



Sentencing Guidelines Council

**Overarching Principles:
Assaults on children
and
Cruelty to a child**

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the CJA 2003, every court must have regard to a relevant guideline. This guideline applies to the sentencing of offenders on or after **3 March 2008**.

In a separate guideline the Council has set out the principles and guidance relevant to the sentencing of assault offences ranging from common assault at the lowest end of the seriousness scale, up to wounding or causing grievous bodily harm with intent.

This guideline details additional relevant principles for sentencing where the assault was on a child.

In addition, this guideline defines sentencing principles, starting points and ranges for the offence of cruelty to a child which may involve a variety of types of conduct and stem from a pattern of offending behaviour against a child rather than an isolated assault.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council. The advice and this guideline are available on www.sentencing-guidelines.gov.uk or from the Sentencing Guidelines Secretariat at 4th Floor, 8-10 Great George Street, London SW1P 3AE. A summary of the responses to the Council's consultation also appears on the website.



Chairman of the Council
February 2008

CONTENTS

Foreword	i
Introduction and structure of the guideline	3
Part 1: Assaults on children: General principles	5-7
A. Assessing seriousness	5-6
(i) Aggravation	5-6
(ii) Mitigation	6
B. Other factors relevant to sentencing	7
(i) The adverse effect of the sentence on the victim	7
(ii) Offenders who have primary care responsibilities	7
Part 2: Cruelty to a child	8-18
A. Statutory provision	8
B. Forms of cruelty to a child	8
C. Assessing seriousness	9-11
(i) Culpability	9-10
(ii) Harm	10
(iii) Aggravating and mitigating factors	10-11
D. Other factors relevant to sentencing	11-13
(i) Long-term psychological harm	11-12
(ii) The adverse effect of the sentence on the victim	12
(iii) Offenders who have primary care responsibilities	13
(iv) Personal mitigation	13
E. Starting points and sentencing ranges	14
The decision making process	15
F. Factors to take into consideration and guideline	16-18

OVERARCHING PRINCIPLES: ASSAULTS ON CHILDREN AND CRUELTY TO A CHILD

Introduction and structure of the guideline

1. The Council has produced a separate guideline covering offences of assault which do not result in the death of the victim, ranging in seriousness from common assault to wounding or causing grievous bodily harm with intent. Those offences involve the infliction of permanent or temporary harm on a victim by direct action, or an intention to cause harm to a victim even if harm does not in fact result.
2. That guideline applies only to the sentencing of offenders aged 18 and older convicted of assault, primarily where the victim of the assault is aged 16 or over. It covers:
 - assessing the culpability of the offender and the harm caused;
 - relevant aggravating and mitigating factors;
 - use of a weapon and particular parts of the body;
 - aggravated assaults;
 - provocation as mitigation;
 - compensating victims, and
 - ancillary orders.
3. In **Part 1** of this guideline additional principles are set out which should be considered when the victim of an assault is a child (aged 15 years and under).
4. **Part 2** provides guidance in relation to the offence of cruelty to a child² which has a wide-ranging definition that can include assault but also other forms of conduct likely to cause a child under 16 years of age unnecessary suffering or injury to health.

1 Assault and other offences against the person; www.sentencing-guidelines.gov.uk

2 Children and Young Persons Act 1933, s.1(1)

Part 1: Assaults on children: General principles

A. Assessing seriousness

5. The primary factor in considering sentence is the seriousness of the offence committed; that is determined by assessing the culpability of the offender and the harm caused, intended or reasonably foreseeable.³ A community sentence can be imposed only if the court considers that the offence is serious enough to justify it⁴ and a custodial sentence can be imposed only if the court considers that a community sentence or a fine alone cannot be justified in view of the seriousness of the offence.⁵ The Council has published a definitive guideline that guides sentencers determining whether the respective thresholds have been crossed.⁶
6. In considering the seriousness of an offence committed by an offender who has one or more previous convictions, the court must consider whether it should treat any of them as an aggravating factor having regard to the nature of the offence to which each conviction relates and its relevance to the current offence, and the time that has elapsed since the conviction.⁷
7. When dealing with cases involving assaults committed by adults against children, many of which involved some of the aggravating factors described below, the Court of Appeal has given a consistent message that an assault against a child will normally merit a custodial sentence. The Council's view is that such a presumption will not always be appropriate, but in all cases, the fact that the victim is a child is likely to aggravate the seriousness of the offence where the offender is an adult.

