home, institution, hospital, etc as a result of offence

Failure of offender to respond to previous warnings about the activity

Commission of offence whilst under the influence of alcohol or drugs

Mitigating factors

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

Remorse

Previous good character and/or exemplary conduct

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

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

Mental disorder or learning disability, where linked to the commission of the offence

Offender voluntarily stops the sexual activity taking place

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Care workers: sexual activity in the presence of a person with a mental disorder

Sexual Offences Act 2003 (section 40)

Care workers: causing a person with a mental disorder to watch a sexual act

Sexual Offences Act 2003 (section 41)

Triable either way
Maximum: 7 years' custody

Offence range: Community order – 2 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm		Culpability
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Causing victim to view indecent/prohibited images of children Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child 	A <ul style="list-style-type: none"> Use of gifts/bribes to coerce the victim Use of threat (including blackmail) Use of alcohol/drugs on victim to facilitate the offence Abuse of position of trust
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving <ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of the mouth Masturbation 	B <ul style="list-style-type: none"> Factor(s) in category A not present
Category 3	Factor(s) in categories 1 and 2 not present	

STEP TWO**Starting point and category range**

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	Starting point 18 months' custody	Starting point 1 year's custody
	Category range 1 – 2 years' custody	Category range 26 weeks' – 18 months' custody
Category 2	Starting point 1 year's custody	Starting point 26 weeks' custody
	Category range 26 weeks' – 18 months' custody	Category range High level community order – 1 year's custody
Category 3	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range High level community order – 1 year's custody	Category range Low level community order – High level community order

The table below 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 starting point. **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.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Exposure

Sexual Offences Act 2003 (section 66)

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 1 year's custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- **for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Exposure without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm

Victim followed/pursued

Offender masturbated

Factors indicating raised culpability

Vulnerable victim targeted

Abuse of position of trust

Threats of violence/threatening or violent sexual language

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

Category 1	Starting point 26 weeks' custody
	Category range 12 weeks' – 1 year's custody
Category 2	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point Medium level community order
	Category range Band A fine – High level community order

The table below 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 starting point. **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.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of the offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of the offence	Mental disorder or learning disability, where linked to the commission of the offence
Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

EXPOSURE

Voyeurism

Sexual Offences Act 2003 (section 67)

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 18 months' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- **for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.**

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Voyeurism without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm

Image(s) available to be viewed by others

Victim observed or recorded in their own home

Factors indicating raised culpability

Image(s) recorded

Abuse of position of trust

A significant degree of planning or organisation

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

Category 1	Starting point 26 weeks' custody
	Category range 12 weeks' – 18 months' custody
Category 2	Starting point High level community order
	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point Medium level community order
	Category range Band A fine – High level community order

The table below 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 starting point. **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.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Placing images where there is the potential for a high volume of viewers	Age and/or lack of maturity where it affects the responsibility of the offender
Period over which images were made or distributed	Mental disorder or learning disability, where linked to the commission of the offence
Image(s) circulated to people known to victim	
Any steps taken to prevent victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sex with an adult relative: penetration

Sexual Offences Act 2003 (section 64)

Sex with an adult relative: consenting to penetration

Sexual Offences Act 2003 (section 65)

Triable either way

Maximum: 2 years' custody

Offence range: Fine – 2 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Sex with an adult relative without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm

Context of habitual exploitation

Child conceived as a result of the sexual activity

Factors indicating raised culpability

Evidence of grooming

Use of threat (including blackmail)

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under section 202 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence.

Category 1	Starting point 1 year's custody
	Category range 26 weeks' – 2 years' custody
Category 2	Starting point High level community order
	Category range Medium level community order – 1 year's custody
Category 3	Starting point Medium level community order
	Category range Fine – High level community order

The table below 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 starting point. **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.

When sentencing **category 2 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3 offences**, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Failure to respond to previous warnings about the relationship	Age and/or lack of maturity where it affects the responsibility of the offender
Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	Mental disorder or learning disability, where linked to the commission of the offence
Attempts to dispose of or conceal evidence	
Failure to comply with current court orders	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Administering a substance with intent

Sexual Offences Act 2003 (section 61)

Triable either way
Maximum: 10 years' custody

Offence range: 1 – 9 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Administering a substance with intent without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Abuse of position of trust

Recording of victim

Member of group or gang during the commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Category 1	Starting point 6 years' custody
	Category range 4 – 9 years' custody
Category 2	Starting point 4 years' custody
	Category range 3 – 7 years' custody
Category 3	Starting point 2 years' custody
	Category range 1 – 5 years' custody

The table below 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 starting point. **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.

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Significant degree of planning	Offender intervenes to stop the sexual activity taking place
Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Failure to comply with current court orders	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Trespass with intent to commit a sexual offence

Sexual Offences Act 2003 (section 63)

Triable either way
Maximum: 10 years' custody

Offence range: 1 – 9 years' custody

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), this is a specified offence for the purposes of section 226A (extended sentence for certain violent or sexual offences) of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Raised harm and raised culpability
Category 2	Raised harm or raised culpability
Category 3	Trespass with intent to commit a sexual offence without raised harm or culpability factors present

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Factors indicating raised harm

Abduction/detention

Additional degradation/humiliation of victim

Forced entry into victim’s home

Factors indicating raised culpability

Vulnerable victim targeted

Intended sexual offence attracts a statutory maximum of life

Member of group or gang during the commission of the offence

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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 below.

Category 1	Starting point 6 years’ custody
	Category range 4 – 9 years’ custody
Category 2	Starting point 4 years’ custody
	Category range 3 – 7 years’ custody
Category 3	Starting point 2 years’ custody
	Category range 1 – 5 years’ custody

The table below 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 starting point. **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.

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity where it affects the responsibility of the offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Significant degree of planning	Offender intervenes to stop the sexual activity taking place
Any steps taken to prevent reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Failure to comply with current court orders	
Offence committed whilst on licence	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The court should consider whether having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003 it would be appropriate to award an extended sentence (section 226A).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

If the offence has been committed against a child (being under 18 years of age), the court must consider whether a disqualification order prohibiting the offender from working with children should be made. In addition, the court should consider whether the offender may be automatically barred from regulated activity relating to children or vulnerable adults and inform him accordingly.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT**Reasons**

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

TRESPASS WITH INTENT

Sexual activity with a child (offender under 18)

Sexual Offences Act 2003 (sections 9 and 13)

Causing or inciting a child to engage in sexual activity (offender under 18)

Sexual Offences Act 2003 (sections 10 and 13)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 24 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE

Determining the offence category

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Sexual images of victim recorded, retained, solicited or shared
Vulnerable victim targeted
Member of group or gang during commission of offence
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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 below.

	A	B
Category 1	Starting point 12 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 24 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

The table below 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 starting point. **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.

When sentencing appropriate **category 1 or 2 offences**, the court should also consider the custody threshold as follows, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	Young offender intervenes to stop the sexual activity taking place
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Pregnancy or STI as a consequence of sexual activity	
Failure of young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The Crown Court should consider whether, having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003, it would be appropriate to award an extended sentence (section 226B).

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT

Reasons

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Engaging in sexual activity in the presence of a child (offender under 18)

Sexual Offences Act 2003 (sections 11 and 13)

Causing a child to watch a sexual act (offender under 18)

Sexual Offences Act 2003 (sections 12 and 13)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 12 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm		Culpability	
Category 1	<ul style="list-style-type: none"> Causing victim to view extreme pornography Engaging in or causing a victim to view live sexual activity involving sadism/violence/sexual activity with an animal/a child 	A	
Category 2	Engaging in or causing a victim to view images or view live sexual activity involving: <ul style="list-style-type: none"> penetration of vagina or anus (using body or object) penile penetration of the mouth masturbation 		Use of gifts/bribes to coerce the victim Use of threat (including blackmail) Use of alcohol/drugs on victim to facilitate the offence Abuse of position of trust Vulnerable child targeted Offence racially or religiously aggravated Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
Category 3	Factor(s) in categories 1 and 2 not present	B	
			Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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 below.

	A	B
Category 1	Starting point 8 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 4 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

The table below 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 starting point. **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.

When sentencing appropriate **category 1 or 2 offences**, the court should also consider the custody threshold as follows, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Failure of young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst young offender under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The Crown Court should consider whether, having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003, it would be appropriate to award an extended sentence (section 226B).

STEP SIX**Totality principle**

If sentencing a young offender for more than one offence, or where the young offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT

Reasons

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Sexual activity with a child family member (offender under 18)

Sexual Offences Act 2003 (section 25)

Inciting a child family member to engage in sexual activity (offender under 18)

Sexual Offences Act 2003 (section 26)

Triable either way
Maximum: 5 years' custody

Offence range: Youth rehabilitation order – 24 months' detention and training order

These are 'grave crimes' for the purposes of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

From 3 December 2012 or such date as sections 122 to 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 come into force:

- for convictions on or after such date (irrespective of the date of commission of the offence), these are specified offences for the purposes of section 226B (extended sentence for certain violent or sexual offences: persons under 18) of the Criminal Justice Act 2003.