(i) Aggravation

8. The fact that the victim of an assault is a child will often mean that the offence involves a particularly vulnerable victim.
9. For all offences of assault, where the offence has been committed by an adult offender and the victim is a child under 16 years, the most relevant aggravating factors, as listed in the Council guideline *Overarching Principles: Seriousness*, are likely to be those set out below. Many of those are most likely to be present where the defendant has caring responsibilities for the child:
 - victim is particularly vulnerable;
 - abuse of power;
 - abuse of position of trust;
 - an especially serious physical or psychological effect on the victim, even if unintended;

3 Criminal Justice Act 2003, s.152(2)

4 *ibid*, s.148(1)

5 *ibid*, s.152(2)

6 *Overarching Principles: Seriousness* published on 16 December 2004; www.sentencing-guidelines.gov.uk

7 Criminal Justice Act 2003, s.143(2)

- presence of others e.g. relatives, especially other children;
- additional degradation of the victim.

Additional aggravating factors are:

- sadistic behaviour;
 - threats to prevent the victim reporting the offence;
 - deliberate concealment of the victim from the authorities; and
 - failure to seek medical help.
10. Many offences committed by adults against children will involve an abuse of power and many also will include an abuse of a position of trust. The Education Act 1996 abolished the right of teachers and other school staff to administer corporal punishment.⁸
11. The location of the offence, for example the fact that an offence takes place in the child's home, and the particular circumstances, such as the fact that the victim is isolated – common aggravating factors in cases of child cruelty – may also be present in relation to individual offences of assault against children.

(ii) Mitigation

12. An offender might seek to argue that any harm caused to the child amounted to lawful chastisement and a court might form the view that the offender held a genuine belief that his or her actions amounted to no more than a legitimate form of physical punishment. The defence of lawful chastisement is available only in relation to a charge of common assault. Where that defence is not available, or, in relation to a charge of common assault, such a defence has failed, sentence for the offence would normally be approached in the same way as any other assault.
13. There will be circumstances where the defendant has been charged with an assault occasioning actual bodily harm and the court finds as fact that the defendant only intended to administer lawful chastisement to the child, and the injury that was inflicted was neither intended nor foreseen by the defendant.
14. Although the defendant would have intended nothing more than lawful chastisement (as currently allowed by the law), he or she would have no defence to such a charge because an assault occasioning actual bodily harm does not require the offender to intend or even foresee that his act will result in any physical harm; it is sufficient that it did. Such a finding of fact should result in a substantial reduction in sentence and should not normally result in a custodial sentence. Where not only was the injury neither intended nor foreseen, but was not even reasonably foreseeable, then a discharge might be appropriate.

⁸ s.548

B. Other factors relevant to sentencing

(i) The adverse effect of the sentence on the victim

15. In many circumstances, an offence of assault on a child will cause the court to conclude that only a custodial sentence can be justified. Imposition of such a sentence will often protect a victim from further harm and anguish; some children will be less traumatised once they are no longer living with an abusive carer.
16. However, where imprisonment of the offender deprives a child victim of his or her sole or main carer (and may result in the child being taken into care), it may punish and re-victimise the child.
17. In view of the seriousness of the offence committed and the risk of further harm to the victim or other children, even though a child may be distressed by separation from a parent or carer, imposing a custodial sentence on the offender may be the only option. However, where sentencing options remain more open, the court should take into account the impact that a custodial sentence for the offender might have on the victim.
18. There will be cases where the child victim is the subject of concurrent care proceedings and, indeed, the child's future care arrangements may well have been determined by the time the offender is sentenced. Both the sentencing court and the Family Court need to be aware of the progress of any concurrent proceedings.
19. **In considering whether a custodial sentence is the most appropriate disposal for an offence of assault on a child the court should take into account any available information concerning the future care of the child.**

(ii) Offenders who have primary care responsibilities

20. The gender of an offender is irrelevant for sentencing purposes. The important factor for consideration is the offender's role as sole or primary carer of the victim or other children or dependants.
21. In cases where an immediate custodial sentence of less than 12 months is justified, it is possible that a suspended sentence order (where available) might be the most appropriate sentence. This could enable the offender, subject to the necessary risk assessment being made, to resume care for, or at least have regular contact with, the child and could also open up opportunities for imposing requirements to rehabilitate and support an offender in need. In practice, this principle is likely to benefit more women than men, firstly because women commit the larger proportion of offences and secondly because men are less likely to be the sole or primary carers of children but the principle is established on the grounds of carer status and not gender.
22. **Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate and, subject to a risk assessment, the offender may be able to resume care for or have contact with the victim.**

Part 2: Cruelty to a child

A. Statutory provision

23. Section 1(1) Children and Young Persons Act 1933 provides:

“If any person who has attained the age of sixteen years and has responsibility for a child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence...”⁹

B. Forms of cruelty to a child

24. As is clear from the definition, the offence covers a variety of types of conduct that can compendiously or separately amount to child cruelty. The four generally accepted categories are:

- (i) assault and ill-treatment;
- (ii) failure to protect;
- (iii) neglect; and
- (iv) abandonment.

25. With regard to assaults, the CPS Charging Standard¹⁰ suggests that an assault charged as child cruelty will differ in nature from that which is generally charged as an offence against the person and notes that “the offence is particularly relevant in cases of cruelty over a period of time.” As such, it is more likely to apply to offences where there is evidence that a child was assaulted by someone with caring responsibility during a certain period but where there is no clear evidence of any particular incidents, the extent of those incidents or the specific time of the incidents.

26. Where a serious assault has been committed, the CPS Charging Standard advises that a charge of child cruelty will not be appropriate and that the most appropriate offence against the person should be charged in such circumstances.¹¹

27. For the purposes of the offence, ‘neglect’ can mean physical and/or emotional neglect.

9 In addition to the Children and Young Persons Act 1933 the UN Convention on the Rights of the Child may be particularly relevant when dealing with this offence. Article 19 obliges States Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

10 The Charging Standard on Offences Against the Person; www.cps.gov.uk

11 *Child Cruelty: Charging Practice*; www.cps.gov.uk/legal/section7

C. Assessing seriousness

28. It is not appropriate to identify one category of child cruelty as being automatically more serious than another; there will be a multitude of scenarios, some of which will involve more than one type of cruelty, in which the seriousness of the types of cruelty judged one against another will vary markedly. A long period of neglect, for example, could, in some circumstances, be more harmful to a child than a short period of violence.
29. In order to assess properly the seriousness of an offence, the precise nature of the offence must be established before consideration is given to a range of contingent factors, including the defendant's intent, the length of time over which the cruelty took place, and the degree of physical and psychological harm suffered by the victim.

(i) Culpability

30. Although the nature and degree of harm that was caused, was intended or was reasonably foreseeable will impact on the seriousness of an offence of child cruelty, the Council guideline¹² clearly establishes that culpability should be the initial factor in determining the seriousness of an offence. In child cruelty offences, where there is such a wide variation in the nature and degree of harm that can be caused to a victim, there will similarly be a considerable variation in levels of culpability.
31. Child cruelty may be the consequence of a wide range of factors including:
- sadism
 - violence resulting from any number of causes
 - a reduced ability to protect a child in the face of aggression from an overbearing partner
 - indifference or apathy resulting from low intelligence or induced by alcohol or drug dependence
 - immaturity or social deprivation resulting in an inability to cope with the pressures of caring for children
 - psychiatric illness
32. In the short term, an offence might arise as the result of a momentary lack of control by an otherwise responsible and loving carer. The extent to which any of these factors might have contributed to the commission of an offence will be important in determining the culpability of the offender.
33. A court must strike a balance between the need to reflect the serious view which society takes of the ill-treatment of very young children and the need to protect those children, and also the pressures upon immature and inadequate parents attempting to cope with the problems of infancy.
34. The extent to which remorse should influence sentence will always have to be judged in the light of all the circumstances surrounding the case.

12 *Overarching Principles: Seriousness*, page 5, published on 16 December 2004; www.sentencing-guidelines.gov.uk

35. In view of the seriousness with which society as a whole regards child cruelty, the normal sentencing starting point for an offence of child cruelty should be a custodial sentence. The length of that sentence will be influenced, however, by the circumstances in which the offence took place.