When sentencing offenders under 18 the court must:

- have regard to the principal aim of the youth justice system, which is to prevent offending by children and young persons, in accordance with section 37 of the Crime and Disorder Act 1998;
- have regard to the welfare of the young offender in accordance with section 44 of the Children and Young Persons Act 1933; and
- apply the *Overarching Principles – Sentencing Youths* guideline.

STEP ONE**Determining the offence category**

The court should determine which category of harm the offence falls into by reference **only** to the table below. The court should then determine whether any level A culpability factors are present in order to ascertain the starting point.

Harm	
Category 1	<ul style="list-style-type: none"> Penetration of vagina or anus (using body or object) Penile penetration of mouth In either case by, or of, the victim
Category 2	Masturbation by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Use of gifts/bribes to coerce the victim
Use of threat (including blackmail)
Use of alcohol/drugs on victim to facilitate the offence
Abuse of position of trust
Sexual images of victim recorded, retained, solicited or shared
Vulnerable child targeted
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to offenders irrespective of plea or previous convictions, unless the court imposes a referral order in accordance with the applicable statutory provisions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

The sentencing options that are available to the court will depend on the age of the young offender and relevant statutory criteria. These sentencing options are set out in Annex XXXX at page XXXX [this annex will be included in the definitive guideline].

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 below.

	A	B
Category 1	Starting point 12 months' detention and training order	Starting point 4 months' detention and training order
	Category range Youth rehabilitation order – 24 months' detention and training order	Category range Youth rehabilitation order – 12 months' detention and training order
Category 2	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order – 12 months' detention and training order	Category range Youth rehabilitation order
Category 3	Starting point Youth rehabilitation order	Starting point Youth rehabilitation order
	Category range Youth rehabilitation order	Category range Youth rehabilitation order

The table below 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 starting point. **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.

When sentencing appropriate **category 1 or 2 offences**, the court should also consider the custody threshold, taking into account the circumstances, age and maturity of the young offender and that a custodial sentence is a measure of last resort:

- has the custody threshold been passed?
- if so, could a suitable community sentence be imposed instead?
- if not, is it unavoidable that a custodial sentence be imposed?

Aggravating factors	Mitigating factors
<i>Statutory aggravating factors</i>	No previous convictions or no relevant/recent convictions
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	Remorse
Offence committed whilst on bail	Previous good character and/or exemplary conduct
<i>Other aggravating factors</i>	Determination and/or demonstration of steps taken to address sexual behaviour
Location of offence	Age and/or lack of maturity of the young offender
Timing of offence	Mental disorder or learning disability, where linked to the commission of the offence
Failure to comply with current court orders	
Offence committed whilst on licence	
Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Attempts to dispose of or conceal evidence	
Pregnancy or STI as a consequence of sexual activity	
Failure of young offender to respond to previous warnings about his/her behaviour	
Commission of offence whilst under the influence of alcohol or drugs	

STEP THREE**Consider any factors which indicate a reduction, such as 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**Dangerousness**

The Crown Court should consider whether, having regard to the criteria contained in chapter 5 of part 12 of the Criminal Justice Act 2003, it would be appropriate to award an extended sentence (section 226B).

STEP SIX**Totality principle**

If sentencing a young offender for more than one offence, or where the young offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court must consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:***Sexual offences prevention order (SOPO)***

A SOPO may be made by the court, in respect of a qualifying offender, if it is satisfied such an order is necessary to protect the public or any particular member of the public from serious sexual harm. The terms of the SOPO must be proportionate to the objective of protecting the public and consistent with the sentence and other ancillary orders, conditions and requirements to which the offender is subject.

Notification requirements

A qualifying offender automatically becomes subject to the notification requirements, obliging him to notify the police of personal information for a specified period. The court should inform the offender of any notification requirements that apply.

Protection for children and vulnerable adults

In respect of a grave crime, the Crown Court must consider whether a disqualification order prohibiting the offender from working with children should be made.

Restraining orders

Following a conviction *or an acquittal*, a court may make a restraining order for the purpose of protecting the victim or another person from harassment or a fear of violence.

STEP EIGHT

Reasons

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence at this final step. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