(ii) Harm

36. In order to assist a court in assessing the exact nature and seriousness of an offence of child cruelty, the CPS Charging Standard¹³ advises that “it may be preferable to have two or more alternative allegations in order that conduct complained of is appropriately described” and this certainly seems to be of benefit to sentencers. Where an offender has been convicted of an offence of child cruelty and the indictment clearly states the nature of the offender’s conduct – neglect for example – the sentencer can be clear about the nature of the conduct for which the offender is to be sentenced.

37. However, even if the nature of the offending behaviour can be identified, statute is silent as to the relative seriousness of the different types of child cruelty identified above, creating obvious difficulties for the sentencing court.

38. There is a significant distinction between cases of wilful ill-treatment which usually involve positive acts of abuse and physical violence, and cases of neglect which are typified by the absence of actions.

39. In some cases there will be physical injury, whether resulting directly from an assault or ill-treatment or resulting from a period of abandonment or neglect. In other cases the harm occasioned may be lack of proper care, attention or supervision or exposure to the risk of harm.

40. As to whether one form of cruelty is worse than another will depend not only on the degree to which the victim suffers as a result but also on the motivation and culpability of the offender, which can range from inadequate parenting skills and an inability to cope, or constantly prioritising the needs of the offender or the offender’s partner over those of the child, through to purposeful, sadistic and systematic abuse.

(iii) Aggravating and mitigating factors

41. The *Seriousness* guideline¹⁴ sets out aggravating and mitigating factors that are applicable to a wide range of cases. Not all will be relevant to the offence of cruelty to a child. Care needs to be taken to ensure that there is no double counting where an essential element of the offence charged might, in other circumstances, be an aggravating factor. The sentencing starting points for the offence of child cruelty have been calculated to reflect the inherent abuse of trust or power and these cannot be treated as aggravating factors.

13 The Charging Standard on Offences Against the Person; www.cps.gov.uk

14 *Overarching Principles: Seriousness*, paragraphs 1.20-1.27, published on 16 December 2004; www.sentencing-guidelines.gov.uk

42. The following additional factors will aggravate offences of child cruelty:
- targeting one particular child from the family
 - sadistic behaviour
 - threats to prevent the victim from reporting the offence
 - deliberate concealment of the victim from the authorities
 - failure to seek medical help
43. The following additional factor will mitigate offences of child cruelty:
- seeking medical help or bringing the situation to the notice of the authorities

D. Other factors relevant to sentencing

(i) Long-term psychological harm

44. There is no immediately predictable link between a type of offending behaviour and the impact it may have on the victim, either in the immediate or long term. The innate resilience of children and the presence of protection from another adult or the wider environment are also important factors that will influence the impact of the offence upon the child.
45. However, victims of child cruelty will frequently suffer psychological as well as physical harm. The evidence of emotional and behavioural consequences of child abuse is frequently presented by the following characteristics:¹⁵
- impaired capacity to enjoy life – abused children often appear sad, preoccupied and listless;
 - psychiatric or psychosomatic stress symptoms, for example, bed-wetting, tantrums, bizarre behaviour, eating problems etc;
 - low self-esteem – children who have been abused often think they must be worthless to deserve such treatment;
 - school learning problems, such as lack of concentration;
 - withdrawal – many abused children withdraw from relationships with other children and become isolated and depressed;
 - opposition/defiance – a generally negative, uncooperative attitude;
 - hyper-vigilance – typified in the ‘frozen watchfulness’ expression;
 - compulsivity – abused children sometimes compulsively carry out certain activities or rituals;
 - pseudo-mature behaviour – a false appearance of independence or being excessively ‘good’ all the time or offering indiscriminate affection to any adult who takes an interest.
46. Abuse can also be evidenced by ‘learned behaviour aggression’ and a tendency for a victim of child cruelty to inflict violence on others. Victims may also mature into adults with poor parenting skills who perpetrate similar acts of cruelty on their own children.

15 ‘The Effects of Physical Abuse and Neglect’ in Wendy Stanton Rogers et al ed, *Child Abuse and Neglect*, The Open University 1992 page 206, citing a study by Martin, H.P and Beezley, P., ‘Behavioural observations of abused children’, *Developmental Medicine and Child Neurology*, Vol 19 (1977), pages 373-87

47. There is an established general principle that the sentence imposed for an offence can be based both on what is known about the harm caused to an individual victim and, in some cases, what is known about the harm caused to society as a whole.
48. Whilst objective evidence about the degree of physical harm should be available at the point of sentence, psychological harm, especially that which may or may not manifest itself in the future, will be extremely difficult, and often impossible, to assess at the point of sentence. Where there is objective expert evidence about the particularly severe psychological trauma suffered by an individual victim, which indicates a more than usually serious degree of harm, this would be captured by the generic aggravating factor in the Council guideline – *“An especially serious physical or psychological effect on the victim, even if unintended”*.¹⁶
49. **The sentencing starting points for the offence of child cruelty have been calculated to reflect the likelihood of psychological harm and this cannot be treated as aggravating factors. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence.**
- (ii) **The adverse effect of the sentence on the victim**
50. Imposing a custodial sentence for an offence of child cruelty is the most appropriate outcome in most cases in that it properly reflects society’s view of the seriousness of this type of offending behaviour and protects victims from further harm and anguish. In addition, it is not unreasonable to suppose that some children will be less traumatised once they are no longer living with an abusive carer.
51. However, there is a counter argument that, as the imprisonment of the offender may deprive a child victim of his or her sole or main carer and may result in the child being taken into care, a custodial sentence effectively punishes and re-victimises the child and, it is argued, should only be considered in the most serious of cases.
52. In some cases, even though a child may be distressed by separation from a parent or carer, imposing a custodial sentence on the offender may be the only option in view of the seriousness of the offence committed and the risk of further harm to the victim or other children. However, where sentencing options remain open, the court should take into account the impact that a custodial sentence for the offender might have on the victim.
53. In many cases the child victim will be the subject of concurrent care proceedings and, indeed, the child’s future care arrangements may well have been determined by the time the offender is sentenced. Both the sentencing court and the Family Court need to be aware of the progress of any concurrent proceedings.
54. **In considering whether a custodial sentence is the most appropriate disposal for an offence of child cruelty, the court should take into account any available information concerning the future care of the child.**

¹⁶ *Overarching Principles: Seriousness*, page 7, published on 16 December 2004; www.sentencing-guidelines.gov.uk

(iii) Offenders who have primary care responsibilities

55. The gender of an offender is irrelevant for sentencing purposes. The important factor for consideration is the offender's role as sole or primary carer of the victim or other children or dependants.
56. In cases where an immediate custodial sentence of less than 12 months is justified, it is possible that a suspended sentence order might be the most appropriate sentence. This could enable the offender, subject to the necessary risk assessment being made, to resume care for, or at least have regular contact with, the child and could also open up opportunities for imposing requirements to rehabilitate and support an offender in need. In practice, this principle is likely to benefit more women than men, firstly because women commit the larger proportion of offences and secondly because men are less likely to be the sole or primary carers of children but the principle is established on the grounds of carer status and not gender.
57. **Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate and, subject to a risk assessment, the offender may be able to resume care for or have contact with the victim.**

(iv) Personal mitigation

58. There may be other factors that impact on an offender's behaviour towards children in his or her care and should legitimately influence the nature and length of the sentence passed in child cruelty cases.
59. In relation to the offence of cruelty to a child, the most relevant areas of personal mitigation are likely to be:
- Mental illness/depression
 - Inability to cope with the pressures of parenthood
 - Lack of support
 - Sleep deprivation
 - Offender dominated by an abusive or stronger partner
 - Extreme behavioural difficulties in the child, often coupled with a lack of support
 - Inability to secure assistance or support services in spite of every effort having been made by the offender
60. It must be noted, however, that some of the factors identified above, in particular sleep deprivation, lack of support and an inability to cope could be regarded as an inherent part of caring for children, especially when a child is very young. Thus, such factors could be put forward in mitigation by most carers charged with an offence of child cruelty. It follows that, before being accepted in mitigation, there must be evidence that these factors were present to a high degree and had an identifiable and significant impact on the offender's behaviour.

E. Starting points and sentencing ranges

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a first time offender who has been convicted after a trial. Within the guidelines, a first time offender is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guidelines describe a number of types of activity which would fall within the broad definition of the offence. These are set out in a column headed “type/nature of activity”.
3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the type or nature of offence activity) to reach a **provisional sentence**.
4. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.¹⁷

¹⁷ Criminal Justice Act 2003, s.174(2)(a)

The Decision Making Process

The process set out below is intended to show that the sentencing approach for the offence of cruelty to a child is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Cruelty to a child is a specified offence for the purposes of the public protection provisions in the 2003 Act. The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders who do not meet the dangerous offender criteria and b) as the basis for the setting of a minimum term within an indeterminate sentence for those who do meet the criteria.

2. Identify the appropriate starting point

The court should identify the description that most nearly matches the particular facts of the offence.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), below the range provided, or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "*Reduction in Sentence for a Guilty Plea*" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court imposes a sentence of a different type or outside the range provided, it should explain its reasons for doing so.

F. Factors to take into consideration

1. Cruelty to a child is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003 and sentencers should consider whether a sentence for public protection should be imposed. **The following guideline applies to offenders who have not been assessed as dangerous.**
2. The suggested starting points and sentencing ranges in the guideline are based upon a first-time adult offender convicted after a trial (see page 14 above).
3. The same starting point and sentencing range is proposed for offences which might fall into the four categories (assault; ill-treatment or neglect; and abandonment). These are designed to take into account the fact that the victim is particularly vulnerable, assuming an abuse of trust or power and the likelihood of psychological harm, and designed to reflect the seriousness with which society as a whole regards these offences, is proposed for an offence in each.
4. Only additional aggravating and mitigating factors specifically relevant to this offence are included in the guideline. When assessing the seriousness of any offence, the courts must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness.¹⁸
5. Where there is an especially serious physical or psychological effect on the victim, even if unintended, this should increase sentence.
6. In considering whether a custodial sentence is the most appropriate disposal for an offence of child cruelty, the court should take into account any available information concerning the future care of the child.
7. Where the offender is the sole or primary carer of the victim or other dependants, this potentially should be taken into account for sentencing purposes, regardless of whether the offender is male or female. In such cases, an immediate custodial sentence may not be appropriate.
8. Sentencers should take into account relevant matters of personal mitigation such as those suggested at paragraph 59 above.

¹⁸ *Overarching Principles: Seriousness*, published on 16 December 2004; www.sentencing-guidelines.gov.uk

Cruelty to a child

Children and Young Persons Act 1933 (section 1(1))

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003.

Maximum penalty: 10 years imprisonment

Nature of failure & harm	Starting point	Sentencing range
(i) Serious cruelty over a period of time. (ii) Serious long-term neglect. (iii) Failure to protect a child from either of the above.	6 years custody	5 – 9 years custody
(i) Series of assaults (the more serious the individual assaults and the longer the period over which they are perpetrated, the more serious the offence). (ii) Protracted neglect or ill-treatment (the longer the period of ill-treatment or neglect and the longer the period over which it takes place, the more serious the offence). (iii) Failure to protect a child from either of the above.	3 years custody	2 – 5 years custody
(i) Assault(s) resulting in injuries consistent with ABH. (ii) More than one incident of neglect or ill-treatment (but not amounting to long-term behaviour). (iii) Single incident of long-term abandonment OR regular incidents of short-term abandonment (the longer the period of long-term abandonment or the greater the number of incidents of short-term abandonment) the more serious the offence). (iv) Failure to protect a child from any of the above.	36 weeks custody	26 weeks – 2 years custody

Nature of failure & harm	Starting point	Sentencing range
(i) Short term neglect or ill-treatment. (ii) Single incident of short-term abandonment. (iii) Failure to protect a child from any of the above.	12 weeks custody	Community Order (LOW) – 26 weeks custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Targeting one particular child from the family. 2. Sadistic behaviour. 3. Threats to prevent the victim from reporting the offence. 4. Deliberate concealment of the victim from the authorities. 5. Failure to seek medical help. 	<ol style="list-style-type: none"> 1. Seeking medical help or bringing the situation to the notice of the authorities.

